CONSTITUTIONAL PROVISIONS AND LEGISLATIONS FOR CHILD LABOUR IN INDIA

K. G. MALLIKARJUNA
Assistant Professor of Economics, SBSYM Degree College, Kurnool, Andhra Pradesh, India

ABSTRACT

Childhood is the most innocent phase in human life. It is that stage of life when the human foundations are laid for a successful adult life. Many children, instead of spending it in a carefree and fun-loving manner while learning and playing, are scarred and tormented. They hate their childhood and would do anything to get out of the dungeons of being children and controlled and tortured by others. They would love to break-free from this world, but continue to be where they are, not out of choice, but force.

KEYWORDS: Shramyogi, Problem of Child Labour, Royal Commission on Child Labour

INTRODUCTION

The problem of child labour in India is one of great magnitude compared to other developing countries of the world. Not only is it eating into the very vitals of the democracy but also is affecting our productive efficiency. As a child is forced to labour under sub-human and inhuman conditions, its health is shattered and growth shunted. Thus it affects our social production in the long run. It is in recognition of this fundamental fact that much thought has been paid to the subject of child labour both in the pre-independent and post-independent periods and by the framers of our constitution. Result of this is a plethora of legislation that aims at prohibiting the incidence of child labour. Certain other legislation, while accepting the reality of employment of children in certain selected areas, tries to regulate their work environment, pay, hours of work etc.

India is sadly the home to the largest number of child labourers in the world. The census found an increase in the number of child labourers from 11.28 million in 1991 to 12.59 million in 2001. M.V. Foundation in Andhra Pradesh found nearly 400,000 children, mostly girls between seven and 14 years of age, toiling for 14-16 hours a day in cottonseed production across the country of which 90% are employed in Andhra Pradesh. 40% of the labour in a precious stone cutting sector is children. NGOs have discovered the use of child labourers in mining industry in Bellary District in Karnataka in spite of a harsh ban on the same. In urban areas there is a high employment of children in the zari and embroidery industry.

A child is the wealth of a nation. The word ‘Shramyogi; is a misnomer. In India 14th November is celebrated as Children’s day and 30th June is observed as Child Labour Day.

SIGNIFICANCE OF THE STUDY

Innocent children are employed by industries and individuals who put them to work under grueling circumstances. They are made to work for long hours in dangerous factory units and sometimes made to carry load even heavier than their own body weight. Then there are individual households that hire children as domestic help and beat and physically torture them when they make a mistake. The children are at times made to starve and are given worn out clothes to wear. Such is the story of millions of children in India painful and yet true. In this context, there is a need to study the protection and
provisions made by the Indian Constitution itself for child labour. Present study is an attempt to review Indian Constitution in view point of child labour protection.

OBJECTIVES OF THE STUDY

- To define the term child labour from different viewpoints.
- Finding out the areas where child labour existence is more.
- To analyse various Articles of Indian Constitution meant for protection of child labour interests.
- To discuss various legislations made by Indian government against child labour.
- To review Committees and Commissions appointed by Government on child labour.
- To discuss the judgments given by the Judiciary in different contexts against state and central governments in case of child labour.

DATA BASE

The present study is primarily based on the reviews made by various studies on Indian constitution regarding the provisions made for child labour in it. Different articles of Indian constitution are reviewed for the purpose. Various Governmental Orders (GOs) regarding the legislations and laws of child labour are collected. Reports of different Commissions like The Royal Commission, The Gurupadaswamy Committee, Report of NACEL etc., were considered. Along with, various web pages are visited like www.childlabour.net/, www.indiacode.nic.in/coiweb/welcome.html etc. are visited.

LEGAL DEFINITION OF A CHILD

- Section 2 (2) of Shops and Establishment act – 1948 states that child is a person who hasn’t completed 15 years of his age.
- Article 45 of the Constitution of India defines child as a person younger than 14 years.
- Mines Act – 1952 says that a child is a person not older than 16 years.
- According to the Suppression of Immoral Traffic in Women and Girls Act 1956, a child is a person who is not 21 years old.
- According to the Juvenile Justice (care and Protection of a Child) Act, a child is a person who has not completed 18 years of age.

LAW DEFINES CHILD LABOUR AS

Under the Act, ‘Child’ means a person who has not completed his fourteenth year of age. Any such person engaged for wages, whether in cash or kind, is a child worker. According to UNICEF, all the children not being provided education at a school are considered as Child Labours.

AREAS WHERE CHILD LABOUR IS RAMPANT

- Bidi making
- Carpet weaving
- Garages
- As Servants at Homes
- Farming
- Building and construction industry
- Tea Stalls
- Cement manufacture including bagging
- Cloth printing, dyeing and weaving
- Manufacture of matches, explosives and fireworks.
- Diamond Industry
- Soap manufacture
- Tanning
- Wool-cleaning
- Manufacture of slate pencils (including packing)
- Shoe Polishing.

**CONSTITUTIONAL PROVISIONS REGARDING CHILD LABOUR**

Several articles of Indian Constitution provide protection and provisions for child labour.

**Article 15 (3)**

The State is empowered to make the special provisions relating to child, which will not be violative of right to equality.

**Article 21**

No person shall be deprived of his life or personal liberty, except according to procedure established by law. The Supreme Court held that ‘life’ includes free from exploitation and to live a dignified life.

**Article 21A (Right to Education)**

The State shall provide free and compulsory education to all children of the age of six to fourteen years, in such manner as the State may, by law, determine. Where children are allowed to work, in such establishment, it is the duty of employer to make provisions for the education of child labourer.

**Article 23**

Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence punishable in accordance with law.

**Article 24 (Prohibition of Employment of Children in Factories, etc.)**

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.
The Supreme Court held that “hazardous employment” includes construction work, match boxes and fireworks therefore; no child below the age of 14 years can be employed. Positive steps should be taken for the welfare of such children as well as for improving the quality of their life.

**Article 39 (e)**

The State shall, in particular, direct its policy towards securing the health and strength of the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

**Article 39 (f)**

The State shall, in particular, direct its policy towards securing 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.

**Article 45**

The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

**Article 51A (e)**

It shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child or ward as the case may be, between the age of six and fourteen years.

**NATIONAL LEGISLATION AGAINST CHILD LABOUR IN INDIA**

**The Child Labour (Prohibition and Regulation) Act, 1986**

The Act prohibits the employment of children below the age of 14 years in 16 occupations and 65 processes that are hazardous to the children's lives and health. These occupations and processes are listed in the Schedule to the Act. In October 2006, the Government has included children working in the domestic sector as well as roadside eateries and motels under the prohibited list of hazardous occupations. More recently, in September 2008 diving as well as process involving excessive heat (e.g. working near a furnace) and cold; mechanical fishing; food processing; beverage industry; timber handling and loading; mechanical lumbering; warehousing; and processes involving exposure to free silica such as slate, pencil industry, stone grinding, slate stone mining, stone quarries as well as the agate industry were added to the list of prohibited occupations and processes;

**The Factories Act, 1948**

The Act prohibits the employment of children below the age of 14 years. An adolescent aged between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorized medical doctor. The Act also prescribes four and a half hours of work per day for children aged between 14 and 18 years and prohibits their working during night hours.

**The Mines Act, 1952**

The Act prohibits the employment of children below 18 years of age in a mine. Further, it states that apprentices above 16 may be allowed to work under proper supervision in a mine.
Constitutional Provisions and Legislations for Child Labour in India

The Juvenile Justice (Care and Protection) of Children Act, 2000

This Act was last amended in 2002 in conformity with the UN Convention on the Rights of the Child covers young person below 18 years of age. Section 26 of this Act deals with the Exploitation of a Juvenile or Child Employee, and provides in relevant part, that whoever procures a juvenile or the child for the purpose of any hazardous employment and keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable for fine.

In some States, including Karnataka and Maharashtra, this provision has been used effectively to bring to book many child labour employers who are otherwise not covered by any other law and to give relief and rehabilitation benefits to a large number of children.

The Minimum Wages Act, 1948

Prescribes minimum wages for all employees in all establishments or to those working at home in certain sectors specified in the schedule of the Act. Central and State Governments can revise minimum wages specified in the schedule. Some consider this Act as an effective instrument to combat child labour in that it is being used in some States (such as Andhra Pradesh) as the basis on which to prosecute employers who are employing children and paying them with lower wages.

The Right of Children to Free and Compulsory Education Act, 2009

Provides for free and compulsory education to all children aged 6 to 14 years. This legislation also envisages that 25 per cent of seats in every private school should be allocated for children from disadvantaged groups including differently abled children.

COMMITTEES AND COMMISSIONS ON CHILD LABOUR

Along with legislation, a series of committees and commissions have been appointed by the Government of India, either specifically on the question of child labour or on labour conditions in general to enquire into the causes or consequences of the problem and to suggest measures to reduce the incidence of child labour and to ameliorate the conditions of the child workers.

- The Royal Commission on Child Labour observed that the employment of children continued to be a problem and found out that in many cities large number of young boys was employed for long hours and the employees imposed corporal punishment and other disciplinary measures against them.

- The Labour Investigation Committee submitted in its report in the year 1946 observed that in various industries, especially smaller industries, the statutory prohibition of employment of children was not seriously enforced. (GOI, 1946).

- According to the National Commission on Labour "the employment of children is non-existent in organised industries. It persists in varying degrees in the unorganised sector.

- The Gurupadaswamy Committee, in its 1979 report, identified the sectors of the economy with substantial number of working children.

The Committee in its report recommended:

- Setting up of Child Labour Advisory Boards;
• Fixation of minimum age of entry to any establishment;
• Strengthening of enforcement machinery;
• Formulation of effective education policy.

• It was realised that legislation alone cannot bring an end to child labour. Therefore, the National Policy on Child Labour was formulated in conjunction with the legal measures to address the socio-economic issues and to provide a framework for a concrete programme of action. The policy encompasses action in the field of education, health, nutrition, integrated child development and employment.

• The National Authority for the Elimination of Child Labour (NACEL) was constituted on September 26, 1994 under the chairmanship of Union Labour Minister. The NACL in its 1995 meeting adopted a programme of securing convergence of services of Ministries of Governments.

INTERNATIONAL INITIATIVES ON CHILD LABOUR

• At the international level the ILO sets the pace and standards for the welfare and safety of the working class. It may be remembered here that one of the objectives of the ILO itself is the abolition of child labour. Child labour has been a major preoccupation of ILO since its foundation in 1919.

• The linkage of child rights with human rights is an obvious one and has been emphasized by world leaders. The world summit for children was held at the United Nations headquarters in New York on September 301h of 1990 (UNICEF, 1990). The success of World Summit or1 Children of 1990 and the political commitment expressed by Commonwealth Heads of Government and regional organisations like OAU and S.4ARC have opened a new chapter with regard to cooperation in realising child rights.

• With the support and assistance of ILO in 1993, India has launched an extensive action-oriented programme of reduction and elimination of working children and their rehabilitation in thirty centers of the country. The programme is implemented under the auspices of International Programmed on the Elimination of Child Labour (IPEC), an agency of ILO.

• The UNICEF is also renders fruitful service for the cause of child welfare, rehabilitation of child labour, prohibition of child labour, popularisation of universal education protection of girl children etc. (Ramnarayana, 1992). UNICEF acknowledges the need to seriously address child labour as a key component of the organisation policy.

JUDGEMENTS REGARDING CHILD LABOUR

Unni Krishnan Vs Andhra Pradesh (1993 1. SCC 645)

The Supreme Court in its judgment held that children up to the age of 14 had a fundamental right to free education.

Neeraja Chaudhary Vs State of Madhya Pradesh (AIR 1984 SCC (3) 243)

In this case the Supreme Court of India stated that the Child Labourers should be rescued and provision for their rehabilitation should be made.
Constitutional Provisions and Legislations for Child Labour in India

U.P. Bandhua Mukti Morcha Vs Union of India (AIR 1984 SC 802)

In this case the Supreme Court of India stated that if no steps are taken under Bonded Labour System Act – 1976 by the Government then it would be a violation of Article 23 of the Constitution. Article 23 states that children should not be forced to work at cheap wages due to their economical or social disadvantage.

Sheela Barse Vs Secretary, Children Aid Society and Others, 1987

The Supreme Court held, "If there be no proper growth of children of today, the future of the country will be dark. It is the obligation of every generation to bring up children who will be citizens of tomorrow in a proper way.

M. C. Metha Vs State of Tamil Nadu, 1991

The Supreme Court has not allowed children to work in a prohibited occupation. According to the judges, "the provisions of Article 45 in the Directive Principles of State Policy has still remained a far cry and according to this provision all children up to the age of 14 years are sponsored to be in school, economic necessity forces grown up children to seek employment.

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