

Welfare of child labour: Role of judiciary in India

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Abstract

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 endeavoured 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. This paper gives a brief overview of various judgements given by Supreme Court and High courts of India on child labours in construction works, beedi industry, fire crackers, carpet industry, sericulture and judgements regarding importance of education for child labourers.

Keywords: child labours, Supreme Court judgements

Introduction

With regard to child labour in India, Justice Subbha Rao, the former Chief Justice of India has 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"^[1].

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 of India.

Legislative Framework on Child labour

In India, there are numerous legislations on child labour, various committees, sub-committees and commissions have been appointed by the Government in order to find out the ways to prevent the child labour from the society. Besides these there are different ILO conventions to prevent this problem.

As per Census 2011, the total child population in India in the age group (5-14) years is 259.6 million. Of these, 10.1 million (3.9% of total child population) are working, either as 'main worker' or as 'marginal worker'. In addition, more than 42.7 million children in India are out of school^[2].

The first protective legislation for child labour in India was seen in 1881 in the form of Indian factories Act, 1881. This was actually made by the ruling British Government to decrease the production in Indian industries through some legal restrictions.

It may be submitted that the labour legislations in India including protective legislation for children have been influenced with the result of various Conventions and Recommendations adopted by International Labour Organisation. Besides Constitutional provisions, there are

several legislative enactments which provide legal protection to children in various occupations.

Child Labour (Prohibition and Regulation) Act (1986) was the culmination of efforts and ideas that emerged from the deliberations and recommendations of various committees on child labour. Significant among them were the National Commission on Labour (1966-1969), the Gurupadaswamy Committee on Child Labour (1979) and the Sanat Mehta Committee (1984)^[3].

Child Labour (Prohibition and Regulation) Amendment Act, 1986

The act is an outcome of various recommendations made by different commissions⁵³. It has repealed earlier two legislations,⁵⁴ dealing with child labour. The Act was passed to prohibit and regulate the child labour which is opposite in terms because prohibition and regulation is not used in the same sense both are opposite in meaning because. And it is not in conformity with the constitutional goal to be achieved. ILO was established in 1919 with the purpose of abolition child labour but it is not an easy task, it is a long run process. The Act 1986, mainly prohibit the employment of children in certain occupation and processes and regulate the work in hazardous employment, working hours, mandatory weakly holidays, working conditions wages etc. The Act mentioned the duty of the Inspector under the 1986 Act regarding then employment, age of the workers in absence of birth certificate etc. Moreover the Act 1986 provides a penal sanction in case of anything done in contravention of any provisions of the aforesaid Act.

Child Labour (Prohibition and Regulation) Amendment Act, 2016

The Act has been enacted by the Parliament to amend the principal Act,⁵⁵ with an object to bring the existing law in line with the Right to Free and Compulsory Education Act 2009, so that elementary primary education of children between the age group of 6 to 14 years is not to be hampered. The Act 2016 has received the assent of the President of India 29th July 2016. The features of the new Act 2016 are that the Act

completely prohibited the work of children below 14 years in any establishment whether hazardous or non-hazardous except family business but without hampering their education. The Child Labour Amendment Act 2016 has changed the name of the Act 1986 as the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. The Act has introduced the new concept of adolescent and defines adolescent. Children between 14 to 18 years are adolescent and not hired to be work in hazardous occupation which was not in the earlier Act. The number of hazardous processes and occupation has been reduced from 83 to 3 but it will be increase or decrease according to the notification of the central government. Child labour is now under the Act is compoundable and cognizable offence notwithstanding any provisions of Criminal Procedure Act and if anything done in contravention of this Act is to be punished as provided by this Act and even for repeated offences, though parents are allowed to get some relaxation.

Child labour laws in India: After its independence from colonial rule, India has passed number of constitutional protections and laws on child labour.

The Constitution of India in the Fundamental Rights and the Directive Principles of State Policy prohibits child labour below the age of 14 years in any factory or mine or engaged in any other hazardous employment (Article 24) ^[4].

India is a federal form of government, and child labour is a matter on which both the central government and state governments can legislate. The major national legislative developments include the following:

The Factories Act of 1948: The Act prohibits the employment of children below the age of 14 years in any factory. The law also placed rules on who, when and how long can pre-adults aged 15-18 years be employed in any factory.

The Mines Act of 1952: The Act prohibits the employment of children below 18 years of age in a mine.

The Child Labour (Prohibition and Regulation) Act of 1986: The Act prohibits the employment of children below the age of 14 years in hazardous occupations identified in a list by the law. The list was expanded in 2006, and again in 2008 amended 2016.

Bonded labour system abolition Act 1976: The act prohibits all forms of bonded labour including children from any forced labour. It also considers a forced work under any consideration, less than minimum wages labour as bonded labour as cognizable offence.

National Policy on Child Labour in 1987: India formulated a National Policy on Child Labour in 1987. This Policy seeks to adopt a gradual & sequential approach with a focus on rehabilitation of children working in hazardous occupations. It envisioned strict enforcement of Indian laws on child labour combined with development programs to address the root causes of child labour such as poverty. Despite these efforts, child labour remains a major challenge for India ^[5].

Major Constitutional Provisions ^[6]

Fundamental Rights

- 1 **Article 14:** ... shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- 2 **Article 15:** ... shall not discriminate against any citizen... (3) Nothing in this article shall prevent the State from making special provision for women and children.

Clause (4) nothing shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

- 3 **Article 19:** (1) All citizens shall have the right—(a) to freedom of speech and expression; ... (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India.
- 4 **Article 21:** No person shall be deprived of his life or personal liberty except according to procedure established by law.
- 5 **Article 21 A:** ... shall provide free and compulsory education to all children of the age of six to fourteen years...

The 86th Constitutional Amendment Act 2002 inserted a new Article 21(A) which provides for free and compulsory education to children of the age group of 6 to 14 years being a Right to Education. The same Amendment Act provides for amendment of the Article 45 as Directive Principle of the State Policy to provide provision for early childhood care and protection Bill up to the age of 6 years. It is also made a Fundamental Duty of parents and guardians under New Article 51(a) to provide opportunities for education to children between the age of 6 to 14 years.

- 6 **Article 23:** Traffic in human beings and beggar and other similar forms of forced labour are prohibited...
- 7 **Article 24:** No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Directive Principles of State Policy

- **Article 39:** ... (e) ... the tender age of children are not abused... and not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood... protected against exploitation and against moral and material abandonment.
- **Article 46:** ... shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribe.
- **Article 47:** ... raising of the level of nutrition and the standard of living of its people and the improvement of public health...
- **Article 51:** The State shall endeavour to— ... (c) foster respect for international law and treaty obligations ...
- **Article 51A:** ... (k) ... parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

India adopted a National Policy for Children in 1974, declaring children to be nation's most precious asset. In the wake of the 1990 World Summit for Children, the Government of India adopted a National Plan of Action for Children in 1992 ^[7], with goals for the decade. In the year 1992 itself, it also ratified the CRC and thereafter in its Periodic Country Reports submitted to the UN Committee on the Rights of the Child has dwelled at length about the measures taken for ensuring children's rights.

Right to education for child labourers and other abused children

Despite the Right of Children to free and Compulsory Education Act, 2009, paving the way for every child in the age group of 6-14 to be in school, there are a large number of children who are still out, working as child labourers or bonded labourers, and becoming victims to all kinds of exploitation, like trafficking and sexual abuse. The RTE Act [8] aims to free these children from the clutches of abuse and bring them to school instead. It's however a challenging task. One important aspect to be kept in mind is that rescuing a child from a workplace or from the clutches of traffickers is not easy. Therefore it is necessary to take the help of the law, and the agencies implementing the law, to achieve the desired result.

Under provision 23 and 26 of the Juvenile Justice Act, 2000, the police can lodge a case against the employer immediately. According to these provisions, if a child is engaged in any dangerous work, or is not paid his wage, it is a punishable offence. The accused can be booked both under the Bonded Labour Act and the Juvenile Justice Act, 2000. The labour department can book the person who has been accused of employing child labourers under the Child Labour (Prohibition and Regulation) Act, 1986. Under the Bonded Labour System (Abolition) Act, 1976, a child can be rescued from labour and rehabilitated.

Judicial Pronouncement on Child Labour

Supreme Court replaced the liberal concept of Article 21 taken in *Maneka Gandhi v. Union of India* [9] and *Francis Coralie Mullin v. Union Territory of Delhi* [10], 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-21.

In *Peoples Union for Democratic Rights v. Union of India* [11], 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. Bhagwati and Justice Baharul 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 that no child below 14 years of can be allowed to be engaged in construction work". And specifically in Employment of Children Act, 1934, states that no child below 14 years can be employed in construction work [12].

In *Labourers, Salal Hydro Project v. State of Jammu and Kashmir* [13], Bhagwati 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 said that this is an economic problem and it 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.

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" [14].

With regard to child labour in Beedi Industry, in *Rajangam, Secretary, Dist.Beedi Workers Union v. State of Tamil Nadu and others* [15], with *K.C. Chandra Segaram v. State of Tamil Nadu and others*, 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. 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.

In *M.C. Mehta v. State of Tamil Nadu and others* [16] Supreme Court allowed children to work in a prohibited occupation like fireworks. Further Supreme Court in *M.C. Mehta v. State of Tamil Nadu and others*, 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 "Suomotu" 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 [17].

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.' It was observed that

every employer should be asked to pay a compensation for every child employed in contravention of the provisions of the Act, a sum of Rs. 20,000; while the state shall pay Rs.5, 000/- if it failed to provide alternative employment to the adult member of the child's family. Both the amounts shall go to the Corpus Welfare Fund, the income from which would be used for the education of laid off children and their welfare.

However, the judges made it clear that they were not issuing any direction to the state to provide the jobs to the adult members presently. Instead they were leaving the matter to be sorted out by the government.

Factory inspectors were directed to see that the working hours of the child in non-hazardous industries were not more than four to six hours a day and that the child receives education for at least two hours a day and the entire cost of education is borne by the employer.

In the above said M.C. Mehta case^[18], with regard to Sec. 14 of the Child Labour (Prohibition and Regulation) Act, 1986 to apprise the developing restitutive jurisprudence, the Supreme Court observed "Taking guidance there from, we are of the view that the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs.20,000/-and the inspectors, whose appointment is visualized by section 17 to secure compliance with provisions of the Act, should do this job. The inspectors appointed under section 17 would see that for each child employed in violation of the provisions of the Act, the concerned employer pays Rs. 20,000/- which sum could be deposited in a fund to be known as "Child Labour Rehabilitation-cum-Welfare Fund". The liability of the employer would not cease even if he would desire to disengage the child presently employed". Karnataka High Court in *Hayat Khan v. Deputy Labour Commissioner, Regional Office, Belgaum and others*^[20] observed, offending employer must be asked to pay compensation of Rs.20, 000/- for every child employed in contravention of the Child Labour Act.

In *Sheela Barse v. Union of India*^[21], it was held that child is a national asset, and it is the duty of the state to look after the child with a view to assuring full development of its personality. Judicial institutions have played a significant role not only for resolving disputes but also has always endeavoured to expand and develop the law so as to respond to the hopes and aspirations of the people who are looking to the judiciary to give life and content to law.

With a view to safeguard the interest of bonded child labourer Supreme Court delivered a judgment with important observation in a leading case in *Bandhua Mukti Morcha v. Union of India and others*. It is therefore essential that which ever be the State Government it should, where there is bonded labour, admit the existence of such bonded labour, and make all possible efforts to eradicate it.

Further, in the case of *Neeraja Choudhary v. State of M.P*^[22], the Court said that 'it is not enough merely to identify and release bonded labourers, but it is equally, perhaps more important that, after identification and release, they must be rehabilitated, because without rehabilitation, they would be driven by poverty, helplessness and despair into serfdom once again. The observation made by the Supreme Court in another judgment in *Bandhua Mukti Morcha v. Union of India and others (II)*^[23], public interest litigation was filed alleging employment of children aged below 14 in the Carpet Industry in the State of Uttar Pradesh. Reports of a

Commissioner/Committee appointed by the Supreme Court confirmed forced employment of a large number of children, mostly belonging to SCs and STs and brought from Bihar, in carpet weaving centres in the State. It was held by the Court that the State is obliged to render socio-economic justice to the child and provide facilitates and opportunities for proper development of his personality^[24].

The Karnataka High Court in *A Srirama Babu v. Chief Secretary, Government of Karnataka*^[25], has observed, "This needs a re-look and an abolition of such difference would certainly go a long way in increasing employment potential for grown up and dissuade the employer from employing child labour". So it is essential that the state should step in to retard the trend to employ child labour.

In *M.C. Mehta and Bandhua Mukti Morcha cases*^[26], Supreme Court, of course, delivered land mark judgments but while observing both the judgments it appears that full scale of abolition of child labour of all types was not aimed. The court was conscious about practicality.

The High Court of Karnataka in *A Sriram Babu Case*^[27], looked to the issue of eradication of child labour in sericulture industry, especially weaving of silk sarees, where children in the age group of five to eight were engaged in huge numbers. While the schedule to Child Labour Act is silent about this industry, the court enunciated the criterion of hazardous work. To be hazardous, the work should be either inherently injurious to the children or the conditions of work are harmful to their health. The Court held that all employments which cripple the health of a child and which disable him from being a healthy member of the society should be treated as a hazardous industry. It directed the Commissioner of Labour to issue notices to the deviant establishments for appropriate action. One shocking disclosure made by the Court is with regard to improper use by the State Administration of funds released by the Central Government.

The courts in various judgements have observed the importance of education for child labours also. The abolition of child labour must be preceded by the introduction of compulsory education, since compulsory education and child labour laws are interlinked. Article 24 of the Constitution bars employment of child below the age of 14 years^[28] Article 45 is supplementary to Article 24 for if the child is not to be employed below the age of 14 years he must be kept occupied in some educational institution. Now Article 45 is amended. In *J. P. Unni Krishnan v. State of Andhra Pradesh*^[29], Supreme Court while dealing with education as a fundamental right and has emphasized the importance of education.

In *P.A. Inamdar v. State of Maharashtra*^[30], Supreme Court observed that; Education is "Continued growth of personality, steady development of character, and the qualitative improvement of life.

It could be seen that several international documents have recognized the right to education as a human right^[31]. The process of moulding the right to education as a fundamental right was triggered off by Mohini Jain's case^[32] and subsequently strengthened by Unni Krishna's case^[34] which ruled that right to education is a fundamental right that flows from the Right to life in Article 21 of the Constitution. Every child/citizen has a right to free education up to the age of 14 years thereafter the right would be subject to the limits of the economic capacity of the state. This decision was upheld and confirmed by the 11 Judge constitutional bench of the Supreme Court in *TMA Pai Foundation v. Union of India*^[35].

In the year 2002, the Indian Constitution through its 46th Amendment Act, has made “Right to Education a Fundamental Right”^[36]. The State is obliged to duty bound to provide free and compulsory education to all children of age 6-14 years in such manner as the state may by law determined.

Conclusion

The Constitution of India casts the pious duty to protect life and liberty of the countrymen on the judicial organ of states. On the other hand, according to American Realist Jurisprudence the judges not only interpret the law, they make the law. This thought also gathers momentum and strength. If we go through the working of the judicial organ of a state in last 70 years and especially in the post emergency era the Supreme Court and High Courts worked as watchdog. The judgement delivered over societal issue of child labour where Supreme Court not only concentrated on preventing measures despite they draw a comprehensive framework for rehabilitation of such children is appreciable step.

In spite of several legislative measures by enactment of statutory provisions to curb employment of children in hazardous employment and those injurious to health, the exploitation of children by different profit makers for their personal gains continued. 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.

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. Due to lack of political will and in absence of realistic measures to tackle the problem, the percentage of child labour in the total labour force of the country kept on increasing over the years. In fact, the evil of child labour has not only survived but has become deep rooted.

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