

UNCRC & LABOURING CHILDREN IN INDIA

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Abstract

Child labour in India happens to be a socio-economic as well as a global phenomenon and it jeopardizes their rights and prevents them from getting a good education and their early childhood. It is not good for their physical and mental development. 10.1 million children are engaged in work in India and their age is between 5-14 years. According to 2011 census 4.5 million girls and 5.6 million boys are engaged in work in India. They are more prevalent in Utter Pradesh, Bihar, Maharashtra, Madya Pradesh and Rajasthan etc. in this society the child labour is more visible to all because there is a change in the location of the work and it is converted to business owner and other workers. The present study sought to examine the socio-economic profile of child labour in rural and urban India. Data were collected by the help of secondary data available in census data and other Govt organization in India. CRC (Convention on Child Rights) also plays an important role in promotion and protection of rights of children in India. The main reason for child labour are includes: Poverty, Illiteracy, unemployment, lack of good schools and growth of informal economy etc. The results revealed that majority (38%) of the respondents were engaged in Agriculture. Nearly (63%) of the respondents were wage-paid workers and semi-skilled. Almost all the respondents were engaged in work to support their family to get a minimum standard of life and how to get food, clothing, shelter, minimum medical facilities etc. The data concluded that poverty is the main cause of sending their children to work from their early childhood. The Policy initiatives taken by Government of India through various programmes, NGO's and major National Legislations had a great impact on the situation of child labour and for the protection of child rights and elimination of child labour in India.

Keywords: Child labour, Poverty, Programmes, Initiatives, Causes.

Introduction

It is a matter of pleasure that people have now started realizing that human rights instruments are not only a subject for diplomatic relations between States but a set of norms that can be used to promote accountability of governments at the national level. The UN Convention on the Rights of the Child(CRC) envisages an important role for the legal system in realizing children rights. One can easily feel a

movements from a welfare approach to a rights approach in the form of this Convention. An honest realization of even core values of human interests that the Convention distinctly pronounces for is bound to have effective impact on the quality of life of all people including children.

The CRC lays down that State Parties recognize the right of the child to protection from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental spiritual, moral and social development. It also stipulates that the countries shall take legislative administrative social and educational measures to ensure the implementation of this provision. It specifies to a minimum age or minimum ages for admission to employment, appropriate regulation of the hours and conditions for employment and appropriate penalties or other sanctions to ensure the effective enforcement of this provisions.¹ Subsequently it has also been reaffirmed at Jomtin in March 1990, The World Summit on Children in the autumn of 1990 and the SAARC Conference on Children in 1991 and ILO which clearly speak that Children below 14 years age must not be put to work. However, the harsh reality is that in India ratification of inter-national labour standards have been effective more as 'status symbol' and for upholding the country's image abroad rather than their sincere implementations and compliance in practice. The Constitution India provides that States shall endeavour to foster respect for International law and treaty obligations.² So also the Supreme Court has observed that International Convention if ratified by the government of India would be binding on it.³

Constitutional Provisions: -

Article 24: No child below the age of 14 years shall be employed to work in any factory or work which is hazardous.

Article (39-E): The state shall direct its policy towards securing the health and strength of workers, men and women and the tender age of children are not abused.

Article (39-F): Children shall be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.

Article 45: The state shall endeavor to provide within a period of 10 years from the commencement of the constitution for free and compulsory education for children until they complete the age of 14 years. The Implementation of Right to Education Act of 2010 ensures free and compulsory education for children between the ages of 6-14 years.

The Constitution of India does provide no Child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment⁴ and 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 to

¹ Art. 32 of the UN Convention on the Rights of The Child, 1989.

² Art 51(C) Constitution of India.

³ Sheela Barse vs Union of India (1983) 1 SCC 175, Legal Aid Committee vs Union of India (1989) 1 SCC 331.

⁴ Art 24 Constitution of India.

economic necessity to enter avocations unsuited to their age and strength.⁵ It has also been proclaimed that childhood and youth are protected against exploitation and moral and material abandonment.⁶ Besides, there exist several laws in the name of protecting interests of the labouring children.⁷ However, it is also true that no serious and willful efforts have been so far made for eradication of child labour.

Notable is that Britishers in 1938 had enacted Abolition of Child Labour Act With a clear intent to abolish the employment of the children whereas Indian Parliament after a long period of more than half of a century could enact the Child Labour (Prohibition and Regulation) Act, 1986 which does not speak for abolition but just for prohibition and regulation of the child labour. In the statement of objects and reasons of this Act the continuance of Child Labour has been justified on the ground of economic necessity. The Constitutional position in this regard is contained in the provisions under Article 39(e) which as has been referred to above mandates the State to direct its policies towards children in such a way as not to be abusive of their tender age and prohibits that the citizens would not be forced by economic necessity to enter any avocation which are harmful and abusive of their age or strength.⁸ Thus we see that employing of children as workers even under excessive pressure of economic necessity has been prohibited.

Now coming to the point of Constitutional status of this provision, it is to be noted that it falls under the Chapter IV of Directive Principles of State Policy. Earlier the principles of this Chapter were Considered non justifiable in the courts of law but just guidelines which may or may not be followed by the State. However, the Judiciary has altogether altered the position. Once the Supreme Court held that Parliament is competent to amend the Constitution to override or abrogate any of the fundamental rights in order to enable the State to implement the Directives so long as the basic structures of the constitution are not affected.⁹ This court could not like non-implementation of the Directives which is evident from the fact that it has been directing to the governments and the administrative authorities to take positive action to remove grievances which are existing only because of non-implementation of the Directive. The point of relationship between the Directive principles and Fundamental Rights was further elaborated by Y.V. Chandrachud C J in the case of *Minerva Mills vs Union of India*.¹⁰ That Part III and Part IV are like two wheels of a chariot and observed that to give absolute primacy to one over the other is to disturb the harmony of the constitution. Thereafter the Hon'ble Court raised the status of Directives at par with the fundamental rights when it observed that the Directive principles are to be read into Fundamental Rights.¹¹ Then the court in another case held that the course should make every attempt to reconcile the Fundamental

⁵ Art 39(e) Constitution of India.

⁶ Art 39(f) Constitution of India.

⁷ Factories Act, 1948, Mines Act, 1952, Merchant Shipping Act, 1958, Motor Transport Workers Act, 1961, Plantation Labour Act, 1951, Beedi and Cigar Workers (Conditions of Employment) Act. 1966. Children (Pledging of Labour): Act. 1933, Apprentices ,Act, 1961, Child Labour (Prohibition) and (Regulation) Act. 1986. and Shops and Commercial Establishments Act etc.

⁸ Art. 39(e) of the Constitution of India reads: The State shall direct its policy towards securing that the health and strength of men and women and the tender age of children are not abused and that citizens are not (brought by economic necessity to enter avocation unsuited to their age and strength.

⁹ *Keshavanand Bharti vs State of Kerala*. AIR 1973 SC 1561: (1973) 4 SCC 225

¹⁰ AIR 1980 SC 1789.

¹¹ *Randhir Singh vs Union of India*, AIR 1982 SC 879.

Rights with the Directive Principles.¹² It may be taken as well settled that the provisions under Part III and Part IV of the Constitution are supplementary and complementary to each other and that fundamental rights are a means to achieve the goal indicated in Part IV.¹³ Thus we notice that the constitutional directives under Part IV are being implemented, if any, by the States and the administrative authorities only after they become a sort of judicial directives'. Now a question arises as to why was non-enforceability of the Directive principles of state policy maintained by the framers of our Constitution? The only answer seems to be to give the State some reasonably sufficient time to implement these principles. A long time of more than five decades has elapsed which is definitely a reasonably sufficient time. Therefore, if today the Central or State Governments justify the existence and continuance of the child labour on the ground of economic necessity that cannot be accepted as sufficient. It is ridiculous. It amounts to constitutional mockery. It reflects total lack of will and advertent slackness on the part of the State. The State is judicially accountable for not giving priority to implement such a humane and significant constitutional mandate. Justice K.N. Singh, former Chairman of Law Commission of India also once pointed that the laws have been there but there has been no will to enforce them effectively.¹⁴

Who is a Child Labour?

The Child labour has been defined as that segment of the child population which participates in work either paid or unpaid.¹⁵ Child labour generally concentrates on two concepts i.e. child in terms of chronological age and labour in terms of its nature, quantum and income generation capacity. Child labour may also be explained as employment of children in gainful occupations or a material contributions to the income of the family.¹⁶ Again the child labour means the employment of children under the specified legal age.¹⁷ The term child labour has also been defined by US Department of Labour as 'the employment of boys and girls then they are too young to work for hire, or when they are employed for jobs unsuitable or unsafe for children of their age and under conditions injurious to their welfare.¹⁸

Labour by Children-why?

Causes of Child Labour

- Poverty: Poverty is undoubtedly a dominant factor for child labour as Below Poverty Line families, because they force their children to work to supplement their family Income. Poverty has deprived the children from elementary as well as higher education and health of those children.

¹² Bandhua Mukti Morcha vs Union of India, AIR 1984 SC 802; (1984) 3 SCC 161.

¹³ See Dr RR Dangwal's paper ' Article 21 and Child's Right to Education' Presented at the national Workshop on the Right of the Child held in the Law faculty of Lucknow University on January 14-15, 1994 P.7

¹⁴ See Justice KN Singh 'No will to Enforce Child Labour Laws' The Economic Times dt. Oct. 12. 1992.

¹⁵ Encyclopedia of Social Works in India, Vol. 1 Ministry of Welfare. Govt of India 1987.

¹⁶ Kulshreshtha JC 'Child Labour in India.

¹⁷ New Encyclopedia Britannica, Micropaedic Vol. II. 15th Edn.(1978) P. 329.

¹⁸ Encyclopedia Americana (1963) P. 461.

- Illiteracy and unemployment: it is another major cause of child labour in India because if the family size is large and literacy rate is low then children are compelled to work to help their parents to survive in the society.
- Urbanization and adult unemployment: it is also another problem in India.
- Lack of proper educational facilities: it leads to more number of school dropouts both in rural and urban areas.
- Overpopulation and increasing living cost: population explosion is also a major problem for child labour
- Informal economy and ineffective law enforcement: sometimes the Act and regulations made by the Govt are not properly implemented in the society
- Low level of parental education.

The child labour is the most outrageous form, of child abuse which has become a State-aided abuse after its legitimating through the Child Labour (Prohibition and Regulation) Act., 1986. It is a product of human policy and is liable to reversal by well-defined policy and where necessary by police action. The problem of child labour is not a natural phenomenon which cannot be overcome by any analysis or action. It cannot be equated to the natural disasters like famine, earthquake and cyclone of which occurrence is beyond any human anticipation or control. In our country this problem is because of production and reproduction of unconstitutional and unconstitutional policies.¹⁹ The State policy makers argue that the State ought not to intervene in the point of child labour 'since poor parents depend upon income of their children'. It is thus a matter of social justice that the children of the poor be allowed to work.²⁰ This contention of the State does not hold good. They are absolutely wrong as the concept of child labour is pervasive not only to the paternalism but also to the idea of social justice since the children of the non-poor do not need to work and only the children of the poor need to work 'Social' justice signifies really Class justice--. Since the impoverished will always with us, social (Class) justice will also require continual reproduction of the deprived destitute and devastated labouring children. In our country the child labour is a product of Socio-economic conditions. Unconstitutional policies, inadequate legislative measures and lack of political will may also be taken as important factors responsible for the persistence of this unlawful social evil. social neglect of and indifferent attitude towards them also contributes much for the large child labour force in our country. In most of the cases sinister attitude of the parents and their improper appreciation of the child's education, capabilities and intelligence, have been found to be the root course behind the child labour. Further, in many cases the poor parents in bad habits and with criminal tendencies take the child in confidence and tell him affectionately that education could not improve their eco-nomic conditions and that in long run he would be earning significantly if he starts just now. Besides, poverty also plays dominant role in the continuance of child labour so much so that a child cannot avail the benefits of State Policy for

¹⁹ Professor Upendra Bakshi 'Unconstitutional Politics and Child Labour' Published in Mainstream di Oct. 02, 1993, See also Srinivas Gupta, "Unconstitutional Practice of Child Labour: Ret respect & Prospect' published in CILO 1995 pp 287-332.

²⁰ Myron Weiner "The Child and State in India' (1991) P. 13.

free education to children. He cannot afford to go to school for education and miss the wages. The basic need is not the education but the food, medicines and clothes, say the people.

The reason for such violations of children rights directly and in-directly related to social discrimination, prevailing attitudes and customs and the inefficiency or inappropriateness of educational system. Inadequacy also plays an important role. Bondages to repay a creditor for cash advances at rates of interest which are forever beyond the means of poor families is also one of the important factors responsible for child labour. The Children are mortgaged to the landlord or money lenders for small sum of money borrowed for the purpose like treatment of sickness and social ceremonies etc. It seems amazing that at the time the cycle is inter-generational child labourers working through adulthood and old age, then replacing their labour with that of their own children.

The existence of child labour in our country in most of the cases may be the gift of poverty but it cannot be denied that there are certain other causative dimensions of the problem and the social structure is also one of them. The child labours are mostly from the Scheduled Castes, Scheduled Tribes and other backward classes and religious minorities. It is to be noted that the girl constitute a major portion of the working children. For instance, in Tamil Nadu match factories half of the total 90 percent of female work force are children. This manifests the problem of the girl child and prevailing gender inequalities. This is because of considerable disparities evident in terms of sex ratio, health and nutritional status, literacy and school enrolment. Lack of quality and relevant education to the poor may also be taken as one of the major causative factors.

Besides, to the employer, child labour is profitable as the wages of children are small, their complaints few and they accomplish in some industries and occupations as much as adults. The employers, therefore, do not hesitate in exploiting the children in their own interest without any consideration to their needs for their healthy growth and development. The child labour is a great socio-economic evil. It is, indeed, a national waste as it involves several far-reaching socio-economic implications. The children have to work hard for long and this is harmful for their health and normal development. Certain economic problems are also created because of this unconstitutional practice. The use of labour as its lowest productivity results in an insufficient utilization of labour force. Then a sort of unfair competition with labour force is caused due to the practice of employing child labour and this results in an extensive unemployment of the adults or the working conditions may be less satisfactory than they would otherwise have been there.

HUMAN RIGHT TO DIGNITY & CHILD LABOURERS

Once Justice SM Sikri observed that the supremacy of the Constitution and its basic structure is built on the basic foundation i.e. dignity and freedom of the individual. Similarly Chandrachud CJ also observed that the dignity of the individual could be preserved through the right to liberty and equality²¹. Then VR Krishna Iyer CJ in the case of Inder Singh vs State²² held that the spiritual basis of our constitutional order

²¹ Minerva Mills vs Union of India, (1960) 2 SCC 660.

²² (1978) 4 SCC 161.

is human dignity and social justice and not the sadistic cruelty and hard confinement. In *Francies Coralis Mullin vs Administration. Union Territory of Delhi*²³. The Supreme Court observed that right to life includes the right to live with human dignity and all that goes along with it, namely; the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading writing and expressing oneself in diverse forms, freely moving about the mixing commingling with fellow human beings. right to protect against torture, cruel and inhuman and degrading treatment. The Child labourers are firstly children and then labourers so they should also not be treated cruelly and inhumanely.

*Bandhua Mukti Morcha vs Union of India*²⁴ Justice PN Bhagwati observed it is the fundamental right of every one in this country assured under the interpretation given to Art 21. to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Art 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (a) and (f) of Art. 39. 41 and 42 and therefore, it must include protection of the health and strength of workers, men and women and of the tender age of Children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and human conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State- neither the Central Government nor the State Government, has the right to take any action which will deprive a person of the enjoyment of these basic essentials which go to makeup a life of Human dignity.

In the light of Supreme Court Judgements in the cases of *Maneka Gandhi*²⁵ and *Sunil Batra*²⁶ any kind of brutality, constant fear of violence, psycho-logical restraint, encroachment of person, destruction of any organ of the body through which the soul communicates with the-outer world, physical assault, allotment of de-grading labour, lack of adequate medical care, poor food service, inadequate or non-existent rehabilitative and educational facilities and payment of nominal subsistence allowance have been forbidden under Art 21 of the Constitution of India²⁷. However, it remains a bitter truth that in most of the cases the little workers are not provided adequate medical care, rehabilitation and educational facilities, good food service, payment of normal subsistence allowance and so on. Then the apex court in *LK Pandey vs Union of India*³⁴ observed that welfare of entire community, its growth and development depend upon the health and well-being of its children and that children need special protection because of their tender age and physical, mental immaturity and incapacity to look after themselves.

The Supreme Court is of view construction work is hazardous that they employment and hence no child below the age of 14 years can be allowed to be employed in construction work ²⁸. In the case of *MC Mehta*

²³ (1981)1 SCC 618.

²⁴ See Supra n. 14.

²⁵ (1978) I SCC 248.

²⁶ (1978)4 SCC 494.

²⁷ Art. 21 reads : No Person shall be deprived of his life or personal liberty except according to the procedure established by law.

²⁸ *Labourers Working in Salal Hydra Project v State of J&K*, AIR 1984 SC 177.

vs State of TN²⁹ this court has said that the children must be provided basic died during working period. However, the court could not maintain its activism and championship for the rights of the child in this case when it went out of tune with the constitutional spirit and aspirations envisaging a fair deal for children. It is a matter of surprise that Hon'ble Supreme Court in this case allowed children to be employed in match factories of Sivakashi in Madras, where admittedly hazardous manufacturing process of match and fireworks is carried on. The Hon'ble court could not for see that risk is also involved in sorting out and processing for the purpose of packeting of such objects, when it observed that tender hands of packeting of such objects, when it observed that tender hands of young workers are more suited to sorting out the manufactured products and process if for the purpose of packing. Going a step further against the milts of the child it considered children's special adoptability working in match and fireworks in sorting out and packing manufactured products and ruled that at least 60 per cent of the prescribed minimum wages for an adult worker doing the same work should be given to the child worker doing the same work. This author could not rand as to why only 6% per cent? While they have specially adopted efficiency. why not at least equal to what is paid to the adult/workers'? The judgement is not in accordance with the conditional spirit and aspirations speaking for a fair play with the rights of the child³⁰.

CONCLUSION AND SUGGERSTIONS

The root uses of the exploitation and abuse of children arc. the state of law. the court system and lawyering. Hence, they need to be given considerable rethinking. More and more people should know about the rights of the child and think they must be materialized and be exercisable by the children. It is good that now we have international standards for the rights of the child but still it is more important to see that the process required for their realisation is accelerated and strengthened. Every child who works takes away the job of an adult and every child who works for lower wages reduces the possibility of fair wages for adults. This fact also proves that profit motivation of the factory' owners and poor living conditions of millions of people have of course threatened the perpetuation of the problem of child labour. The children in the workforce should be replaced by adults and the children up to 14 years should be granted free and compulsory schooling. An adequate legislation providing for the abolition (only regulation and prohibition would not do) of the labour by children is urgently required. An honest and regular monitoring of enforcement provisions must be done so as to ensure that no child in India is forced to work and remains without schooling.

A serious omission in the legislation relates to enforcement machinery. the laxity of which has enabled employers to circumvent the provisions of the law with impunity. It is heartening to note that several NGOs concerned with child labour as a part of network called as South Asian Coalition on Child Servitude (SACCS) have succeeded to an extent in creating worldwide consciousness on the point of child labour. Then media has also played very important role in creating public awareness on this court. 21. Some kind

²⁹ AIR 1991 SC 417.

³⁰ See also Shriniwas Gupta, 'human Rights of the Child and Judicial Activism in India' pull-fished in the C11.0. 1994 Vol. VII pp. 133-168.

of financial incentive may also be considered for the parents who are prepared to send their children to spools instead of work place. Again, the poverty alleviation programmes together with universalization of education and general change in attitude only can help in eradication, the evil of child labour. We must not forget that we the adults are real 'culprits' in fitting the child labour to persist. The children are innocent. They are our liability and we are under sacred duty to let them have every chance and opportunity to grow and develop all in their faculties. They are really flames and fountains of life and be must not extinguish and stop them by converting into labourers. It is 'today' and 'today' only when we have to do whatever is possible to abolish child labour from our country because 'tomorrow' labour by them would be justifiable as they would have become adults.

Now the new Act was introduced in the year 2016 for the prohibition of child labour in India. The Child Labour (Prohibition and Regulation) Amendment Act 2016 has completely banned employment of children below 14 to 18 years in all kind of occupations and enterprises. The 1986 Act prohibited the employment of children under 14 years in certain occupations like bidi-making, mines, domestic work, power looms, automobile workshops, carpet weaving, glass making, saw making etc. The act makes child labour a cognizable offence. Employing children below 14 years in any kind of industry or enterprises then the imprisonment will be between 6 months to two years (earlier 3 months to 1 year) or a penalty between twenty-thousand to fifty thousand rupees or both for the first time. Repeat offenders will attract imprisonment between 1 year to 3 years (6 months to 2 years). In case, the offender is a parent, it provides a relaxed penal provision and proposes a fine of Rs.10,000 for repeat offence committed by parent. With passing of this new legislation, India law is now aligned with the statutes of the International Labour Organization (ILO) convention. It calls complete ban on child labour so they can get compulsory primary education under Right to Education. Further, the act has recognized the ground realities of family enterprises and permitted children to help their parents run their family enterprises. It has increased the penalties for employing children and made child labour as a cognizable offence.

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