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CHILD LABOUR LEGISLATION: A NATIONAL TREND

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ABSTRACT

The paper makes an analysis of the situation of child labour in India-focuses on the causes of child labour and also outlines the remedial measures so far taken-exhaustively discusses the trend report of different laws enacted in the country-finally briefly concludes that immediate implementation of anti-poverty programmes in the country is highly necessary to eradicate child labour.

Among the laws which are considered important for the nation which reveal the spirit of the nation and which give progressive value to the field of jurisprudence, the labour law in general and the child labour law in particular have acquired places of high esteem and pride. Most of the legislation which arrive at the court of law pertains to child labour. Study of the historical perspective of the laws on the child labour is therefore marked as a very significant study of jurisprudence.



KEYWORDS :child Labour Legislation ,
India-focuses

INTRODUCTION :

The prevalence of child labour is as old as existence of human civilization, where one can notice the use of children and more specifically girl child in one form or the other such as slaves, domestic servants, etc., mostly in unorganized sectors like shops, hotels, dhabas, workshops and other establishments. On the advent of industrialization and with the establishment of complex industries, there arose the necessity of raising labour and

increase productivity and national income and in the process the children were used as the most convenient section in various organised and unorganised sectors.

Child labour laws are those laws which are concerned with the upliftment and welfare of child labour, the laws which provide relief to the children working in both organised and unorganised sectors. Both at national and international levels greater emphasis is being laid upon the welfare of children. Children need special protection because of their age physical and mental condition. The govt. of India evolved a national policy for the welfare of the children in which it was viewed that the nation's children are a "supremely important national asset". The future of the nation depends the way the children grow and develop both physically and mentally. In view of this, special laws are

needed to protect the children from all kinds of exploitation, and to develop their personality.

If one scans the pages of statutes covering the welfare of the children prior to independence one finds very few statutes, in spite of the fact that the British had nevertheless a general sympathy towards the wellbeing of children of India. However, after independence the state became fully conscious of its responsibility for the children which is well revealed in the provisions of the constitution and in no. of enactments which need thorough study and scrutiny.

Article 15(3) of the constitution enables the state to make special provisions for women and children which reads "Nothing in this article shall prevent the state from making any special provision for women and children"

Article 23(1) prohibits the traffic in human beings and forced labour in all forms. According to this article "Traffic in human beings and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law".

Article 24 provides 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". Clauses (e) and (f) of article 39 provide that the state shall direct their policy towards securing "that the health and strength of workers, men and women and the tender age of children are not abused and citizens are not forced by economic necessity to enter avocations unsuited to their age or strength" and that "children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and moral and material abandonment". According to article 45 "The state shall endeavor to provide, within a period of 10 years from the commencement of this constitution, for free and compulsory education to all children until they complete the age of 14 years".

In 1974 the govt. of India adopted the national Policy of Children. The provisions of policy are "the nation's children are a supremely important asset. Their nature and solicitude are our responsibility. Children programmes should find prominent part in our national plans for the developments of human resources, so that our children grow up to robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunity for development of all children during the period of growth should be our aim, for this would serve our longer purpose reducing inequality and ensuring social justice. The resolution further provide: it shall be the policy of the state to provide adequate services to the children, both before and after birth and through the period of growth, to ensure their physical, mental and social development. The state shall progressively increase the scope of such services so that within reasonable time, all children in the country enjoy optimum conditions for their balanced growth."

The resolution constituted a National Children's Board whose functions are to create awareness about the need for child welfare, to plan and review different programmes, to coordinate different services extended to meet the needs of children. It was advised that to strengthen the welfare of the children similar boards at the state level should be constituted.

A survey of legal provisions in India regarding welfare of the children in various occupations particularly the employment of the children in various occupations indicate that by and large the laws so far enacted are satisfactory. Since labour welfare and vocational and technical training of labour are in the concurrent list of the constitution both the centre and state can enact laws on child labour subject to condition that the central laws will prevail over the state laws in case of need. Generally the laws dealing with child labour are promulgated by the centre. The state laws confine to the area of non-industrial occupations namely shops, establishments, etc.

The analysis of Indian statutory provisions on child labour ever since made has been highlighted in the

following lines.

2.1 CHILDREN (PLEDGING OF LABOUR) ACT, 1933

The Children (Pledging of Labour) Act, 1933 prohibits the making of arrangements to pledge the labour of children for employment. An agreement to pledge the labour of child is void under the act. Such an agreement will also be void under the Indian Contract Act, 1872 because of the reason that the contract is opposed public policy. According to this act a parent or guardian who makes any agreements to pledge the labour of the child shall be subject to the fine upto Rs 50. The act further states that whosoever makes an agreement with the parent or guardian of a child with the result that the later pledges the child labour shall be punished with fine upto 200 rs. Such practices of pledging the labour of children existed in the past, in some parts of the country due to poverty of the parents.

2.2 EMPLOYMENT OF CHILDREN ACT, 1938

The Employment of Children Act, 1938 prohibited the employment of children in certain occupations which are considered hazardous and injurious to health. According to this act no child who has not completed the age of 15 years can be employed in occupations linked with transport of goods, passengers or mails by railway, or port authority within the limits of a port. Certain restrictions are also imposed even for employment of children who are above 15 years and below 17 years of age, who are to be given consecutive hours of rest which shall include? Hours between 10 PM and 7 AM. However, children who are working as apprentices or receiving vocational training some relaxation are provided. This act does not include employment of children in occupations connected with the transport of passengers and goods, etc. by other modes of transport such as ship, airplanes, boats, motor vehicles.

Separate enactments namely Motor Transport Act, 1961 for motor transport workers and Merchant Shipping Act, 1958 for sea going ships have been enacted.

Under these Acts a child below the age of 14 years can not be employed in workshops like beedi making, cement manufacture, dyeing and weaving, explosives and fireworks, mica –cutting and splitting, soap manufacture, canning, carpet weaving, etc.

The state govt. may further add any other manufacturing process to which this kind of prohibition shall be made applicable. An important provision of this act is, any dispute regarding the age of child shall be determined by the prescribed medical authority. If there is any contravention of the provisions of the act then the employer shall be punishable with simple imprisonment extending to one month or fine upto Rs 500 or both. This act has since been amended.

2.3 FACTORIES ACT, 1948

According to Factories Act, 1948 no child below 14 years shall be employed in any factory. Further the act imposes certain restrictions on the employment of young persons above 14 years of age and below 18 years with a view to protect their health. Such persons are required to produce a certificate of fitness from a certified surgeon. Periodical examination of their health at intervals of not less than 12 month is done by the surgeon. The act also puts restriction on the working hours of these persons. Accordingly a child between the age group of 14 years and 17 years is not to be employed at night which means a period of at least 12 consecutive hours which shall include the period between 12 pm to 6 am. A child between the age of 14 and 15 cannot be employed in two shifts and cannot be allowed to work in more than one factory on the same day. Besides these provisions a young person between the age group of 15 and 18 years is treated as an adult for other provisions of factories act, subject to condition that he submits a certificate of fitness from a certifying surgeon that he is fit to

work for a full day in a factory and without this he is considered as a child only. In the act there is provision prohibiting the employment of a child for pressing cotton in which a cotton opener is at work.

The act has provisions for penalties in case of contravention of the provisions for example an employer shall be punishable with imprisonment up to 3 months or fine up to Rs 500 or both penalties are also preserved for persons over 15 years of age who use false certificate of fitness. There are also penalties on the parents or guardians who permit double employment of a child.

The Factories act, does not apply to such factories where the no of workers is below 10, where the process of manufacturing is carried on with help of power. The act also does not apply to those factories where the no. of workers is below 20, where the manufacturing process is carried on without power. Under such circumstances no statutory protection is provided to the children working in such factories. However the state govt. may extend all or some of the provisions of the act except where the works done solely by the members of the family.

2.4 PLANTATIONS LABOUR ACT, 1951

Plantations Labour Act, 1951 prohibits the employment of children in plantations who have not completed 12 years of age. Every child above 12 years and every adolescent who has completed 15 years of age but not 18 years, is required to produce a certificate of fitness valid for a period not exceeding one year at a time, from a certifying surgeon. A child, that means the person who have not completed the age of 14 years, is not allowed to work during night time. For a child and adolescent, the maximum working hours is 40 in a week.

This act applies to plantations in a tea, coffee, cinchona or rubber which measures 10.111 hectares or more and where 30 or more persons are employed. This act is also applicable to such other plantations having the said measurement and having the same no of persons as the state govt. may notify. Provisions are made in the act to prevent fragmentation of plantations into small units by the employers who try to by-pass the act.

Few welfare measures are also prescribed in the act. Thus a plantation should possess suitable crèches fit for use of children below 6 years where 50 or more women workers are employed. Regarding the education of children the act also makes provisions which reads:

“Where the children between the ages of six and twelve workers are employed in any plantation exceed five in numbers the state government may make rules requiring every employer to provide educational facilities for the children in such manner and of such standard as may be prescribed”. Provision of penalties for offences has also been provided in the Act on the lines of the factories Act.

2.5 Motor Transport Workers Act, 1951

The Motor Transport Workers Act, 1951 prohibits employment of children in a motor transport undertaking. According to the Act a child is a person who has not completed 15 years. This Act is designed to regulate the conditions of workers in motor transport undertakings. The act is applicable to every transport undertaking where less than five workers are employed. In addition to this the state government has been given the power to apply the provision of the Act to the transport undertakings employing less than five workers.

Further the act is also applied to adolescents who have completed 15 years of age but not 18 years to work in such undertaking provided they produce certificates of fitness from certifying surgeons. The certificate remains valid for one year and can be renewed from time to time. An adolescent is not allowed to work more than six hours a day including rest of half an hour. He is not

allowed to work between 10 Pm to 6 Pm .The provisions of penalties are prescribed for offences on the lines of the Factories Act.

2.6 Mines Act, 1952

The mines Act, 1952 has also made provisions controlling the employment of children in mines. In the matter of regulation of employment of children in mines the provisions of the Mines Act are more stringent than the Factories Act. Young persons who have not completed the age of 16 years cannot be employed in any mine and a child who has not completed 15 years of age is not allowed to be present in any part of mine which is below the ground and also above the ground after a particular date which the central government will fix by notification .An adolescent (who is between 16 years and 18 years of age) is allowed to work in any part of the mine below the ground provided he produces a medical fitness certificate from the certifying surgeon .But such adolescents are not allowed to work during night time (between 6 pm and 6 am or between 10 pm and 5 pm in case the central government notifies accordingly).

An employer who contravenes the provision of child labour is punishable with imprisonment upto three months or a fine upto Rs. 1000 or both .The mines Act has provisions or penalties for use of false certificate of fitness and double employment of children like the Factories Act.

2.7 Merchant Shipping Act, 1958

The merchant shipping Act, 1958 has same provision regulating employment of children. The Act prohibits employment of a person below 15 years in any capacity in a ship

- a.In a school ship or training ship, in accordance with the prescribed conditions, or
- b.In a ship where all the persons employed are members of one family, or
- c.In a home trade ship if less than two hundred tons gross, or
- d.Where such person is to be employed on nominal wages and will be in charge of his father or other adult near male relative.

The Act prohibits employment of a person below 18 years as a trimmer or stoker in any ship. No young person who is below 18 years of age is allowed to work unless he furnishes a medical fitness certificate by a prescribed surgeon ,Such type of medical examination is done at intervals of one year. But this does not apply to the situation when all persons employed in the ship are members of one family or when there is urgency. In case of contravention of the provisions of the Act a penalty of Rs. 50 is imposed .The subject shipping is in the concurrent list of the government .It would be appropriate if necessary legislation is enacted by the Govt. of India in the matter of employment of children in ships plying on inland waterways.

2.8 Apprentice Act, 1961

According to the Apprentice Act, 1961 a person who is less than 14 years of age is not qualified for apprenticeship training .This means that only persons between the ages of above 14 and below 18 years and the adults are eligible for training. The Act is applied to such areas or industries as may be determined by the central Apprenticeship council constituted under the Act. This Act is designed to regulate the training of apprentices in industry so that the training programmes can be organised in systematic manner and the apprentices will get the maximum advantage of their training .The Act deals with the matters like qualifications for engagement as an apprentice ,contract of apprenticeship ,period of apprenticeship training termination of apprenticeship contract, practical and basic training

of apprentices, obligations of employees and apprentices, payment to apprentices, health, safety and welfare of apprentices, hours of work, etc.

The Act is very flexible as most of the matters are left in the hands of executive and other various authorities.

2.9 Beedi and Cigar Workers (conditions of employment) Act, 1966

The Beedi and Cigar workers (conditions of employment) Act, 1966 regulates the conditions of work of beedi and cigar workers. Though certain provisions of the Factories Act are applicable to these type of workers yet the employers try to avoid these and get the work done through contract labour and in private dwelling houses. So this Act came into existence to meet these difficulties. This Act applied to all manufacturing processes connected with the making of beedi or cigar and which is carried on irrespective of the number of persons employed. The scope of the definition of the employee has been widened to include not only a regular worker but also a home worker. A home worker is further defined as a worker who is given raw materials by an employer or contractor for making beedi or cigar at home. It also includes a worker who is employed under the contract labour. However, most of the provisions of the Act apply to industrial premises but not a private dwelling house. A private dwelling house is defined as a house where the manufacturing process is carried on by the members of the family or by them with the help of outsiders. This is the limitation of the Act and needs correction. However, the Factories Act can be made applicable if the number of workers employed is more than 10 with aid of power and is more than 20 without aid of power.

The Act specifically provides that no child, who has not completed 14 years of age, can be employed in any industrial premises. A young person who has completed the age of 14 years but not 18 years is not allowed to work between 7 Pm to 6 am.

The Act provides usual provisions of crèches and penalties for offences.

2.10 Shops and Establishments Act

Different Acts have made different provision regulating the conditions of workers engaged in shops and other establishments like commercial establishment, restaurants, hotels, places of amusement at notified urban areas to which the provisions of the Factories Act are not made applicable. The State governments are also empowered to apply the Act to such other establishments as considered necessary. Generally a child, who has not completed the age of 12 years are prohibited from employment. This age limit in other states like Tamil Nadu, Pondicherry and Uttar Pradesh is 14 years.

2.11 Child Labour (Prohibition and Regulation) Act, 1986

The Child labour (Prohibition and Regulation) Act, 1986 is contemplated to bring uniformity among different differing laws relating to child labour. At first instance the Act defines the term child under sec 2 (ii) as person who has not completed 14 years of age thus bringing a solution to different definitions of the term child in different Acts. In part II section 3 it is mentioned that no child under 14 may work in any of the occupations listed in Part A of the schedule or in any workshop where any of the processes set forth in part B of the schedule is carried on. Part III of the Act controls child labour in those establishments where none of the occupations or processes listed in schedules of part A and B are carried on. The Act classifies occupations into hazardous and non hazardous in nature. It provided conditions such as wage structure, working hours, etc for employment of children in non hazardous

occupations. Sec 7 of the Act specified that the period of work for a child in any establishment on each day is fixed so as not to exceed 6 hours. This includes interval and the time spent in waiting for work on any day. Sec 7(4) prohibits night work from 7 pm to 8 am and section 7(5) prohibits double employment of a child in any establishment.

The Act makes provision for inspection by inspectors. The inspectors are appointed by the state government to look into the proper and effective implementation of the Act. On contravention of any of the provisions of the Act or rules made there under, the Act provides punishment. Under sec. 14 the imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both. For a subsequent offence he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years. Under section 14(1)(2) if the Act. There are various drawbacks in the Act for which necessary amendments should be made.

CONCLUSION:

A good number of laws have been made on child labour. In spite of this the child labour continues on the soil of India. The basic reason is poverty. To add to it there is lack of national as well as political conscience and unless anti poverty programmes are worked out the child labour laws will be of little use to eradicate child labour in India.

REFERENCES:

- 1) Code on Child Labour Mooted. NIPCCD News letter, Nov., 1989- Feb. 1990. P.4-5.
- 2) Constitutional Law of India, Bare Act.
- 3) Dhagamwar, Vasundha. Fulfilling the Right to Primary Education ; India's Supreme Court opens a Door. Future. Vol. 31-32 ; 1994, P. 24-29
- 4) Jain, S.N., Child and the Law, Bombay: N.M. Tripathi Pvt.Ltd, 1979
- 5) Juneja, Prakash C. Child in Domestic Service; A need for protective legislation. Indian Socio-legal Journal. Vol. XI, 1&2; 1983, P. 32-41.
- 6) Musharraf Ali, Child Labour and Socio-economic Problem in India. Indian Socio-legal Journal. Vol IX, 1; 1983, P. 34-39.
- 7) Pandey M.K., Child Labour In India, Calcutta : India Book Exchange, 1979.
- 8) United Nations Convention on the Rights of the Child 1989.



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