



CHILD LABOUR: DENIAL OF RIGHT TO EDUCATION

Dr. Mariamma

A.K, Faculty, Government Law College, Calicut-673012, Kerala

Childhood is the most precious stage of a man's life which moulds his mental, physical and intellectual development and children are the most important asset of our nation. Every nation links its future with the present status of its children. Children who are brought up in an environment which is conducive to their intellectual, physical and social health grow up to be responsible and productive members of society. The problem of child labour continues to pose a challenge before the nation. The child has been the subject of special laws enacted for their welfare because of its tender years, weak physique and inadequately developed mind and understanding. In the formative years of life, child needs special care for his growth and development and protection against moral and physical harm and exploitation by others.

International Labour Organisation defines child labour¹ as “Not all work done by children should be classified as child labour that is to be targeted for elimination. Children's or adolescents' participation in work that does not affect their health and personal development or interfere with their schooling is generally regarded as being something positive. This includes activities such as helping their parents around the home, assisting in a family business or earning pocket money outside school hours and during school holidays. These kinds of activities contribute to children's development and to the welfare of their families; they provide them the skills and experience and help to prepare them to be productive members of society during their adult life”². ILO says that in its most extreme forms, child labour involves children being enslaved, separated from their families, exposed to serious hazards and illness and or left to fend for themselves on the streets of large cities—often at a very early age. Whether or not the particular forms of ‘work’ can be called ‘child labour’ depends on the child's age, the type and hours of work performed, the conditions under which it is performed and the objectives pursued by individual countries. The answer varies from country to country as well as among sectors within countries. The worst forms of child labour as defined by Art.3 of ILO convention No.182 are:

- (a). All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

The Child Labour (Prohibition and Regulation) Act, 1986, aims to ban employment of children below 14 years in factories, mines and hazardous employments and to regulate the working conditions of children in other employments. The Act defines a child as any person who has not completed his fourteenth year of age from working in any occupation listed in Part A & B of the schedule, viz. Domestic work, dhabas & hotels, catering at railway establishments, construction work on the railway or anywhere near the tracks, plastics factories and automobile garages. The act also prohibits children from working in places

¹ Article 3 of ILO convention No.182.

² www.ilo.org/ipec/facts/index.htm



where certain processes are being undertaken like beedi making, tanning, soap manufacture, brick kilns and roof tiles units. These provisions do not apply to a workshop where the occupier is working with the help of his family or in a government recognised or aided school.

Major reasons for child labour

1. Poverty and lack of social security measures;
2. Lack of effective education policy;
3. Unemployment or under employment of parents;
4. Homelessness
5. Population explosion and traditional occupations;
6. Parental attitude;
7. Lack of minimum wages;
8. Single parenthood.

Child Population in India:- As per 2001 Population Census, children in the age group of 0-14 constituted about 360 million and accounted for 35.3 percent of total population. Children in the 5-14 age groups constituted about 251 million and accounted for 24.6 percent of the population. Though there is an increase in the absolute number of children, the proportion of children in the total population is declining between 1991 and 2001. By Census of India projections, the proportion of children (0 to 14) has further come down to 32.1 percent during 2006. Elementary school age children (5 to 14) in the total population constituted 241.7 million accounting for 21.7 percent of the total population³.

Magnitude of Child Labour: According to International Labour Organization's Bureau of Statistics (1998), there are 250-million child labourers in the age group 5-14 in the developing countries. Of them, 120 million children are working full time and are engaged in hazardous and exploitative occupations. Some 180 million children aged 5-17 (or 73 per cent of all child labourers) are now believed to be engaged in the worst forms of child labour, comprising hazardous work and the unconditional worst forms of child labour. This amounts to one child in every eight in the world. Of the some 171 million children engaged in hazardous work, nearly two-thirds are under 15 and therefore require immediate withdrawal from this work and rehabilitation from its effects. While 67 million children in the 5-14 age group are engaged in non-hazardous child labour that they should not be undertaking by virtue of their age, many more children (111 million) are involved in work that actually jeopardizes their well being. Among older children aged 15-17 years (who are above the minimum age for employment), the estimates indicate that 59 million are involved in hazardous work. This represents an alarming 42 per cent of all working children in this age group. In India, according to 1991 census there were 11.29 million child workers. National sample survey figures for the year 1999-2000 indicated that there were 10.4 million child labourers. In Tamil Nadu, according to 2001 census, there are lakhs of child workers. 48.2% of them were male and 51.8% were female child workers⁴.

Constitutional Provisions against child labour:

Art. 24- Prohibition of employment of children in factories, etc.: No child below the age of 14 years shall be employed in work in any factory or mine or engaged in any other hazardous employment.

Art.39- The state shall, in particular, direct its policy towards securing. 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.

³ http://ncpcr.gov.in/view_file.php?fid=87 visited 6/4/2015

⁴ <http://www.tnchildlabour.tn.gov.in/magnitude.htm> visited 5/4/2015



Art. 45- The state shall endeavour to provide within a period of 10 years from the commencement of the Constitution for free and compulsory education for all children until they complete the age of 14 years.

The Factories Act, 1948: This Act prohibits employment of children below the age of 14 years. An adolescent aged between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorised medical doctor. The Act also prescribes four and half hours of work per day for children aged between 14 and 18 years and prohibits their working during night hours.

The Mines Act, 1952: This Act prohibits the employment of children between 18 years of age in a mine. Further, it means that apprentices above 16 may be allowed to work under proper supervision in a mine.

The Right of Children to Free and Compulsory Education Act, 2009:- Provides for free and compulsory education to all children aged 6 to 14 years. This Act envisages that 25 percent of seats in every private school should be allocated for children from disadvantaged groups including differently-abled children.

Role of education is very important and in order to ensure education to all children, Right to Education is made as a fundamental right guaranteed by the Constitution of India. By virtue of Constitutional amendment Act of 2002 with effect from 1st April 2010, has added Art.21-A as the fundamental right by proclaiming “*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*”.

Judicial pronouncements also prohibiting child labour:

1. ***M.C. Mehta v. State of Tamil Nadu***⁵, Supreme Court directed the Union and state governments to identify all children working in hazardous processes and occupations, to withdraw them from work, and to provide them with quality education. Court interpreting Act.21 held that right to receive education by child worker until they completed 14 years of Age is an integral part of right to life and personal liberty. Supreme Court directed survey for identification of working children; withdrawal of children working in hazardous industry and ensuring their education in appropriate institutions; contribution off Rs.20,000/- each per child to be paid by the offending employers of children to a welfare fund to be established for this purpose; and 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. Regulating hours of work for children working in non-hazardous occupations so that their working hours does 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.
2. ***Peoples Union for Democratic Rights v. Union of India***⁶, known as ‘Asiad workers case, wherein it was brought before the Supreme Court that, children below 14 years of age are employed in the construction work. Justice P.N.Bhagavathi and Justice Bahrul referring to Art. 24, held that construction work is clearly a hazardous occupation and employment of children under the age of 14 years must be prohibited in every type of construction work and the Union as also every State Government must ensure that the constitutional mandate is not violated in any part of the country.
3. ***Labourers, Salal Hydro Project v. State of J&K***⁷, in this case, Supreme Court held the work of children employed in the Salal Hydro Project as hazardous work and also

⁵ AIR 1991 SC 417

⁶ AIR 1982 SC 1473

⁷ AIR 1984 SC 177



observed that ‘child labour is a difficult problem which cannot be solved merely by legislation, so long as there is poverty and destitution in the country, it will be difficult to eradicate child labour’.

4. ***Bandhu Mukti Morcha v. Union of India and others***⁸ Supreme Court confirmed forced employment of a large number of children, mostly belonging to SC/ST and brought from Bihar in carpet weaving centres in the State. Court observed that, “the child of today cannot develop to be a responsible and productive member of tomorrow’s society unless an environment which is conducive to his social and physical health is assured to him. Neglecting children means loss of society as a whole and their deprivation has a deleterious effect on the efficacy of democracy and rule of law”.
5. ***Rosy Jacob v. Jacob A, Chakramakkal***⁹ in this case also Supreme Court observed that “children are not mere chattels; nor are they mere play things for their parents. Absolute rights of parents over the destinies and the lives of their children have in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society”.

CONCLUSION

In *Sheela Barce v. Union of India*¹⁰ Supreme Court observed “children are assets of the nation”. But even today the condition of children are not improved much and large number of children are working in various industries including hazardous jobs like, Fireworks and match manufacture, Glass and bangle manufacture, Construction work, Carpet weaving, Bidi-making, Rag-picking, Agriculture and plantations where children usually work in tea plantation and in fields doing unskilled jobs like weeding, plucking, watering, etc. and they even use pesticides and chemicals although there are several laws enacted for the protection and welfare of children in India, viz. Child Marriage Restraint Act, 1929; Children Act, 1960, Kerala Children Act, 1972, Hindu Adoption and Maintenance Act, 1960; Juvenile Justice Act; Employment of Children Act, 1949; Guardian and Wards Act, 1929 etc. Besides, there are special provisions for children in the Constitution as well as Indian Penal Code along with several judicial pronouncements prohibiting child labour. According to 2011 census data, 43.5 lakh children of the age group of 5 to 14 are working in India, which shows that they are deprived of the benefits of all the welfare legislations enacted for the children including the Right to Education Act itself, hence it is highly necessary to curb child labour to ensure providing of free and compulsory education to all the children of our country. In *Bandhu Mukti Morcha*¹¹ Supreme Court rightly observed, “Total banishment of employment of children may lead them into destitution and other mischievous environment, making them vagrant, hard criminals and social risks etc. Therefore, exploitation of the child must be progressively banned with other simultaneous alternatives to the child should be evolved including providing education, health care, nutrient food, shelter and other means of livelihood with self-respect and dignity of person. Immediate ban of child labour would be both unrealistic and counterproductive. Ban of employment of children must begin from most hazardous and intolerable activities like slavery, bonded labour, trafficking, prostitution, pornography and dangerous forms of labour, etc.” Hence it is necessary to enforce the Right to Education Act to eradicate child labour and to ensure free and compulsory education to all the children of our country.

⁸ AIR 1984 SC 802

⁹ AIR 1973 SC 2090

¹⁰ (1986)3 SCC 632

¹¹ supra