

**CHILD LABOUR IN INDIA: CONSTITUTIONAL AND JUDICIAL DIMENSIONS****Dr. Pandhare Balasaheb D.**Assistant Professor,
New Law College, Ahmednagar**INTRODUCTION**

The Child has been the subject of special laws and legal provisions. Because of its tender years, weak physique, and inadequately developed mind and understanding, every child needs protection against moral and physical harm and exploitation by others. In the formative years of its life, the child needs special care service to realize its full potential for growth and development. There are about 300 Central and State Statutes concerning children. These have been enacted with an intention to protect and help children and achieve the goal of child labour welfare enshrined in our National charter.¹ Further these laws are applicable to children in various spheres of life, which are regulatory, protective and correctional in nature. These laws are seeking to protect and promote the rights of child. Under these legislation children's are entitled to special care, assistance and essential needs and they should be given highest priority in the allocation of resources.

CONSTITUTIONAL DIMENSIONS OF CHILD LABOUR

Our Constitution makers were wise and sagacious to provide, that children should receive distributive justice in free India. The rights against exploitation were mentioned in the draft proposed by Dr. B.R. Ambedkar, K.M. Munshi and K.T. Shah. While Dr. Ambedkar's draft simply provided that subjecting a person to forced labour or involuntary servitude would be an offence, K.M. Munshi's draft article suggested for abolition of all forms of slavery, child labour, traffic in human beings and compulsory labour.²

Constitution of India contains provisions for survival, development and protection of children; these are mainly included in Part III and Part IV of the Constitution, i.e., fundamental rights and directive principles of state policy. India follows pro-active policy towards tackling child labour problem. The concern for children in general and child labour in particular is reflected through the Articles of the Constitution of India. In Article 23, it prohibits traffic in human being and beggar and other similar forms of forced labour. Under Article 24 it has laid down that "no child under the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment". Article 39(e) and (f) requires the State and secure that the tender age of children are not abused and to ensure that they are not forced by economic necessity to enter avocations unsuited in their age or strength. Those children are given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity and that childhood and youth are protected against

¹ See Encyclopedia of Social Work in India, (1987), Vol.I. p.69.

² The framing of Indian Constitution – A study, Vol.V. p.243.



exploitation and against moral and material abandonment. Article 45 provides, for free and compulsory education for all children until they complete the age of 14 years. Article 51A (k) makes it a fundamental duty of the parent or Guardian to provide opportunities for education to the child or ward between the age of 6 and 14 years. Art. 21-A recognizes that the Right to Education as fundamental right and it mandates that, the state shall provide free and compulsory education to all children of age of six to fourteen years in such manner as the state may, by law, determine.³

Legislation to control and regulate child labour in India has existed for several decades. Legislations have sought to address two broad concerns; (1) Prescribing minimum age limit for employment of children and regulation of working hours for children; and (2) Ensuring the health and safety of the child labourers by prohibiting the employment of children in hazardous work. Several statutory provisions prohibiting child labour and protecting interests of children of tender age working as a child labour have been enacted before and after independence to fulfill the commitment to international community and to oblige the mandate provided under Constitution to eradicate the evil of child labour.

There are number of child labour legislations prohibiting the employment of children below 14 years and 15 years in certain specified employments. However, contrary to our international commitment and all proclamations in the country's Constitution, and despite all the legislative measures, child labour is a harsh reality.

JUDICIAL DIMENSIONS OF CHILD LABOUR

The response of the judiciary with regard to Child Labour in India is highly commendable. It has in real sense brought a revolution in the field of child labour in India. It has always endeavored to expand and develop the scope of law so as to respond to the hope and aspirations of the framers of the Constitution as well as the people of India. Time and again, it has pronounced glorious judgments for eliminating the problem of child labour in India. With regard to child labour in India, Justice Subba Rao, the former Chief Justice of India, rightly remarked; "Social justice must begin with the child. Unless a tender plant is properly nourished, it has little chance of growing into strong and useful tree. So, first priority in the scale of justice should be given to the welfare of children."⁴ Supreme Court has played an important Role to control the problem of child labour and has shown its concern for child labour by bringing occupations or processes under the courts order by the direct application of constitutional provisions. Human Rights jurisprudence in India has a constitutional status and sweep; Article 21 of the Constitution can be termed as 'Magna Carta' of human rights. This Article guarantees right to life and liberty to every human being. Right to life and liberty is a cherished and prized right under the Constitution.

³ Article 21A inserted by the Constitution (Eighty Sixth Amendment) Act, 2002 ,Sec.,2

⁴ See, Subha Rao, J., *Social Justice and Law*, Delhi: National Publishing House, 1974, p.4. 306



Supreme Court replaced the liberal concept of Article 21 taken in *Maneka Gandhi v. Union of India*,⁵ and *Francis Coralie Mullin v. Union Territory of Delhi*,⁶ held that Article 21 included protection of health and strength of workers, men, women and tender age of children against abuse. According to the court, the opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity and educational facilities are included in Article-1. In *Peoples Union for Democratic Rights v. Union of India*,⁷ commonly known as ‘*Asiad workers case*’, it was brought to the notice of the Supreme Court that children below 14 years of age employed in the construction work. It was held that construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. Referring to Article 24, Justice P.N. Bhagavathi and Justice Bahrul have held that “apart from the requirement of International Labour Organization Convention No.59, we have Article 24 of the Constitution which even if not followed up by the appropriate legislation, must operate “*proprio vigore*” and construction work plainly and indubitably a hazardous employment, it is clear that by a reason of constitutional prohibition no child below 14 years can be allowed to be engaged in construction work”. And specifically in Employment of Children Act, 1938, no child below 14 years can be employed in construction work⁸

The Supreme Court observed that “there can be no doubt that notwithstanding the absence of specification of construction industry in the schedule to the Employment of Children Act, 1938, no child below the age of 14 years can be employed in 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”. The Judgment was eye an opener about the lacunae of the law and the need to reform in order to be comprehensive. In accordance with this judgment, the construction work has been added item No.7 as prohibited, occupation in part ‘A’ of Schedule to the Child Labour Act, 1986

In *Labourers, Salal Hydro Project v. State of Jammu and Kashmir*,⁹ Bhagavati J. with R.S.Pathak and Amarendra Nath Sen JJ., delivered another valuable decision to protect the interest of large number of child labourers working in the construction of Salal Hydro Project, a hazardous work. The court was constrained to remark that the problem of child labour is a difficult problem and it is purely an account of economic reasons that parents often want their children to be employed in order to be able to make both ends meet. The court said that this is an economic problem and it cannot be solved merely by legislation. So

⁵ AIR, 1978, SC 597; 1978 (I SCC 248)

⁶ (1981) I SCC p.608.

⁷ AIR 1982 SC 1473; (1982) 3.SCC 235; 1982 SCC (L & S) 275.

⁸ AIR 1982 SCC 1481.

⁹ (1983)2 SCC 181; AIR 1984 SC.177.



long as there is poverty and destitution in the country, it will be difficult to eradicate child labour¹⁰. The court conceded that having regard to the prevailing socio-economic conditions, it is not possible to prohibit child labour altogether and in fact, any such move may not be socially or economically acceptable to large masses of people. That is why Article 24 limits the prohibition against employment of child labour only to factories, mines or other hazardous employments. The Central Government was directed to persuade the workmen to send their children to a nearby school and arrange not only for the school fees to be paid but also provide free of charge, books and other facilities such as transportation etc. The Court also suggested to the Central Government that “whenever it undertakes a construction project which is likely to last for some time it should provide that children of construction workers who are living at or near the project site should be given facilities for schooling and this may be done either by the Central Government itself or if the Central Government entrusts the project work or any part thereof to a contractor, necessary provision to this effect may be made in the contract with the contractor”.¹¹

With regard to child labour in Beedi Industry, in *Rajangam, Secretary, Dist. Beedi Workers Union v. State of Tamil Nadu and others*,¹² with *K.C. Chandra Segaram v. State of Tamil Nadu and others*,¹³ various allegations were made regarding failure to implement the provisions of the labour laws, manipulation of records regarding employees, non-payment of appropriate dues for work taken etc. including the child labour and specifically the non-implementation of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966. To protect child labour, the Apex Court suggested that “tobacco manufacturing has indeed health hazards. Child labour in this trade should therefore be prohibited as far as possible and employment of child labour should be stopped either immediately or in a phased manner to be decided by the State Government the provisions of the Child Labour Act, 1986 should be strictly implemented.”¹⁴ The Court further admitted that the exploitation of labour is rampant in the beedi trade and suggested that ‘in view of the health hazard involved in the manufacturing process, every worker including children, if employed, should be insured for a minimum amount of Rs. 50,000 and the premium should be paid by the employer.’¹⁵

In *M.C. Mehta v. State of Tamil Nadu and others*,¹⁶ Supreme Court allowed children to work in a prohibited occupation like fireworks. Ranganath Mishra and M.H.Kania JJ.

¹⁰ Ibid at Page-91

¹¹ Sudesh Kumar Sharma, “Child Labour: Problems and Prospects”, (1999) *Cochin University Law Review*, p.268.

¹² AIR 1993 SC 404; 1993 Lab IC 4.

¹³ Ibid

¹⁴ *Ibid*, at 405

¹⁵ Ibid

¹⁶ AIR 1997, SCC 283.



opined that “the provisions of Article 45 of Constitution in the Directive Principles of State policy still remained a far cry and through according to this provision”, all children upto the age of fourteen years are supposed to be in the school, but economic necessity forces grown-up children to seek employment. Children can, therefore, be employed in the process of packing of fireworks but packing should be done in an area away from the place of manufacture to avoid exposure to accident.¹⁷ It is a matter of surprise that the Supreme Court in this case allowed the children to be employed in match factories of Sivakashi in Madras and said that, the children must be provided basic diet during working period. This judgment is not in accordance with the constitutional spirit. Further Supreme Court in *M.C. Mehta v. State of Tamil Nadu and others*,¹⁸ popularly known as ‘Child Labour Abolition Case’ has held that the children below the age of 14 years cannot be employed in any hazardous industry, mines or other work. It would be appropriate to quote brief facts that, when news about an accident in one of the Shivakashi crackers factories was published in the media, wherein several children reported dead, the Supreme Court took “*Suo motu*” cognizance of it. The Court gave certain directions regarding the payment of compensation. An Advocate’s Committee was also constituted to visit the area and report on the various aspects of the matter.¹⁹

A three judge bench of the Supreme Court comprising justice Kuldip Singh, Justice B.L. Hansaria and Justice Mujumdar delivered a landmark judgement on 10 December 1996 in writ petition (Civil) No.465/1986. This Judgement is of considerable importance and is a progressive advancement in public interest litigation and child jurisprudence. The decision has attempted to tackle the problem of child labour. M.C. Mehta, an environmentalist, lawyer, filed a writ under Article 32 of the Constitution of India, as the fundamental right of children against exploitation (Article 24) was being grossly violated in the match and fireworks industries in Sivakashi where children were employed. The Court then noted that the manufacturing process of matches and fireworks is hazardous, giving rise to accidents including fatal cases. Therefore, keeping in view the provisions contained in Article 39(f) and 45 of the Constitution, it gave directions as to how the quality of life of children employed in the factories could be improved. The Judges further observed that ‘it is a stark reality that in our country like many others, children are exploited a lot.’²⁰ Court had remarked that “child labour is a big problem and has remained intractable even after 50 years of country having become independent, despite various legislative enactments prohibiting employment of a

¹⁷ Ibid

¹⁸ Ibid

¹⁹ The Committee consisting of Shri R.K.Jain a Senior Advocate, Indira Jaisingh, another senior advocate, and Shri K.C. Dua Advocate, submitted its Report on 11 November, 1991.

²⁰ *Supra* note 100, p.701.



child in a number of occupations and avocations.”²¹ The Court said employment of the child below 14 years was unconstitutional in diction and if it had to be seen that all these children had a fundamental right for education, it seemed that the least the Court ought to do was to see the fulfillment of the legislative intent behind the Child Labour (Prohibition and Regulation) Act, 1986.²²

CONCLUSION

The complete Abolition of child labour and proper regulation thereof in accordance with the statutory provisions should be the cherished and prime objective of a civilized society. It is also pertinent to state that the Judiciary played a significant role in protection of child labours. Many path breaking judgments of the Supreme Court have done a great deal by expanding the human rights doctrine. It would not be out of place to mention the historic judgment of the Supreme Court on December, 10, 1996 banning child labour in non-hazardous industries. The judgment specified the hazardous and the most dangerous occupations from where child labour should be eliminated. Penalty to the employer at Rs.20,000/- per child be paid and a corpus to be found through the amount so collected. This was to be spent on education and rehabilitation of the children. The court also ordered that the working hours of a child labour should not exceed 4-6 hours a day and not less than 2 hours a day should be set a side for the child’s education. The responsibility for imparting this education is that of the employer. Judiciary in India played a very significant role in promoting child welfare. It has taken the lead to save the child from exploitation and improve their conditions. Judicial mandate clearly demonstrates that right to education is necessary for the proper flowering of the children and their personality.

Thus the judiciary has always made concrete efforts to safeguard them against the exploitative tendencies of their employers, by regularizing their working hours, fixing their wages, laying down rules about their health and medical facilities. The judiciary has even directed the states that it is their duty to create an environment where the child workers can have opportunities to grow and develop in a healthy manner with full dignity in consensus of the mandate of our constitution.

²¹ Ibid.

²² Ibid at 709