



EMANCIPATION OF CHILD LABOUR: A CHALLENGE BEFORE INDIAN LEGISLATIVE & JUDICIAL SYSTEM

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INTRODUCTION

Child labour has existed in one form or other form since time immemorial. It is not a new phenomenon. However, its perception as a social evil is of a recent origin. Children in every society have assisted in the activities characteristic of their social group. They have helped their parent's household chorus, in family run business and also outside in factories and an hodgepodge of big and small commercial establishments. Children worked along with their parents in the fields in family house-hold work, in domestic and non-domestic work.

The term child labour is commonly interpreted in two different ways: first as an economic practice, and secondly as a social evil. In the first context it signifies employment of children in gainful occupations with a view to adding to the labour income of the family. It is in the second context that the term child labour is now more generally used. In assessing the nature and extent of the social evil, it is necessary to take into account the character of the jobs on which the children are engaged, the danger to which they are exposed and the opportunities of development which they have been denied.ⁱ

A prodigious number of child workers irrespective of age, sex and educational attainments has been working in agriculture. Transplantation is the work in which largest number of child workers has been engaged. Among different types of agricultural operations, sowing, transplantation, weeding, irrigating, storage, crop watching and threshing have been considered suitable and preparatory work, ploughing, harvesting and hoeing as unsuitable to the majority of the child workers involved in this operation.ⁱⁱ

In factories children are often employed for packing, pasting, labelling, etc. in the organised sector, there are various manufacturing units and processes where children are engaged such as carpet weaving, glass and bangle industry, match and firework industry, slate factories, lock factories, mica factories cashewnut factories, beedi manufacturing, tea estates, coir industry, handloom and power loom industry, wood and cork, furniture and fixture, printing publishing and allied trades, leather and leather products, rubber and rubber products, machinery, transport equipment's and personal services like laundry, dyeing and cleaning etc.

A number of children are employed as domestic servants; or as workers in hotels, restaurants, canteens, dhabas, petrol pumps, wayside shop and establishments; or as the hawkers, magazine and newspaper sellers, fruits and pea nuts sellers; coolies, show shine boys, rag pickers, vendors, car cleaners, parked car watch boys; or helper in scooter and motor repairing workshop, tailing shops or as messengers etc. many of them are also working in construction work for loading, unloading and breaking of stones etc. A major sector where children are put to work is organised begging. However, it is open to serious debate whether



begging should be considered a form of work at all. And if not, should it not be prohibited to all children and adults.

Child labour is also brought about by one of the nefarious method, namely, bonded labour. The parents obtain loan and surrender their child as security for it in virtual mortgage where amount of loan is to be worked off by the child. Thus children in particular are more susceptible to exploitation; they are less likely to protest inadequate working condition, and are more easily manipulated by unscrupulous employers. Whatever the occupation, the element of risk is always there as far as child is concerned. It has been estimated that 16 million children among India's child labour force are exposed to health hazards in their working conditions.ⁱⁱⁱ India is signatory to convention on right of child of 1989, yet there are about 44 million working children who are not allowed by their parents to go to school because of poverty. Therefore it becomes important to discuss constitutional and legal provisions relating to abolition of child labour system in India.

CONSTITUTION OF INDIA & CHILD LABOUR

The children are the national assets and constitute the most weakest and defenseless class. Under constitutional mandate it is the duty of every state organ to protect them from exploitation and moral and material abandonment for their all-round development. The Preamble to the Constitution lays down the goals of politico-socio-economic democracy for the Citizens of India. The Preamble emphasizes that India should be socialist secular democratic republic. The preamble further states that the people of India have given the Constitution to themselves to secure to all its citizen justice- social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity, and fraternity assuring the dignity of the individual. The three concepts – Liberty, Equality and Justice constitute a trinity; one cannot be divorced from another.^{iv}

In *Air India Statutory Corporation v. United Labour Union*,^v Hon'ble Supreme Court has observed that the concept of social justice which the Constitution of India engrafted consists of the diverse principles essential for the orderly growth and development of personality of every citizen. Social justice is thus, an integral part of the justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is the dynamic device to mitigate the sufferings of poor, weak, Dalit's, Tribal and deprived section of the society and to elevate them to the level of equality to live a life of dignity of person. Social justice is not a simple or single, idea of the society but is an integral and essential part of complex social change to relieve the poor, etc. from handicaps penury to ward off the distress and to make their life liveable, for greater good of the society at large. In other words the aim of social justice is to attain the substantial degree of social, economic, and political equality, which is the legitimate expectation and constitutional goal. Social security just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve the self-expression of his personality and to enjoy his life with dignity. The state should provide facility and opportunities to enable them to reach at least minimum standards of health, economic security and civilised living while sharing according to their capacity, social and cultural heritage. All these constitutional aspects held by Hon'ble Supreme Court is equally true and need to be implemented for the emancipation of child labour in India.



The fundamental right against exploitation of children is provided in Article 24. It prohibits employment of children below 14 years of age in factories and hazardous employment. The 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 the workers, men and women and the tender age of children are not abused and the citizens are not forced by the economic necessity to enter avocation unsuited to their age or strength.^{vi}In the case of *M C Mehta v. State of T.N.*,^{vii} the Supreme Court has made it clear that in view of Article 39(f), the employment of children in match factories directly connected with the manufacturing process of the matches and fire work is hazardous and therefore not permissible. Children can, however, be employed in the process of packing but it should be done in the area away from the place of manufacturing to avoid exposure to accident.

LAWS RELATING TO CHILD LABOUR

The Child Labour (Prohibition and Regulation) Act, 1986 was enacted for obtaining uniformity in the definition of 'child' in various laws relating to child labour because the term 'child' is defined indifferent Acts in different ways. The Act defines the term 'child' under section 2 (ii) as a person who has not completed 14 years of age. It classifies occupations in to 'hazardous' and 'non- hazardous' in nature. It state^{viii} that no child under 14 may work in any of the occupations listed in Part A of the Schedule or in any workshop where any of the process set forth in Part B of the Schedule is carried on.

Part III of the Act regulates child labour in those establishments where none of the occupations or processes listed in the Schedule are carried on. However, it stipulates conditions such as wage structure, working hours, etc. for employment of children in such non-hazardous occupations. Section 7 of the Act specifies that the period of work for a child in any establishment on each day is fixed so as to exceed 6 hours. This includes interval and the time spent in waiting for work on any day. Section 7(4) prohibits night work between 7 p.m. and 8 a.m. and section 7(5) prohibits double employment of a child in any establishment.^{ix}

The Act^x regulates child labour in establishment where children under 14 are permitted to work, namely, in the glass, or slate-pencil industry, etc. or in other establishment where none of the occupations or processes likes transport of passengers, goods or mails by railway cinder picking, Beedi-making, carpet weaving, cement manufacture etc. (as mentioned in the Schedule) are carried on. However, such regulation does not apply to any workshop where any processes are carried on by the occupier with the aid of his family or to any school established by or receiving assistance or recognition from the government.^{xi}

JUDICIAL APPROACH TOWARDSEXPLOITATION OF CHILDREN

In *People's Union for Democratic Rights v. Union of India*,^{xii} the Supreme Court ruled that Article 24 is enforceable against everyone and by reasons 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*,^{xiii} 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 Supreme Court in its landmark judgement in *M. C. Mehta v. State of Tamil Nadu*,^{xiv} after going through the reports and recommendations of the committee which visited Sivkasi where the manufacture of the match boxes in large scale take place and where child labour is employed in violation of various Constitutional and statutory provisions prohibiting employment of children opined:^{xv}“Till an alternative income is assured to the family, the question of abolition of child labour would really remain a will- o- the wisps.” The court has reverted to the same theme in *Bandhua Mukti Morcha v. Union of India*.^{xvi} In this case the question specifically raised was regarding employment of children in the carpet industry in the state of Uttar Pradesh. After referring to Article 24 and the number of Directive Principles, the Supreme Court has observed:^{xvii}

“It would, therefore be incumbent upon the state to provide facilities and opportunities as enjoyed under Article 39 (e) and (f) of the Constitution, and to prevent exploitation of their childhood due to indigence and vagary. As stated earlier, their employment- either forced or voluntarily- is occasioned due to economic necessity; exploitation of their childhood due to poverty, in particular, the poor and the deprived section of the society, is detrimental to democracy and social stability, unity and integrity of nation.”

In the light of Supreme Court decisions, and taking into consideration Children (Pledging of Labour) Act, 1933, children cannot be appointed in any hazardous employment. The Employment of Children Act, 1938, prohibits employment of children below 14 years of age in railways and other means of transport. The Indian Factories Act, and Mines Act, 1952, the Merchant Shipping Act, 1958, the Motor Transport Workers Act, 1951, the Plantation Labour Act, 1951, the Beedi and Cigar Workers (Condition of Employment) Act, 1966 and the Apprentice Act, 1961 prohibits employment of child below a certain age.

However besides emancipation of child labour system other equally important facet is child Education. It is undoubtedly true that unless and until every child is educated the problem of child labour cannot be overcome. Therefore let us discuss few judicial pronouncements on right to education of children.

The Supreme Court in *Mohini Jain v. State of Karnataka*^{xviii} has recognised primary education as an aspect of personal liberty under Article 21 of the Constitution. The court ruled:

“Right to life is a compendious expression for all those rights which the court must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of the individual cannot be assured unless it is accompanied by the right to education. The state government is under an obligation to make endeavour to provide education facilities at all levels to its citizens.”

Again in *Unni Krishnan J.P v. State of A.P.*,^{xix} the five judge bench of the Supreme Court held that the free and compulsory education up to the age of 14 years to be a fundamental right of all citizens. Jeevan Reddy J observed:

“The citizens have a fundamental right to education, the said right flows from Article 21. This right is however not an absolute right. Its contents and parameters have to be determined in the light of Article 41 & 45. In other words every child/citizen of this country



has a right to free education until he completes the age of 14 years. Thereafter his right to education is subject to the limits of economic capacity and development of the state.”

The parliament enacted the Child Labour (Prohibition & Regulation) Act, 1986 where some employment, (hazardous) Occupations and processes were banned for the employment of children. The parliament went one step ahead to prevent the exploitation of children in various employment/establishments. The apex court remained always cautious in this regard and at many occasions filled the vacuum, created in the absence of parliamentary legislation, by laying down the guidelines governing the inter country adoption.^{xx} The judiciary has to perform the legislative role to protect human rights.

In *Sheela Barse v. Union of India*,^{xxi} the Supreme Court, regarding protection of children from exploitation in jails, directed that children below the age of 16 years be released from jail and be kept in observation homes. Special juveniles courts for their trial, be established, manning the juvenile court with special judicial officers having special training and speedy trial of the children. The Supreme Court gave these good suggestions so that the life and liberty of such children may be meaningful.

The court, in *Gaurav Jain v. Union of India*,^{xxii} 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.

Vishal Jeet,^{xxiii} is another case of its type where the children are victims of sex exploitation and deserve the attention of law enforcing authorities. Most of the children are unwilling participants and involuntary victims of compelled circumstances and are finding no ways to escape and are weeping or waiting throughout. Speedy and severe legal action, against all the erring persons such as pimps, brokers and brothel keepers, require to be taken. Court must also take serious views in this regard. The governments should evaluate various measures and implement them in right direction, as these children are most vulnerable and can easily exploit as child labour.

CONCLUSION AND SUGGESTIONS

Childhood is the most formative period in one's life because this is the time of learning and formation of habits. The issue of child labour, therefore, requires attention of not only legislature, executives and court but also the NGO's social reformist's research and academic institutes and all those who care for the growth and development of the nation. Until this problem is tackled at all fronts the child which is considered as the 'Supreme National Asset' cannot be protected from this abuse. National authority for abolition of child labour has been set up with a sum of Rs.850 crores earmarked for the scheme to abolish child abuse in hazardous industries by 2000 A.D.^{xxiv} but despite passing of many years the condition of children of our country has not even marginally.



Child Labour (Prohibition & Regulation) Act, 1980; needs amendment. This uniform code on child labour is against the spirit of our Constitution and thus violative of the fundamental rights of children. Article 24 prohibits employment of children in a factory. This Act permits their employment in any workshop except the process mentioned in part B of the schedule. The Ministry of Labour did not find it necessary to include the glass Industry among the list of occupations hazardous to children even though there is enough evidence to prove that glass works are very dangerous for children. The slate and pencil industry where children succumb to respiratory ailments working under unhealthy conditions was excluded from the purview of the Act. Similarly, lock industry was not included.

It is therefore suggested that there is need to immediately enact a codified legislation in which free and compulsory education is provided to all children below 18 years as well as complete abolition of child labour in all industries, whether hazardous or otherwise. So also there is need to establish fast track courts for speedy disposal of cases for the violation of very stringent provisions of this legislation. Besides this a commission is to be formed at central as well as states level and district level forums are to be established to suggest remedial measures for the upcoming cases of child labour.

Finally it is suggested that in a fight against child labour, international bodies, government organisations, judicial bodies, non-governmental organisations, civil societies, pressure groups all have to play important role, to achieve this constitutional objective.

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 - ii. M. K Srivastava, *Agricultural labour and the law*, 1993, p.72
 - iii. Sumanta Banerjee, "Book Reviews," *Seminar* (350) 42 (Oct. 1988)
 4. Dr. Narendra Kumar, *Constitutional Law of India*, Allahabad Law Agency, New Delhi, (2011) at P. 38
 - v. AIR 1997 SC 645
 - vi. Dr. J N Pandey, *Constitutional Law of India*, 1992 p. 195
 - vii. AIR 1991 SC 417 : (1991) 1 SCC 283
 - viii. Child Labour (Prohibition and Regulation) Act, 1986, section 3 (part II)
 - ix. Pawan Sharma, *child labour: a socio-legal study*, JILI, Vol. 36 (1994) p.215
 - x. *Supra* n. 8, part III
 - xi. *Ibid* proviso to Section 3
 - xii. AIR 1982 SC 1473
 - xiii. (1983) 2 SCC 181
 - xiv. 1996 (9) SCALE 45
 - xv. *Ibid* at pp. 52-53
 - xvi. AIR 1997 SC 2218
 - xvii. *Ibid* at p. 2264
 - xviii. AIR 1992 SC 1858
 - xix. AIR 1993 SC 2178
 - xx. *Laxmikant Pandey v. Union of India*, AIR 1984 SC 469
 - xxi. AIR 1986 SC 1773
 - xxii. AIR 1990 SC 292
 - xxiii. *Vishal Jeet v. Union of India*, AIR 1990 SC 1412
 - xxiv. *Times of India*, New Delhi, 29. 11. 1994.