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## Child Labour and Role of Judiciary in India

**Dr. Ramsharan**

Lecturer, Department of Haryana Education, Haryana, India

### **Abstract:**

*Child abuse is one of the most heinous and inhuman crimes against humanity. It means to maltreat a child physically or emotionally. Therefore, any commission or omission of an act which leads to a harm or possibility of harm to the child can be categorized as child abuse. In every society childhood is considered to be the most important part of one's life. However, the prevalence of poverty, illiteracy and scarcity of resources large numbers of children are not given their right to childhood.*

*Child labour is a serious issue before India. It is a paradoxical situation that while on the one hand India is transforming from developing to developed state as it ranks fourth in terms of economic growth, claiming permanent seat of United Nations Security Council, and more than 276 people have joined the club of billionaire in last decades. On the other hand, India, has not made remarkable progress on the front of child labour and India accommodates world's largest number of child labour.*

### **1. Introduction**

This paper makes a modest attempt to focus contribution of judiciary in prohibiting child labour in India. This paper is divided into four parts. In the first part, it locates the causes of child labour in India and attempt a survey of constitutional provisions, Acts and existing policies on child labour. In second part, it analyses the important judgment relating to it and thereafter discusses the contribution of judiciary as followed up by government. The third section of the paper analyses the contemporary scenario on child labour and in the last section it discusses that what more needed to resolve the problem is that not to look at judiciary or government rather community has to own the responsibility to abolish child labour from the society.

### **2. Why Child Labour**

Before looking at the seriousness of the problem it should be analyzed that why child labour is in existence in India. Child labour exist for multiple reasons such as

1. India is a home of around 127 billion people and around 27.5 per cent people live below poverty line. Therefore, most of the people, belonging to below poverty line, didn't earn sufficient income therefore engage their children in employment in early age. Children are assets for poor person that is one of the reasons that they have more children to earn more.
2. Child labours are comparably cheap and they are to be paid less with more hours of work. Further different labour laws e.g. Factory Act, does not cover agricultural activities and their implementation is also very poor as states governments are not having adequate implementation agency for controlling child labour.
3. Poor education facilities are considered another reason for the growth of child labour as rightly described by the Myron Weiner "Educators and officials do not regard education as an equalizer, as an instrument for developing shared attitudes and social characteristics, but rather as a way of differentiating one class from another. Those who are educated have power over those who are not." Thus, poor facility of education and its remote reach also contribute in child labour.

#### *2.1. Constitutional Provisions, Acts and Policies Related to Child Labour*

Child is a very broad term however the child labour (prohibition and regulation) Act 1986, defines "Child" as a person who has not completed is 14 year of age. Child labour simply imply children who are doing paid or unpaid work in factories, workshop, establishments, mines, dhabas and in the service sector such as domestic labour. Factory Act of 1948 defines that "a person below the age of 14 years is to be regarded as a child. Therefore, any physical labour undertaken by a child below 14 years either under compulsion or voluntary in an organized or unorganized sector qualifies to be called as 'child labour'. In this manner, it defines that child who is working for economic gain or not comes under the category of child is child labour. However, it need to be maintained that in India child labour is prohibited in certain specific areas only as Article 24 under fundamental rights of the constitution states that "no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment". Constitution makers also ensure that childhood should be protected and promoted therefore Directive Principles of State Policy also ensures in its Article 39(e) that "the state shall direct its policy towards securing that the health and strength of workers, men and women and the tender age of children are not abused ...enter a vocation unsuited to their age or strength."

Similarly, Article 39(f) holds that “children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.” For the long time, it has been argued that major reason for the child labour is absence of provision of compulsory education. Therefore, keeping this view in mind government of India has undertaken 86<sup>th</sup> constitutional amendment and inserted Article 21A, which states that “The state shall provide free and compulsory education to all the children of the age group of 6-14 years in such manner as the state may, by law, determine.” This was accompanied by the inclusion of Article 51-A (k), which makes it “the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of 6 and 14 years.

Besides the constitutional provisions, there are many Acts which address the issue of child labour. Employment of Children Act of 1938 prohibits the child labour in specific areas namely transport of passengers, goods or mails by railway or involving the handling of goods within the limits of any port. The Plantations labour Act 1951 prohibited the employment of children below 12 and adolescents between the age of 12 and 18 were required to obtain a certificate of fitness. Further, the Mines Act of 1952 has categorically rejected the employment of persons below the age of 18 years. Similarly, the Merchant Shipping Act of 1958 prohibits employment of children under 14. The Government of India has passed a bill resulting into “The Child Labour (Prohibition & regulation) Act, 1986. It prohibits employment of children in a scheduled list of occupations and a scheduled list of processes. The list grew from five to thirteen occupations and from eleven to fifty-seven processes between 1986 and 1999. Government of India has enacted the National Policy on Child Labour in 1987. This policy envisages two objectives first to draw a legislative plan that focus and converge development plan that benefits children, secondly to prepare a plan of action for developing different plans that benefits working children in different areas. In pursuance of this policy NCLP Scheme was launched in 1988 that primarily aimed at rehabilitation of child labour.

### 3. Supreme Court Rulings on Child Labour

The role of judiciary regarding child labour is very active and it has issued direction from time to time to the government. Many industries in India have a long history of using child labour. Over the years, Supreme Court (SC) and High Courts have expanded the scope on child labour laws, acts and constitutional rulings that have aimed to protect children from hazards and unfair practices. In early 1980s the Supreme Court in the case of Peoples Union for Democratic Rights (PUDR) v/s Union of India, ruled that child labour is not allowed in construction activities as it violates the “Employment of Children Act” of 1938. The Act did not specifically, name construction as one of the “Hazardous” employment. However, the scope of the Act was broadened by the apex court after it came to know that children under 14 years of age were employed in the construction work of the Asian Games. The year following this decision, it was reemphasized in Salad Hydro Project v/s State of Jammu and Kashmir, after children were found to be working on the hydroelectric project. This progressive stand of judiciary has resulted in the inclusion of prohibition on building and construction industry in the Child Labour (Prohibitions and Regulation) Act, 1986.

The Bonded labour system (Abolition) Act, 1976 aimed to abolish the bonded labour system and extinguishes the liability to repay bonded debt. However, despite the statutory provision bonded labour was in practice. The SC has taken the cognizance of this fact in its ruling in Bandhua Mukti Morcha v/s Union of India, 1984. The apex court has strengthened the Act by identifying what made labour “bonded” and reasons for the practice of bonded labour. It was a custom in India in which bonded labourers, are paid negligible amount for their work and sometime they were paid nothing. Bonded labour also constitutes a large numbers of child labourers. The practice is considered inhuman by the apex court. The court maintained “... It is the fundamental right of every one in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullin case ((1981) 1 SCC 608: 1981 SCC (Cri) 212) to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, 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, education facilities, just and humane conditions of work and maternity relief.*” This case has advocated for the serious implementation of the Act. It leads to abandoning the system and the liability of the debtor to repay the debt.

Sivakasi in Tamil Nadu is one of the largest hubs of child labour in India where child labour are employed in Cracker factories. In this regard, M.C Mehta has filed a suit in Supreme Court against Tamil Nadu government which is popularly known as M.C. Mehta v/s State of Tamil Nadu. The apex court has given certain directions regarding the payment of compensation and proposed that an advocates committee should visit the area and prepare a comprehensive report relating to the various aspects of the matter, as mentioned in the order passed by the court on 14 Aug. 1991. The committee has submitted its report on 11-11-91 containing many recommendations, the summary of which is given below:

(a) The State of Tamil Nadu should be directed to ensure that children are not employed in fireworks factories; (b) The children employed in the match factories for packing purposes must work in separate premises for packing; (c) Employers should not be permitted to take work from the children for more than six hours a day; (d) Proper transport facilities should be provided by the employers and State Government for travelling of the children from their homes to their work places and back; (e) Facilities for recreation, socialization and education should be provided either in the factory or close to the factory; ..... (i) Welfare Fund - For Sivakasi area, instead of the present committee, a committee should be headed by a retired High Court Judge or a person of equal status with two social workers, who should be answerable either to this Hon'ble Court or to the High Court, as may be directed by this Hon'ble Court. Employers should be directed to deposit Rs 2/- per month per worker towards welfare fund, and the State should be directed to give the matching contribution. (j) A National Commission for children's welfare should be set up to prepare a scheme for

child labour abolition in a phased manner. Such a Commission should be answerable to this Hon'ble Court directly and should report to this Hon'ble Court at periodical intervals about the progress. Thus, this decision saved children from exploitation at work however it didn't aim to eliminate child labour altogether.

In 1993, the SC, in *Unnikrishanan v/s state of Andhra Pradesh* has declared free education up to age fourteen to be a Fundamental Right. Therefore, a demand was being raised from all corners to make education a fundamental Right.

Subsequently, the government enacted constitution (86<sup>th</sup> Amendment) Act, 2002. This has made education a fundamental Right (Article 21A). Education really makes a difference in children life. United Nations Children's Fund (UNICEF) report on children has quoted the example that how jagjagi, Awakening Centre, a day school for girls from age 9-15, has changed the life of girl child with special reference to Lalita from Bihar. Therefore, inclusion of education as a fundamental right is expected to bring enormous benefit as it is followed by 'Right to Education', 2009 which ensures the education to each child and is expected to contribute in dealing with issue of child labour.

Subsequently suo-motu cognizance was taken by the SC in *M.C. Mehta v/s State of Tamil Nadu* when news about an unfortunate accident in one of the Sivakasi Cracker factories was published. This case was looked again in Dec 1996, a three Judge bench of SC revisited the issue of child labour in Sivakasi fireworks factories and issued a landmark decision. The right of child is recognized by the judiciary even Justice Hansaria has recited a poem in its judgment which read as

I am the child; All the world waits for my coming.

All the earth watches with interest to see what I shall become. Civilization hangs in the balance.

For what I am, the world of tomorrow will be.

I am the child. You hold in your hand my destiny.

You determine, largely, whether I shall succeed or fail, Give me, I pray you, these things that make for happiness.

Train me, I beg you, that I may be a blessing to the world'.

The court has given certain directions regarding the manner in which the children working in the hazardous occupations were to be withdrawn from work and rehabilitated, it also discusses the manner in which the working conditions of the children employed in non-hazardous occupations are to be regulated and improved upon. The apex court has ordered withdrawal of child labour from hazardous industries and ensuring their education in appropriate conditions. It has also prescribed employment of at least one adult member of the family of the child so withdrawn from work, interestingly a contribution of Rs. 20000/- per child has been ordered that is to be paid by the offending employer into a corpus of fund setup for the welfare of child labour and their families. The court has ordered that falling short of which the State Government is required to contribute this Welfare Fund Rs. 5000/- per child. The interest earned of this corpus is to be used for providing financial assistance to the families of their children. Apart from it the court has also ordered the regulation of working hours for the children engaged in non-hazardous occupations, so that their working hours did not exceed 5-6 hours per day and. These directions were followed by the State governments from 1997 itself and Chief Labour Commissioner (CLC) has also landed its support for the cause. The proper implementation of Child Labour (Prohibition & Regulation) Act, 1986 was undertaken by way of inspection, prosecution, convictions and acquittals. A brief report by State governments and CLC is discussed below:

Year	No. of inspections carried out	No. of violation Detected	Prosecution launched	Convictions	Acquittals
1997-98	288150	25909	19496	6073	157
1998-99	222856	11263	6469	4125	725
1999-2000	242269	7598	3972	1333	356
2000-01	189842	10537	2398	1036	343
2001-02	449042	16604	9201	1799	606
2002-03	372504	28850	5660	1717	2229
2003-04	346212	26411	9221	4013	642
2004-05	242223	16632	2609	1385	447
Total	2353098	143804	59026	21481	5505

*Table 1: Data on Enforcement of Child Labour (Prohibition & Regulation) Act, 1986*

*Source: Based on reports received from the State Government & Chief Labour Commissioner.*

The court is monitoring the directions issued in this Judgment continuously since then based upon the reports received from the State/UT Government, the Ministry of Labour and Employment has been regularly filing Affidavits to apprise the court of the progress in this regard. Thus, it can be maintained that judiciary has contributed significantly for the cause of child labour but still a lot more required to be done for the complete elimination of child labour from India.

#### **4. In Contemporary Scenario: Child Labour in India**

According to 2001 Population Census there were about 360 million children in the age group of 0-14 years accounted for 35.3 percent of total population. Children in the 5-14 age groups constituted about 251 million and accounted for 24.6 percent of the population. India continues to host the largest number of child labour in the world today. According census 2001, there were 12.7 million economically active children in age group of 5-14 years. The number was 11.3 million during 1991 thus showing an increase in the

number of child labour. A comparative analysis shows that while child labour has increased from 1971 to 1981, it has showed a decline from 1981 to 1991.

In post reform era while India is performing very well as from 2000 to 2009 its Gross Domestic Product has increased around 8 percenton the other hand child labour is also on the increase. The sector wise division of child labour shows that around 69.4 percent children are engaged in agriculture, 16 percent in manufacturing and 12.4 percent are involved in service sector. UNICEF report titled State of world's children, 2009 maintains that 12 per cent of children, from age of 5-12 years, in India come under the category of child labour.

### 5. Conclusion

From the above discussion, it can be maintained that every child who is not given the due opportunity to attend the school and right to childhood is a child labour. It is very pathetic that after having constitutional provisions, acts, policy, and judgments child labour is the fact of the day. Prime minister, P.V. NarasimhaRao, in his speech on Independence Day (1994), announced that child labour would be abolished in five years and to a scheme for the Elimination of Child Labor in Hazardous Industries that was intended to be "implemented intensively in states and regions where employment of child in hazardous industries is maximum." Still there are 12.7 million children working as child labour in India. Generally, it is cited that there are multiple reasons for child labour in India such as illiteracy, poverty, low wages for adult, large families, and migration to urban areas and so on. However, the major reason for the existence of child labour is not the poverty or illiteracy but the lack of communal responsibilities for it. Judiciary has certain limitations such as it can deal with certain cases brought before it. On the other hand, if community own the responsibility and believe that children belong to the whole nations and we need to give proper care and nourishment to them then only this problem can be resolved. Otherwise plethora of acts, commissions, judgments may control it a little but cannot eliminate child labour from our society. Therefore, along with legal and judicial contribution community must aware about the cause so that whenever anyone look at a child labour should not ignore rather do something tangible so that child can enjoy right to childhood.

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