



CHILD LABOUR AND INDIAN LEGISLATION / LAWS

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INTRODUCTION

It is well known fact that future of society, depends upon the sound growth of children. Child labour is a social-economic problem. One of the numerous problems that face India, is the problem of child labour .According to 1990-91 census, Andhra Pradesh has highest incidence of child labour as a number of working children were 16,61,940 & in U.P child labour were 14,10,086 & also Maharashtra was not behind. Through child labour in India is found to be concentrated in specific areas , yet the issue acquires a new dimensions that concentration of child labour in India is the highest in the world.

The term child labour is used as a synonymous for “employed child“or “working child.” It is very difficult to give precise definition of child labour, however, child labour can be defined as that segment of the child population which principles in work, either paid or unpaid . Sec.2 (ii) of child labour (abolition & regulation) Act, 1986 (Act No.61 of 1986) defines child means a person who has not completed his 14th years of age.

i) Why the child labour are supplied in the labour market?

The Neo-Classical theory explains that child labour supplied to market to maximize its current income from the employment of child labour in preference to the income expected from their employment in future after the schooling of its children. To the common man, poverty is the main cause for child labour. In the study of child labour in Kashmir, it is noted that 97 % of children came to carpet weaving due to poverty. A general assumption is that if children were not to work, survival of the entire family could be at stake. Drop –out, illiteracy & high population are another causes of child labour increase.

It is believed that the human body of child is soft, flexible & pliable (Pliant) in childhood can learn with ease, how to twist, bend, stretch or assume different postures as required by particular job. Moreover children are more amenable to discipline & control. They can be coaxed, admonished, pulled up & punished for default without jeopardizing relations. Children are not organized thus are paid a minimum wage to work for long time.

Case law:-

Peoples union for democratic rights

v/s

Union of India (Asiad Games Case) (AIR 1982 SC1473)

Brief Facts:-

For conducting the Asiad games 1982, the central government started to construct several project necessary for conducting the various games. The central Government handed over the constructional works to various contractors. Those contractors paid very lowest wages to the labour. The wages were not sufficient even for food. People’s union for Democratic Rights filed a write petition under Article 32 of the constitution against the Central Government Contending that the state & the contractors were exploiting the labour



by paying the lesser wages & such exploitation would amount to the exploitation of personal liberty & life of the workers & was against Article 23.

Judgment:-

The Supreme Court treated the writ petition as a “Public Interest Litigation” (PIL) & gave judgment in favour of the petitioner & also agreed with the contention of the petitioner. Their Lordships ordered the defendants to enhance the wages. They held that nonpayment minimum wages to the workers employed in various Asiad projects in New Delhi was a denial to the labour of their right to live with basic human dignity & violative of Article 21 of the constitution. Thus the key motive of employment of child labour to minimize costs in world market & maximize profit.

RIGHTS OF CHILD IN INDIAN CONSTITUTION

In the light & spirit of constitution of India & in pursuance of various conventions & recommendations by U.N.O (United Nations Organizations) & I.L.O(International Labour Organization) India is one of the signatories of such conventions & recommendations has adopted several policies of has made Acts prohibiting child labour. This is reflected in the factories Act, 1948. Indian Constitution has provided certain rights to every child in India. Some of them are fundamental Rights & some of them are Directive Principles of state policy.

FUNDAMENTAL RIGHTS

1) Article 21

No person shall be deprived of his life or personal liberty except according to procedure established by law.

2) Article 21 A.

The state shall provide free & compulsory education to all children of age 6 to 14 years. In such manner as the state may, by law, determine. This is the new article inserted in the constitution by the constitution (Eighty- sixth Amendment) Act, 2002 with effect from 01.04.2010.

3) Article 23.

This article say, Traffic in human beings & beggar & other similar forms of forced labour are prohibited & any contravention of this provision shall be an offence punishable in accordance with law.

4) Article 24

This article says, No child below the age of 14th years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Case law:

In M.C. Mehta v/s state of Tamilnadu (AIR 1997 SC 699)

The Supreme Court issued that child labour shall not be engaged in hazardous employment. There shall be set up child labour rehabilitation welfare fund in which offending employer should deposit Rs. 20,000/-. Adult member of such child should be given employment.



DIRECTIVE PRINCIPLES OF STATE POLICY

1) Article 39 (e)

The state shall, in particular, direct its policy towards securing that the health & strength of workers, men & women & the tender age of children are not abused & that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

2) Article 39(f)

This article 39(f) says, the state shall in particular, direct its policy towards securing that the children are given opportunities & facilities to develop in a healthy manner & in conditions of freedom & dignity & that childhood & youth are protected against exploitation & against moral & material abandonment.

Article 39 (f) has been inserted in the constitution by the constitution (forty-second Amendment) Act, 1976 with effect from 03/01/1977.

3) Article 41.

Article 41 says, the state shall, within the limits of its economic capacity & development, make effective provision for securing the right to work, to education & to public assistance in cases of unemployment, old age, sickness & disablement in other cases of undeserved want.

4) Article 47.

Article 47 says, the state shall regard the raising of the level of nutrition & the standard of living of its people & the improvement of public health as among its primary duties & in particular, the state shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks & of drugs which are injurious to health.

i) Child Labour and Indian Legislations.

1) The child labour (Abolition & Regulation) Act, 1986.

This act is an important legislation, objects that, prohibits the employment of children below 14th years of age & 15th 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 the working conditions of children in most of the employment where they are not prohibited from working & are working under exploitative Conditions.

The act intends to

- i) ban the employment of children i.e. those who have not completed their 14th years age in specified occupations & processes
- ii) Lay down a procedure to decide modification to the schedule of banned occupations or processes.
- iii) Regulate the conditions of work of children in employment where they are not prohibited from working.
- iv) Lay down enhanced penalties for employment of children in violation of the provisions of this act which forbid the employment of children.
- v) To obtain uniformity in the definition of “Child” in the related law.

2) The Employment of Children Act, 1938.



This Act prohibits the employment of children below 15th years age in any occupation connected with the transport of passengers, goods or mails by railway or a port authority or in hazardous employment & certain categories of unhealthy occupations.

3) The Plantation Labour Act 1951.

This act prohibits the employment of children under 12 years age. An adolescent between 15 to 18 years age may be employed in plantation, if certifying surgeon certifies him to be fit to work. Such certificate is only valid for one year. The act imposes penalty & punishment upon the violation of the provisions of this act.

4) The Bidi & Cigar Works (Conditions of Employment) Act, 1966

This act also prohibits the employment of children in bidi & cigar works, who have not completed 14th years of age. The employment of young persons between 14 to 18 years age is prohibited between 7 p.m to 6 a.m. the act provides the penalties for breach which may be imprisonment up to 3 months or a fine up to Rs.500 or both.

5) The Contract Labour (Regulations & Abolition) Act, 1970.

This Act applies to establishments & contractors, who have provided employment for 20 or more workers. There are no specific provisions under the act pertaining to employment of children.

6) Shops & Establishment Act, 1988.

The State Governments are empowered to enact shop & establishment Act. Accordingly every State Government has enacted such act for its territory. The act prescribes the minimum age for employment. The Andhra Pradesh shops & Establishment Act 1988 prescribes the completion of 14th years age. The Karnataka shops & Establishment Act prescribes 12 years to be completed. The act also prescribes the working hours in shops & establishment

CONCLUSION

It is regret to say that today there are lakhs of children working in industries , factories , transport, hotels, shops & establishments, plantation etc. children are employed in glass factories, crockery factories . They are working in dangerous & hazardous industries. The occupiers are employing the children due to their greediness to exploit the children at lowest wages. The W.T.O (World Trade Organization) is seriously concerned it & expresses its sympathy for the child labour in developing countries. America & certain European countries have banned certain products from India, Which are involved child Labour.

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