



Child labour legislation's in the era of globalisation

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Abstract

Children are the future of tomorrow. Children are taken as the greatest gift to humanity. In any country childhood is an important stage of development. Children who are brought up in a healthy environment which is pro to their intellect, physical and social development will one day turn into being the responsible and productive part of the society. Thus, every society links its future to the present status of its children. However, due to certain reasons or because of certain socio-economic background of the country not every child enjoys the exigencies of life required at their age. Which force them to end up in the evil practice of Child labour. The present paper tends to give a brief outlook to the legal protection provided to the children in International and National scenario.

Keywords: child labour, ILO, UDHR, Indian laws

Introduction

As per International Labour Organisation (ILO), the term child labour is best defined as work that deprives children of their childhood, their potential and their dignity and that is harmful to their physical and mental development. It refers to a work that is mentally, physically, socially or morally dangerous and harmful to children or work whose schedule interferes with their ability to regular school, or work that affects in any manner their ability to focus during school or experience healthy childhood.

UNICEF definition of child labour is different. As per it a child is involved in child labour activities if between 5 to 11 years of age, he or she did at least one hour of economic activity or at least 28 hours of domestic work in a week and in case of children between 12 to 14 years of age, he or she did at least 14 hours of economic activity or at least 42 hours of economic activity and domestic work per week.

Child labour is defined as "under age children working for money or food or for any other basic needs." Child labour is the practise that needs to be eliminated immediately keeping up with the global trends when the world is starving hard to work for the upliftment of such children who are engaged in such kind of labour. There are thousands of children who work as labour in factories, construction sites and homes. Child who work as labourers are made to do backbreaking work all day long. They are paid lesser than grownups and even beaten and ambushed. As per the estimation of International Labour Organisation 215 million children between the ages of 5 & 17 currently work under conditions that are considered illegal, hazardous, or extremely exploitative.

It is high time that the Government and other organisations must do the needful to bring about an end to the practice of child labour by identifying the causes behind it and effectively working on it. This is a problem that the government and the people need to deal immediately. The major causes behind child labour could be identified as three poverty, cultural beliefs and illiteracy.

International Labour Organisation (ILO) suggest poverty is the greatest single cause behind child labour. For impoverished

households, income from a child's work is usually crucial for his or her own survival or for that of the household. Income from working children, even if small, may be between 25% to 40% of the household income. Therefore, it is required from government side that constant efforts are made for dealing with economic conditions of the poor family, providing them with the financial security and taking the responsibility for the development of child in healthy environment.

The second cause that has been identified behind this practice is cultural belief. As per this belief work is good for the character building and skill development of the children. In many cultures it is established practice that children follow in their parent's footsteps; as per which child labour serves as the means to learn and practice the trade from a very early age. Further, there is a general belief in the nations that formal schooling of girls is not at all necessary. Thereof, these girls end up in domestic services as child labour.

The final reason behind child labour is the illiteracy. It is being said as Children work because they have nothing better to do. Lack of meaningful alternatives, such as affordable schools and quality education, according to ILO, is another major factor driving the children to harmful labour. Many communities, particularly rural areas where between 60-70% of child labour is prevalent, do not possess adequate school facilities. Even when schools are sometimes available, they are too far away, difficult to reach, unaffordable or the quality of education is so poor that parent's wonder if going to school is worth it.

Child labour is biggest problem of 21st Century that India is facing. Bonded child labour is the expanded form of child labour. The conditions of children employed in such kind of labour is even pathetic. Bonded labour means the employment of a person against a loan or debt or social obligation by the family of the child. It is a form of slavery. This practice is prevalent in agriculture sector. As per ILO estimation in 2002 over 5.5 million children had been forced in labour in Asia. Further, a national survey had shown in India that more than 16 million children

between 8 to 14 years are largely appointed in hotels and boarding houses, in tea-shops, restaurants, in commercial firms, in factories and fisheries. They are engaged into all sorts of work for the sake of earning something for the family. The presence of many child labourers is regarded as a serious issue in terms of economic welfare. Children who work fail to get necessary education. They do not get the opportunity to develop physically, intellectually, emotionally and psychologically. In terms of the physical condition of children, children are not ready for long monotonous work because they become exhausted more quickly than adults. This reduces their physical conditions and makes the children vulnerable to disease.

According to ILO, there are tremendous economic benefits for developing nations by sending children to school instead of work. In such an era of globalisation when the world is seeking for elimination of child labour India is not lagging in realising this objective. A lot has been done still a lot needs to be done. Today the right based approach has been adopted by utilizing the UDHR, ICCPR and ICESCR as a supportive framework for elimination of child labour which had assumed a world-wide dimension. In the modern scenario child labour is recognised as the violation of human rights. As per Article 23 and 26 of UDHR that seek to guarantee 'just and favourable conditions of work' and 'right to education', both of which are violated constantly and globally through the exercise of the worst forms of child labour. Similarly, United Nation Convention on the Rights of the Child is the first legally binding international instrument to incorporate a full range of human rights such as civil, cultural, economic, political and social rights for children. By recognizing children's rights in this way, the Convention firmly sets focus on the whole child rights. This convention tries to eliminate the practice of child labour by recognizing their human right of education, health and liberty. Not only this it also forecast obligation onto Government to ensure that children are able to survive and develop to the maximum extent possible and to prevent the illicit transfer and non-return of children abroad. The convention further puts the duty upon the Government to protect children from any kind of exploitation and abuse both sexual and mental. Further the Convention on Right of the Child (CRC) that was adopted in 1989 focuses not only on the avoidance of harm to children but as well, on regulation of employment relationship in which working children find themselves and beyond that, on rights of children to education and to participate in decisions that affect their lives, including those related to their employment. While the Slavery Convention, 1926 and Supplementary convention on abolition of slavery, the slave trade, institutions and practices like slave trade, 1956 entered into force in 1957 prohibits slavery like practices as it involves economic exploitation. Since children are more vulnerable than adults therefore, their labour can be qualified as slavery like practice, which is prohibited under this convention. In the light of ICCPR (ART 8(2)) and Supplementary Convention on abolition of slavery, the slave trade, institutions and practices similar to slave trade, 1956 and Art.4 of UDHR should be interpreted as prohibiting exploitation of child labour comes under "servitude." Child labour also comes under the term "forced or compulsory labour" in Art. 8 (3) of ICCPR. Art. 24 of ICCPR obliges the state to protect children from economic exploitation. All these International conventions are indicative of the fact that the problem of child labour has assumed international dimensions

and International Institutions are taking serious cognizance of it. Not only this but they are also adopting stringent conventions which seeks to put an end to such an evil practice of child labour. International Labour Organisation established in 1926 give utmost importance to the problem of child labour and doing so it has adopted two important and noted conventions on child labour. Convention 138 on Minimum age for employment and Convention 182 on the worst form of Child labour which make it mandatory for international community to follow certain standards in their crusade against child labour. Other important international initiatives against child labour include the adoption of the first Forced labour Convention (ILO, No. 29), 1930, Stockholm Declaration and Agenda for Action: States that a crime against a child in one place is a crime anywhere, 1996, establishment of 12 June as the World Day Against Child Labor in 2002 by ILO and the first global economic study on the costs and benefits of elimination of child labour.

The magnitude of Child labour is such huge that it has received global attention. There is no state that is free from the evil of child labour. It has widely spread to developing countries like India, Nepal, Pakistan, Bangladesh, Burma and Sri Lanka. Although all the states are trying their best to eradicate this evil, but the success is still awaited. India is not far behind in taking positive steps in these regards. The present regime of laws in India relating to child labour are consistent with the International labour conference resolution of 1979 which calls for combination of prohibitory measures and measures for humanising child labour wherever it cannot be immediately outrun.

In 1986 Child labour (Prohibition and regulation) Act was passed, which defines a child as a person who has not completed 14 years of age. The act also states that no child shall be employed or permitted to work in any occupation set forth in Part A or in process set forth in Part B. Infact, the framers of the Constitution consciously incorporated provisions in the constitutions to secure compulsory primary education as well as labour protection for children. If the provisions of child labour in international conventions such as ILO standards and CRC are compared with Indian Standards, it can be said that Indian Constitution articulates high standards in some respect. The Constitution of India, under Articles 23, 24, 39 (c) and (f), 45 and 21 A guarantees a child free education and prohibits trafficking and employment of children in factories etc. The articles also protect children against exploitation and abuse. Equality provisions in the constitution authorises affirmative action policies on behalf of the child. The National Child Labour Policy set up national child labour projects in areas with high concentration of child labour in hazardous industries or occupations, to ensure that children are rescued from work and sent to bridge schools which facilitate mainstreaming. It is now recognised that every child out of school is a potential child labour and most programs working against child labour tries to ensure that every child gets and education and that children do not work in situations where they are exploited and deprived of future. Similarly, there are other programmes like National authority for elimination of child labour, 1994 (NAECL) and National resources centre on Child labour, 1993 (NRCCL). Recently, eateries, spas and places of entertainment as hazardous under the Child Labour (Prohibition and regulation) Act, 1986.

National human rights commission has played an important role in taking up cases of worst forms of child labour like bonded

labour. In 1991, in a silk weaving village of Karnataka called Magdi it held open hearing which greatly sensitised the industry and civil societies. It also gave rise to new NCLP programmes.

Even the Indian Judiciary has played an active role in promoting the cause of the child and in elimination of child labour. In the case of *M.C. Mheta v. State of Tamil Nadu and Ors*, it was held by the Supreme Court that the State Government should see that adult member of the family of child labour gets a job. The labour inspector shall have to see that working hours of child are not more than four to six hours a day and it receives education at least for two hours each day. The entire cost of education was to be borne by the employer. The same was reiterated in *Bandhua Mukti Morcha V UOI* case, and directions were given to convene meeting of concerned ministers of State for purpose of formulating policies for elimination of employment of children below 14 years and for providing necessary education, nutrition and medical facilities. It was observed in both the cases that the vicious circle of poverty and child labour can be broken only through the tool of education.

In *PUCL v UOI and Ors* children below 15 years forced to work as bonded labour was held violative of Article 21 and hence the children were to be compensated. The court further observed that such a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights.

The Indian Judiciary has from time to time played pro active role in elimination of child labour. It was the effort of Judiciary that incorporated a new chapter in Indian Constitution with the addition of Art. 21 A recognising Right to Education as the fundamental right.

Overall, we can say that India has done well in enacting suitable legislations and policies to combat child labour. Government has been taking positive steps to tackle this problem through strict enforcement of legislative provisions along with the simultaneous rehabilitative measures. State Governments, which are the appropriate implementing authorities, have been conducting regular inspections and raids to detect cases of violations. Nonetheless, its implementation at grass root level is very weak. The child labour laws today are like scarecrow which does not eliminate child labour but only shifts it geographically to other places, to other occupations like agriculture which may be less paying. The lack of specialised enforcement officer leads to lesser attention being given to child labour legislations. Further, many of the child labour programmes remain poorly funded.

Child labour is a complex problem which cannot be eliminated without first attacking it at the roots. Since poverty is the root cause of this problem, and enforcement alone cannot solve it, Government has been laying a lot of emphasis on the rehabilitation of these children and on improving the economic conditions of their families. Of an estimated 215 child laborers around the globe: approximately 114 million (53%) are in Asia and Pacific. Thus, poverty, unemployment, lack of social security schemes, illiteracy and the attitude of society need to be tackled first before any progress can be made. A starting point can be to treat child labour as a human right problem and discouraging its manifestation in any form. If the society as such see's child labour as social, malaise, we will be much closer at achieving success.

The positive steps like abstaining child as domestic helper, report to police of child labour, counsel the poor who send their children to work, encourage children to go for education and donate to organizations fighting against child labour can be taken by each member of the society in order to eradicate this evil of child labour. The above mention steps would add as a boon to the constant efforts of the Indian Government in fighting the evil of Child Labour. Slowly and steadily we would enter in an era that will be liberal in true sense. Where everyone will be free in spirit and soul. Where there will be no Child labour.

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