



THE CONSTITUTIONAL PERSPECTIVE OF CHILD LABOUR IN INDIA

Dr. Phad Madhukar N.

I/C Principal

V.P's V.P. Law College Baramati Dist. Pune

ABSTRACT

Child Labour is major problem in India. Child labour is indirectly connected with economic condition of the parents. Child labour is social evil. The Society and Government both are under duty to create proper environment for the growth of children. Child labour is nothing but violation of human rights. Society and government department both should cooperate and coordinate each other regarding the eradication of child labour.

Earlier children work to supplement their parents but now they are bread earner so it is difficult to eradicate child labour from India. After industrial revolution children started working in industry. Child labour is universal problem. Kautilya for the first time impose ban upon the sale of children. During the medieval period child labour practice was continued. Governor General Lord Ripon for the first time introduced protective legislation for child labour in 1881. Many laws were passed to protect children from exploitation. Child labour (prohibition and Regulation) Act 1986 enacted to protect the children from employment in factories or mine or any hazardous employment.

Attempts were made at International as well as National level to protect children. These are five point declaration on rights of child 1923, declaration for child welfare and protection 1959, Art 24 of international convention on civil and political rights, Art 10 of international covenant on economic, social and cultural rights and The convention on rights of child 1989. Articles 15(3), 21, 21A, 23, 24, 39(e), 39(f), 43, 45, 51A(k) are special provisions for children. Articles 14, 38, 41, 42, 46, and 47 are dealing with the welfare of child. The right of the Children to free and compulsory Education Act, 2009 is positive step to eradicate child labour. Indian Judiciary also played significant role to prohibit child labour in India. An attempt is made by researcher to focus on National and International Laws relating to child labour and constitutional provisions as well as Supreme Court on child labour.

INTRODUCTION

Children are the greatest gift to humanity and the same gift is being misused for personal gains as child labour. They constitute 36% of India's population but a large majority of children in the age group of 5-14 years continue to remain in distress and turmoil. One in every five children below the age of 14 is a labourer. The flower (child) withers before it blossom.

Child labour is more a rural phenomenon than an urban phenomenon. Due to acute poverty poor families labourer residing in rural areas send their children to urban areas for bread and butter. In urban areas, to survive in a cutthroat competition, manufacturers have lowered the real wages for adult workers in order to employ child workers on low wages. The problem is very much vast in its dimension. Children are forced to work in the most hazardous, unhygienic conditions, where they are vulnerable to many severe health problems.¹

¹<http://www.upscportal.com/civilservices/essay/An-Essay-Child-labour-in-India> visited on 08.04.2015



Children are like mirror, who reflect the future image of a nation. If anybody wants to know a nation, he should see its children. Children are not only the future of any nation but also strength in reserve for a nation. They are the crops which feed the future. If they are healthy and active, educated and informed, disciplined and trained, the future of a nation is well insured, and if they are wanting in the above aspects the future of a nation is doomed to disaster. Labour is worshipping, no doubt, but it must be expected from and exacted upon these who are fit for it.² Child labour is universal problem. Child labour practice was continued from ancient India to till today. Poverty, illiteracy, cheap as compared to adult workers is causes of child labour.

Five point declaration on rights of child 1923, declaration for child welfare and protection 1959, Art 24 of international convention on civil and political rights, Art 10 of international covenant on economic, social and cultural rights and the convention on rights of child 1989. There are some provisions which are inserted in the constitution by framer of the constitution maker. Articles 15(3), 21, 21A, 23, 24, 39(e), 39(f), 43, 45, 51A(k) of the constitution of India are specially related with children. Articles 14, 38, 41, 42, 46, and 47 are dealing with the welfare of child.

CONCEPT OF CHILD LABOUR

Child labour occurs when children under the age of fourteen are used to do labour. Children are usually forced to do adult work to help provide for their families. The working conditions are poor and children usually suffer physical, emotional, and sexual abuse. They work long hours every day and are unable to attend school, which is their fundamental right.³ Child labour according to census of India: “Any child engaged in productive work is child labour.”⁴ Child labour is defined by Gujarat State Action Plan for Elimination of Child Labour, 2009: “All children deprived of their fundamental right to education between the ages of six to fourteen years are child labour.”⁵

INTERNATIONAL LEGAL NORMS

As early as in 1924 the International Labour Organization adopted charters for children called Declaration of Geneva. It adopted 18 conventions and 16 recommendations relating to prescription of minimum age of workers in different types areas of works, regarding medical and health safety measures for child workers and on duration of work. The Convention 59 of the ILO prescribes that no child below the age of 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment. India is party to this Convention.⁶ Rights of children were included in Article 25(2) of the UDHR, Article 24 of the International Convention on Civil and Political Rights, Article 10 of the International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child 1989

The ILOs Conventions No.138 of 1973 and 182 of 1999 prohibit employment of child labour less than 14 years of age. India is lagging behind due to socio-economic problems. We are not able to ratify ILO’s core Conventions eliminating the worst form of child labour, namely, Con.No.138 and 182⁷

²<http://www.lawyersclubindia.com/articles/CHILD-LABOUR-IN-INDIA/1666> visited on 08.04.2015

³ Malik K.P, Dr. Raval K.C, Law and Social Transformation in India, Allahabad Law Agency, Faridabad(Haryana), Third Edition 2011 at p.214

⁴ Id at p.215

⁵ Ibid

⁶ Bhat P. Ishwara, Law and Social Transformation, Eastern Book Company, Lucknow, First Edition, 2009 at p.612.

⁷ Supra note 4 at p.218



There are two Optional Protocols to the Convention on the Rights of the Child, first protocol prohibits ‘involvement of Children in Armed Conflict’ and second prohibits the ‘sale of children, child prostitution and child pornography.’ These Optional Protocols were adopted by UN General Assembly on 26th March, 2000 and both are signed by India on 15th nov.2004, but are awaiting ratification.⁸

CHILD LABOUR IN INDIA

As regard child labour in ancient India. It can be said that it existed in the form of child slaves. Child slaves could be purchased or sold like commodities⁹. There was employment of children in agriculture and domestic service.¹⁰ Wages paid in cash or kinds were of very low standard.¹¹ The first reform, in the field of slavery that Kautilya sought to bring about was to impose a ban upon the sale or purchase of children as slaves.¹² The notion of child Labour in medieval period was no exception.¹³ Child labour in medieval India remained in existence on a large scale and even the rulers encourage it with an intention to make only traffic in child slaves.¹⁴ In Modern India Children have always been used in economic activities.¹⁵ The labour in this country was exploited by the employers for their benefits.¹⁶ First, protective legislation for child labour was enacted in 1881. This Act was known as the Indian Factories Act, 1881. This Act provided some protection of the children firstly forbidding employment of children under seven years of age in factories and also in two separate factories on same day, secondly, by limiting their working hours to nine hours a day and thirdly, by making it compulsory that four holidays in a month and rest intervals should be given to them.¹⁷ Mine Act 1911, The Indian Factories (Amendment) Act 1922, Mine ACT 1923 prohibited the employment of children.

The Royal Commission on Labour (1929) had noticed wide prevalence of the practice of child labour in India with long hours of work, with very low wages and without leisure. The recommendations of the Commission were discussed in the Central Legislative Assembly and the Children (Pleading of Labour) Act, 1933 came to be passed, which may be said to be the first statutory enactment dealing with child labour. It had the objective of eradicating the pleading of young children by their parents. It imposed penalty upon the employers and parents and invalidated the agreements pleading the children below the age of 15 years’. Many statutes were passed thereafter.¹⁸ The Indian Ports (Amendment) Act, 1931, Indian Mines (Amendment) Act 1935, The Employment of Children Act, 1938, Factories Act 1948, Plantation Labour Act 1951, The Mines Act, 1952, The Factories (Amendment) Act, 1954, The Motor Transport Workers Act, 1961, The Bidi and Cigar Workers (Conditions of Employment), Act 1966, Contract Labour (Regulation and Abolition)

⁸ Ibid

⁹ Mehta P.L., Jaswal S.S., Child Labour and the Law, Deep & Deep publication, New Delhi, First Edition 1997 at P.22

¹⁰ Id at p.24

¹¹ Ibid

¹² www.archiveorg/stream/labourinanciento31368mbp/labour_inanciento31368mbpdjvu.txt visited on 08.04.2015

¹³ Supra note 10 at p.37

¹⁴ Id at P. 27

¹⁵ Ibid

¹⁶ Id at P.28

¹⁷ Id at p.29

¹⁸ Supra note 7 at pp.613-614.



Act,1970,The Apprentice (Amendment) Act,1973 and Child Labour (prohibition and Regulation) Act 1986 were passed to protect the children from hazardous employment.

THE CONSTITUTIONAL PROVISIONS

The Constitution is the law of the land and any law framed contrary to it will be held unconstitutional and invalid. Our Constitution framers were aware about the problem of child labour and compulsory education of children,so they made prohibition of children in certain employment as a fundamental right under Article 24 and issued many Directive Principles of State policies in Part IV¹⁹

Article 15(3): Clause (3) enacts that nothing in Article 15 shall prevent the State from making any special provision for women and children. From the reading of clauses (1),(2) and (3) together follows that while discrimination on the ground of sex is impermissible,special provisions for women and children are permissible.²⁰

Article 21:“Right to life” should be taken to mean right to live with human dignity.The right to life includes all those aspect of life which go to make a man’s life meaningful,worth living and complete.The ambit of the expression “right to life” has been further extended by the Supreme Court in the case of BandhuaMuktiMorchav.Union of India, the Supreme Court has held that right to life should be taken to mean right to live with human dignity free from exploitation.²¹In People’s Union for Democratic Rights v. Union of India,²²the Supreme Court had held that non-enforcement by the State-authorities of the provisions of labour laws, e.g, the Minimum Wages Act, the Employment of Children Act, etc.is violative of the worker’s right to live with human dignity enshrined in Article 21.

Article 21A:The Constitution (86th Amendment) Act, 2002 has added a new Article 21A after Article 21 and has made education for all children of the age of 6 to 14 a fundamental right. It provides that “the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine.”²³In UnniKrishanv.State of A.P. ²⁴where the Court specifically held that the right to education for the children of the age of 6 to 14 is a fundamental right. The Court did not agree with the decision of the Mohini Jain’s judgment that the children of all ages have the right to education but held that the right to free education is available only to the children of upto the age of 14 years and overruled the Mohini Jain case on the point. The Court has said that after the 14 years age the obligation of the state depended on the economic capacity and development. Article 21A makes it obligatory for the Government to enact a central legislation to give effect to the constitutional amendment.

Article 23:Article23 (1) provides “Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.”²⁵Article 23(1) is to be read with Articles 39(e) and 39(f) which impose

¹⁹Supra note 4 at p.218

²⁰ Singh Mahendra Pal, V.N. Shukla’s Constitution of India, Eastern Book Company, Lucknow, Twelfth Edition,2013 at pp.91-92.

²¹Prof. RaiKailash, The Constitutional Law of India, Central Law Publications, Allahabad, Tenth Edition 2011 at pp 242-243 also see AIR 1984 SC 802.

²² Ibid kindly see AIR 1982 SC 1473.

²³Dr.Pandey J.N, The Constitutional Law of India, Central Law Agency, Allahabad, Forty ninth Edition,2012 at p.297

²⁴ Ibid also see (1993) 1SCC 645.

²⁵ Prof Narender Kumar, Constitutional Law of India, Allahabad Law Agency, Haryana, Seventh Edition reprint 2010 at p.369



obligation on the State for protection of children and youth against exploitation and against moral and material abandonment.²⁶

Article 24: Article 24 of the constitution prohibits employment of children below 14 years of age in factories and hazardous employment. This provision is certainly in the interest of public health and safety of life of children. Children are assets of the nation. That is why Article 39 of the Constitution imposes upon the State an obligation to ensure that the health and strength of workers, men and women and the tender age of the children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.²⁷ Supreme Court played dynamic role to prohibit exploitation of child labour. The Supreme Court in *People's Union for Democratic Rights v. Union of India*²⁸ held that building construction work was such hazardous employment where children below 14 years should not be employed, and the prohibition contained in Article 24 could be plainly and indubitably enforced against everyone, whether State or private individual. In *Labours Working on Salal Hydro Project v. State of Jammu and Kashmir*,²⁹ the Court has reiterated the principle that the construction work is a hazardous employment and children below 14 cannot be employed in this work.

In *Unnikrishnan v. State of Andhra Pradesh*,³⁰ education upto the age of 14 years has been declared to be a Fundamental Right. Right to health, right to potable water, meaningful right to life—all these rights have been declared to be fundamental Rights. The child is equally entitled to all these Fundamental Rights. Education upto 14 years would help in prevention of child labour in industries.

But in spite of national and international instruments cases involving child labour are rampant. In *M.C. Mehta v. State of T.N.*³¹ the petitioner brought to the notice of the Court the problems of child labour existing in the match industry of Sivakashi (TN). The Court examined the problem of child labour as a whole. The Court again reiterated that children below the age of 14 years cannot be employed in any hazardous industry, mines or other works and laid down exhaustive guidelines including setting up a Child Labour Rehabilitation Welfare Fund.

To provide: Compulsory education of all children employed in the factories, mine or any other industry, organized or unorganized labour with such timings as is convenient to impart compulsory education, facilities for secondary, vocational profession and higher education; Apart from education, periodical health check-up; Nutrient food, etc; Entrust the responsibilities for implementation of the principles.

The Court further directed that periodical reports of the progress made in that behalf would be submitted to the Registrar of the Supreme Court.

In pursuance of the obligation, contained in Article 24, Parliament enacted the Child Labour (Prohibition and Regulation) Act, 1986, which specifically prohibits the employment of children in certain industries.³²

²⁶ Ibid

²⁷ Supra note 24 at p.323

²⁸ Supra note 26 at p.374 kindly see AIR 1982 SC 1473.

²⁹ Supra note 24 at p.323 also see Air 1984 SC 177.

³⁰ Jain M.P, Indian Constitutional Law, Wadhwa and Company Nagpur, Fifth Edition 2003 at p.1402 also see AIR 1993 SC 2178

³¹ (1996) 6 SCC 756 also see AIR 1997 SC 699 Kindly see Dr. K.C. Joshi, The Constitutional Law of India, Central Law Publications, Allahabad, First Edition, 2011 at p.279.

³² Supra note 26 at p.374.



Article 39(e): The State shall, in particular, direct its policy towards securing the health and strength of the tender age of children so that they are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 39(f): The State shall, in particular, direct its policy towards securing 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.³³

Article 43: State shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, and conditions of work ensuring a decent standard of life.³⁴

Article 45: The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.³⁵

Article 51A (k): It shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child or ward, as the case may be, between the age of six to fourteen years.³⁶ Following are some Articles directly or indirectly dealing with the welfare of child. Article 14 - equality before law, Article 38 - state to secure a social order for the promotion of welfare of the people, Article 41 - right to work, to education and to public assistance in certain cases, Article 42 - provision for just and humane conditions of work and maternity relief, Article 46 - promotion of educational and economic interests of Scheduled Castes, Scheduled tribes and other weaker sections and Article 47 - duty of the state to raise the level of nutrition and the standard of living and to improve public health.

CONCLUSION

The constitution of India guarantees special protection to the children against exploitation. Some provisions are specially protected the rights of children. State is under duty to promote the welfare of the child worker and help them to grow into good citizen and proper policy should be framed for welfare and protection of children. Child labour is a social problem which can be eliminated by changes in attitudes of society. Awareness must be created through mass media. All sections of society should take dynamic step for removal of child labour.

³³Majumdar P.K, Kataria R.P, The Constitution of India, Orient publishing Company, Allahabad, Eight Edition Reprint 2001, at p.19

³⁴ Id at p.20

³⁵ Supra note 26 at p. 474.

³⁶ Id at p.480.