

JOURNAL OF RIGHTS OF THE CHILD OF NATIONAL LAW UNIVERSITY ODISHA

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JOURNAL OF RIGHTS OF THE CHILD
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Special issue on “Child Labour”

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NATIONAL LAW UNIVERSITY ODISHA

CENTRE FOR CHILD RIGHTS

ABOUT THE CENTRE

Centre for Child Rights (CCR) began its journey from 12th April 2015 with an aim to improve access to justice for children through various purposive activities targeted to ensure protection of the rights of the children in various areas like child labour, gender justice, children's education, child trafficking etc. CCR has undertaken a number of programmes for the research and documentation on the juvenile justice system in Odisha, capacity building of different stakeholders of child protection structures, and for the introduction of clinical legal education on child rights and juvenile justice in the NLUO curriculum.

NLU Odisha has entered into a partnership with United Nations' Children Fund (UNCEF, Odisha) for a period of three years (2015-17) for a project on '*Effective Implementation of Children's Laws in Odisha*' conduct research on the functioning of the JJBs/CWCs in the state of Odisha with the objective to secure a better understanding of the operational aspects of the juvenile justice mechanisms. It has also joined hands with ICSSR and the Government of Odisha to undertake research and documentation initiatives for different institutions established under the Juvenile Justice Act. Besides, it is also offering technical support to the labour department, Government of Odisha in the implementation of state plan of action for elimination of child labour in Odisha

VISION

To ensure justice to children and promote effective implementation of children's laws and governance in the State of Odisha. The Centre will endeavor to create child-friendly mechanisms through the promotion of child rights practices.

MISSION

To support and strengthen child protection structures by leveraging knowledge change and policy reforms at various levels of institutional governance to make juvenile justice system more accountable, efficient and effective for protecting and promoting child rights.

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MESSAGE FROM THE VICE CHANCELLOR

We are pleased to offer you the volume II, Issue I of Journal of Rights of the Child of National Law University Odisha with a special focus on “Child Labour”.

Child is the inspiration and the aspiration of tomorrow .The issue of child labour is an important concern as it takes away their inherent right to development. When a child is asked or forced to do some work whether hazardous or not that interferes and deprives him of his childhood and hinders the activities like playing and studying will be termed as child labour. Childhood is a part of a human life and all the children have the right to have a decent living condition which includes right to education also guaranteed under Article.21A of the Constitution. Further, Right of Children to Free and Compulsory Education Act, 2009, also reminds the states upon its responsibility to provide free and compulsory education to the children. Despite of all these, children are still vulnerable and prone to child labour and thus, denying their right to education. There is a popular adage that “*if a child is not in the school, he must be into child labour*”

NLUO is committed towards this triumph and thus, it is offering technical support to the labour department, Government of Odisha in the implementation of state plan of action for elimination of child labour in Odisha. The three main objectives of State Action Plan are , Complete elimination of child labour in all occupations ; achieve complete universalization of primary and elementary education along with universal prohibition of Child labour and rehabilitation and reintegration of all children withdrawn from work through education, nutrition, primary health care and skill training and socio-economic empowerment of their families.

I hope and wish that the issues discussed in this journal will initiate further academic discussions on Child Labour. It is indeed appreciable that the important issues relating to the child labour have been selected for incorporation in the journal that can immensely help the readers to gain knowledge about the law of the land.

I congratulate the Centre for Child Rights and the editorial team of Journal of Rights of the Child of National Law University Odisha for bringing out this special issue on child labour.

Prof. (Dr) Srikrishna Deva Rao

Vice Chancellor

National Law University Odisha

Editorial Note

On behalf of the Editorial Board and my co editors, I am glad to present the volume II, Issue I of Journal of Rights of Child of NLUO with a special focus on “Child Labour”. The objective of this Journal is to publish up-to-date, high-quality and original research papers alongside relevant and insightful reviews. As such, the journal aspires to be vibrant, engaging and accessible, and at the same time integrative and challenging.

Over the past three years, the journal has strived to contribute to the academic discourse surrounding legal issues in the country and around the world by publishing articles by both students and established scholars, as well as by both domestic and international authors. It is due to the support of our Vice Chancellor, Prof. (Dr). Srikrishna Deva Rao, the hard work of our editorial team, and the commitment of our faculty members we are able to commemorate the release of this special issue, and we hope that this tripartite support continues in the future.

This issue has twelve articles written by eminent professors, activist and students, and one book review. The first article is “*A study on child labour in Bangladesh: Causes and consequences*” which exemplifies the laws and the causes behind the child labour in Bangladesh. It has been concluded with a suggestion to the amendment of existing laws of Bangladesh.

Dr. Aruna Sri Lakshmi has contributed her article on “*India’s Ratification of ILO Core Conventions 138 & 182- A way forward to Eliminate Child Labour*” . She emphasized enumerates the core international labour standards and their status, reasons for non ratification so far, the important features of the amended Act in 2016 , the central rules of 2017, the role of RTE Act,2009, the impact of ratification of Conventions 138 and 182 by India etc. It is pertinent to note that she advocates for the complete abolition of child labour in India through various mechanism which she suggested.

Mr. Jai Shankar Bajpai focus is on the review of recent amendment banning Child Labour. This paper enumerates views of the apex court specifically on the topic of ‘child labour’ and has made an attempt to test the new amendments on the touchstone of earlier judgements and ideologies observed by the courts. Further he made a comparison has been made between the earlier views and the current scenario.

Dr. Chandan Kumar Sahoo has written on “*Child Labour - A Curse For Humanity*” The paper deals with child work leads to child labour and accelerations of Socio- Economic complications. Another two articles written by two students on “*Child Labour: Better Control, More Efficiency*” & “*Child Labour – A Violation To A Child’s Right*” also focuses on the various of child right violations and its effective control through righteous mechanism.

Dr. Nabamita Paul Rays paper on “*Public Interest Litigation As A Judicial Response To Child Labour In India: A Perspective*” is focused on role of PIL in eliminating child labour. The primary take away from the conclusion is that the effective implementation of the court orders through PIL is the key to solving the problems of child labour. She also specifically pointed out the reluctant approach of the executive in executing the court orders in the right spirit. Exploring the same dialogue further, Ms. Bhagya Lakshmi, “*Child Labour: The Constitutional Court Perspective and Interpretations*” also discuss the role of the hierarchy of courts in eliminating child labour in India.

Mr. Aderonke Adegbite paper on “*An Assessment Of The Nigerian Legal Framework On Child Labour Within Existing Cultural Regimes*”. The paper examines the available International and national provisions against child exploitation in Nigeria and considers the efficacy of same, within the dictates of the prevailing socio-cultural milieu. It discusses the various manifestations of child labour in the country *vis-a-vis* the existing Formal Laws and their receiving Culture/Customs. The work also makes appropriate recommendations for a National re-assessment of the presently culturally stifled Framework.

Another paper is submitted by a social activist Ms. Sarojitha Arokiaraj on the issues of Child labour and education in India. She discussed at length on how the child labour affects the precious right of the child to get quality education which she demonstrated the reality through few case studies which she encountered.

Mr. Saema Jamil submitted a paper titled “*Children Caught In Confusion*”. The paper is divided into three parts. The first part would discuss the Child Labour Act with special reference to the Child Labour (Amendment) Act, 2016 and investigate its effect on the right to education. The second part of the paper analyses sexual autonomy of married girls between the age of fifteen and eighteen and children (boy and girls) who have attained puberty but have not attained the age of eighteen. The last part concludes by suggesting certain amendments in the current law.

The article by Mr. Saurab Kumar titled “*Child Labour: Better Control and more efficiency*” discusses several mechanism under the statute, rules notifications etc for regulating the child labour in India. The author pointed out the lacunas in the existing laws and also suggested few recommendations for the effective control of child labour.

Ms. Dimple Garges paper is on “*Child Labour – A Violation To a Child’s Right*” discusses the human rights perspective of child labour, the child laws or initiatives in the country, the obstacles and the suggestions. she started the discussion on the human right with a beautiful poem written by Mamie G Cole .She is emphasizing education as a counter product to compact the menace of Child labour in india and she is recommending various methods for zero level child labour.

Mr. Akash Kumar Paper titled “*Accountability issues in Child Sponsorship programs: Ethics of generosity*” discusses the various scheme of Child Sponsorship programs in India, the way it works, issues of accountability and critique of such programs if not monitored properly. Further he emphasises that most of the NGOs and the non-profit organizations to raise funds in the name of child sponsorship and the government is giving less focus on the authenticity and liability of such organizations in their fundraising, spending on administrative costs and actual program. This paper at length the accountability of NGOs and other similar institutions in the child sponsorship programme.

The last part of this journal is dealing with book review section written by Mr. Saji Mathew on “*Let’s call him Vasu : With the Maoists in Chhattisgarh written by Shubhranshu Choudhary*”. It mainly focuses on the menace of naxalism and its effect in Odisha and Andhra Pradesh.

I sincerely thank Prof (Dr). Srikrishna Deva Rao for his valuable guidance and mentoring for the publication of this special issue. I especially thank to Prof. Sheela rai, Dr. Aruna Sri Lakshmi , Dr. Kondaiah Jonnalagadda and Mr. Lakshmi Narayan Nanda for their valuable comments and critic on the paper of this special issue. My special thanks to Ms. SnigdhaSingh and Ms. Eluckiaa for their effort in editing articles and their valuable comments.

In keeping with our efforts to make this journal a truly high quality research platform, we look forward to your candid and critical feedback that will enable us to develop the future editions.

Mr. Ramakrishna Das P.R
Editor-in-Chief

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A STUDY ON CHILD LABOR IN BANGLADESH: CAUSES AND CONSEQUENCES

Mr. Md. Saleh Akram*

ABSTRACT

Child labour is now a global concern and as such attracted attention of people in various sectors. In fact, it is the product of an unequal society. Bangladesh is highly populated country in the world. Child labour in Bangladesh has increased remarkably in recent years. The problem of child labour is a socio-economic reality of Bangladesh. This issue is enormous and cannot be ignored. Poverty is the main reason for the children to become child labourers. The child labour problem has become one of the most striking issues in the developing countries. Traditionally, many children have always engaged in farming in villages, the numbers of child labour has rapidly increased in industrial and commercial sector. Working children are neglected by some of the social groups in Bangladesh. Sometimes they become floating population. Existing laws and Acts in Bangladesh, does not bar child labour in any industry and other sector. Most of the working children do not have the opportunity to go to school. The children are treated as a cheap labour. The main aims of this study find out the basic causes of children are recognized as child labour and try to know the causes behind child labour. This article also attempts to search out the ways how child labour can be decreased gradually.

Keyword: Child labour, Poverty, Hazardous work, National Law, Developing Countries.

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INTRODUCTION

A nation has lost huge potential resource because of the employment activities of children. If a society desire to get qualified person, they must forgo the presence of child labour in economy. Every nation as well as family would like to make his or her children as a qualified person. Although many reasons are involved in child labour but poverty are the main reason and this cause mostly appearing in Bangladesh. Child labour engages in formal and informal sector in Bangladesh. Children are working mainly in rural areas, because most of the poor and vulnerable parents live in remote villages. They do not have enough ability to take all the responsibilities of their children. Majority of the parents can only afford to offer the food and lodging but they cannot afford the educational expenses of their children. But education is the basic right of a children and only education can make him or her resourceful person and be a good quality citizen as well. But in reality, poor parents get relief when their children earn some money and accomplish the family needs. The majority of the people in Bangladesh are poor and uneducated, because of scarcity of land, lack of food and political unrest. In this situation, people intend to ignore about child care. About 44% of populations among the total 160 million are under age of 18.¹ This is really great problem for mushrooming child labour in Bangladesh. Child empowerment rates increased chronological order with age.² To enrich millennium development goal; child labour is the main and principle obstacle in Bangladesh. Child labour is encouraged by the poor parents to get some additional money that is harm for individual children and make obstacle before the national poverty reduction and development efforts. Those families, who are landless, work for rural landowners with their children in the fields. Most families, who are better in financially, use children in their homes as domestic helpers and for cattle tending and other agriculture work. Children also work in small shops, tea stalls, factories and the fishing industry. Most working children do not have the opportunity to attend school. The matter becomes even more traumatic because the child and his family have to observe forced “silence” on the matter. It may cause

¹ United Nation Office For The Coordination Of Humanitarian Affairs Humanitarian News And Analysis Report <http://www.Irinnews.Org/Report.Aspx?Reportid=87306>.

² Unicef, ILO, World Bank Group, Understanding Children’s Work In Bangladesh June 2009.

lots of bad effects among our children. We can reduce it by taking same steps, especially parents and government can play main role for reducing child abuse. It should be stop for our better society. The government of Bangladesh too appears to be recognizing the growing problem and has introduced tougher laws to prevent it, though its effective implementation is yet to be seen. We need such are society where the child get enough freedom which they actually deserve. Moreover we have to ensure an environment where they get the proper care and facility.

BASIC CONCEPT OF ‘CHILD’ AND ‘CHILD LABOUR’

The United Nations Convention on the Rights of the Child (CRC), 1989 and the International Labour Organization Convention on the Worst Forms of Child Labour, 1999 define a child as an individual who is under the age of 18 years, unless under the law applicable to the child majority is attained at an earlier age.³ Historically speaking, Bangladeshi laws have proven to be inconsistent in their determination of an age regime as some Acts were promulgated during the British period; others during the Pakistan period and a handful have been promulgated since the independence of Bangladesh in 1971. For example, the Child Marriage Restraint Act 1929 imposes a gender distinction by setting the age of majority in order to contract a valid marriage at 21 years for men and 18 for women. In addition, under contract law, a minor cannot enter into agreement until attaining the age of 18. Muslim personal laws on marriage, however, determine that a child becomes an adult on attaining the age of puberty. However, in Bangladesh, the Children Act, 2013 is a positive step and it is a great milestone for the protection of the rights of the child in all sphere of life. The numbers of vital issues on child rights have been dealt with in the Act. In the Act, the age of the child has been increased from 16 to 18 years. So, child age has been fixed up to 18 years.⁴ The Bangladesh Labour Act, 2006 both consolidates and abrogates all of the existing labour laws and determines that a child is an individual under the age of 14.⁵ The Bangladesh

³ Sharmin Aktar and Abu Syead Muhammed Abdullah, ‘Protecting Child Labour in Bangladesh: Domestic Laws versus International Instruments’ (2013) *Bangladesh e-Journal of Sociology* (Volume 10 Number 1) 154

⁴ *The Children Act, 2013 s 4.*

⁵ *The Bangladesh Labor Act, 2006 s 2(63).*

Labour Act, 2006 defines an adolescent as an individual between the ages of 14 and 18.⁶ An adolescent can work in a factory if a certificate of fitness is granted to him or her, if he or she carries a token while at work which gives reference to the certificate.⁷ An exception is provided for, as per section 44, a child who is 12 years of age may be employed if the work does not endanger his or her health or interfere with his or her education. On the other hand, child labour is defined as work that deprives children of their childhood, their potential and dignity and that is harmful to physical and mental development. The United Nations Children's Fund (hereinafter UNICEF), defines child labour as work that exceeds a minimum number of hours, depending on the age of a child and on the type of work. For children aged 5 to 11, this would include at least one hour of economic work or 28 hours of domestic work per week.⁸ Besides, the International Labour Organization (hereinafter ILO) asserts that the term child labour refers to work that is mentally, physically, socially or morally dangerous and harmful to children and interferes with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely or requiring them to attempt to combine school attendance with excessively long and heavy work.

CAUSES BEHIND THE CHILD LABOR IN BANGLADESH

There are a huge number of children are facing multi-dimensional forms of violation of human rights, in Bangladesh. It is not only harm for their natural development but also a great burden for national development. Due to overpopulated country, many people migrating to the city for gaining better opportunity. They as well as their children are living under extreme poverty and maintaining worse condition.⁹ The current government deficit in Bangladesh has further aggravated the situation because, the duty bearers such as lawmakers, executives, police, probation officers, and even judges remain insensitive to children's rights and fail to provide protection,

⁶ *The Bangladesh Labor Act, 2006 s 2(8).*

⁷ *The Bangladesh Labor Act, 2006 s 34.*

⁸ Sharmin Aktar and Abu Syead Muhammed Abdullah, 'Protecting Child Labour in Bangladesh: Domestic Laws versus International Instruments' (2013) *Bangladesh e-Journal of Sociology* (Volume 10 Number 1) 155

⁹ <http://www.assignmentpoint.com/Arts/Law/Violation-Of-Child-Right-Bangladesh-Perspective.html>, Last Visited, 31-03-2015.

special care and treatment. There are vibrant transformations between city and countryside of the child labor sector.¹⁰ Besides the above reasons, many children engage into work in order to supplement the family income and the parents do not even restrict them, insufficiency of schools, poor curriculum, absence of proper nursing and care of pupils by the teachers, lack of usefulness of education for their survival profession and the long time needed for education also lead children to begin work at an early age.¹¹ At the end, it can be said that though poverty is the principal cause behind child labor, child labor is also caused by a variety of other reasons.¹²

Low parental Income causes child labor

In every poor family parents earning are very less due to different reasons. If the income is very low then the parents send their child to work in everywhere, the family earning source is the father and his died children work to earn and livelihood.

Children work secretly

To support family some children run away or furtively work outside of the home. In this exceptional case most of the children show over maturity by thinking that family needs his or her help. So these children from poor families furtively go to work instead of school¹³

Now the point of view we cannot actually blame these poor parents for child labor because when survival is the main issue the child labor issue obviously should not bear any importance to them; So here we can blame the country's economic condition and government actions strongly¹⁴

¹⁰Md.Zahangeer Bashir, Dr.BaeJaengSaeng and Dr. Kang Moon Kyung 'A study on Child Labor in Bangladesh under National and International Law' (2015)20(6) *IOSR Journal of Humanities and Social Science* p77.

¹¹ ibid.

¹² ibid.

¹³ Extremology 'Important reasons of Child Labor: An analysis to save poor children' (2013) p4 (4February 2017). <<http://www.extremology.com/2013/02/Important-reasons-of-child-labor-with-analysis.html>>.

¹⁴ ibid.

Children are cheap source of labour

It's very understandable that cheap labor source is important for business growth. But using children as cheap labor source is very unethical¹⁵. Although some owner in developing countries always use children to get things done easily and cheaply¹⁶. Because giving 10 bucks to a child and 100 bucks to an adult worker can make a huge difference in profit; therefore to cut the labor cost owners go for child worker instead of adult worker¹⁷.

Broken family

Parent's separation or divorce in a poor community makes children vulnerable¹⁸. Parents separation is the main problem of child labor because they grew up without a father or mother who lives at the same time.

Parents feeling of insecurity about their children

Many parents in our society fear that if their children spend their time idly, they may get involved in anti-social activities¹⁹. For this reason they try to find an occupation for their children and keep them away from idleness and vagrancy²⁰.

Lack of awareness and embedded tradition

Lack of awareness and the firmly established tradition also play an important role to prolong child labor. Indeed, most of the parents are unaware about the notion of "Child labor"²¹. They know neither what is meant by child labour nor the harmful effects of it; again because of the embedded tradition in our society majority of

¹⁵ Extremology 'Important reasons of Child Labor: An analysis to save poor children' (2013) p5 (4 February 2017). <<http://www.extremology.com/2013/02/Important-reasons-of-child-labor-with-analysis.html>>.

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ Rahman 'Child Labor in Bangladesh: A critical appraisal of Harkin's Bill and the MOU-Type schooling program' (1999) 33 (4) *Journal of Economic Issues* (7 February 2017).

¹⁹ Mahbub Bin Shahjahan, Mst. Jesmin Ara, Md. Ayaz 'Protecting Child Labor in Bangladesh under Domestic Laws' (2016) *Open Access Library Journal* (5 February 2017) <www.researchgate.net/profile/Mst_Ara/Publication>.

²⁰ *ibid*

²¹ *Supra* note 25.

the parents think that their children will earn from early ages and will contribute to the family budget, though there may be no compelling necessity²².

Lack of education of parents, especially of mothers

Lack of education the parents neither understands what child labor is nor what are its effects; as such they very often encourage children and in some cases put pressure on them to work instead of going to school, though they are not in need of work²³. A UNICEF survey of selected countries in Latin America, the Caribbean, South Asia and Sub-Saharan Africa finds that on average children with uneducated mothers are at least twice more likely to be out of primary school than children whose mothers attended primary school²⁴.

Unemployment of elders encourages child workers

Most of the cases families suffer to fulfill the basic human needs if senior members are unemployed. If the elder members of a family become unemployed then the children are work.

Education

Child participation in education increases as the availability and quality of the education improves.²⁵ Additionally, childhood education rates are correlated with family income, parent educational level, social class, and gender. Children from the “lower” classes are less likely to receive an education²⁶.

INSTRUMENTS REGARDING CHILD LABOUR

Child labour is widely discussed in the country but effective initiatives to eliminate or decrease child labour is hardly seen. Though there is a lacking in adopting measures to solve the problem.

²² Shituma Zaman, Sabrina Matin, Asiq Mahmud Bin GholamKibria, ‘A study on Present Scenario of Child Labor in Bangladesh’ ((2014)16(6) *IOSR Journal of Business and Management*4 (17 February 2017), <www.iosrjournals.com>.

²³ Supra note 51.

²⁴ *ibid*.

²⁵ Cathryne L. Schmiz, Elizabeth Kim Jin Traver and Desi Larson. *Child Labor A Global View* (Greenwood Press Westport Connecticut London, 1sted, 2004) p 6.

²⁶ *ibid*. Also see UNICEF Survey Report, 2010

National Instruments

The existing laws of the Bangladesh regarding child labour also does so. These do not prohibit child labour rather provide certain standards for the employment of children. Again the present domestic laws do not cover children who are engaged in household services, such as, in agricultural sector, or domestic help. As a result, it is hard to count the actual rate of child labour and almost impossible to protect them from exploitation through legal procedures. However, the following are the domestic laws which are working for the protection of the rights of the child.

The Constitution of the People's Republic of Bangladesh

The Constitution of the People's Republic of Bangladesh covers the issue perfectly. Since the very inception of the Republic, protection of the child has been declared to be one of the fundamentals of the state policy of Bangladesh. Articles 14 and 15 of the Constitution protect the rights of children and the right of social security. Article 17 imposes an obligation upon the state to take effective measures for free and compulsory education for all children to such stage as may be determined by law and under Article 18, the state is empowered to make special provisions for the benefit of children. Specially, all forms of forced labour are declared as forbidden and in case of violation of such rights legal scopes to seek remedy are available. It is, however, necessary to mention here that the constitution of Bangladesh does not prohibit child labour. It only contains certain articles affecting children.

National Child Labour Elimination Policy 2010

Work performed by a child will be considered as child labour but the term 'child labourer' should not be used here rather he may be termed as a child engaged in labour. The policy advocates a friendly world for the children engaged in work and provides a standard framework concerning education, health, working environment, specific working conditions, recreation, treatment, and security, social awareness building for managing and reducing risks of child abuse by employers. Besides, to supervise the child labour related issues a definite ministry is required. Child concerned matters are regulated by the Ministry of Women and Children Affairs and labour related issues are by the Ministry of Labour and Employment. But no ministry is wholly authorised to administer the child labour issues. That is why the

policy articulates recommendation for giving the entire responsibility of supervising every issues concerning child labour to the Ministry of Labour and Employment as a focal Ministry. A Child Labour Unit is also suggested to be made for co-ordinating all the activities that are mentioned in the Policy of 2010. Furthermore, the policy points out that a National Child Labour Welfare Council can also be created by the experts in child labour studies whose duty will be to observe the circumstances of child labour at national and international level with a view of suggesting to the government.

Bangladesh Labour Act, 2006

The most remarkable legislation in the country for regulating child labour is the Bangladesh Labour Act, 2006, which includes a chapter on employment of child labour. In the earlier laws, the term “child” was used to mean a person who had not completed 16 years of age and the term “young person” was used to mean and include both the child and adolescent. Under the earlier law, even a child could have obtained a fitness certificate to get a job in a factory. But in the new law, child means a person who has completed his or her fourteen years of age and adolescent means the person who has completed sixteen years and has not completed eighteen years of age. The present law specifically prohibits employment of children and makes a provision for fitness certificates for the adolescent only. But a child, who has completed twelve years of age, may be employed in such light work as not to endanger his health and development or interfere with his education. Provided that the hours of work of such child, where he is school going, shall be so arranged that they do not interfere with his school attendance (as per section 44). However, the Act of 2006 does not provide a strong enforcement mechanism for the child labour provisions. Additionally, the vast majority of children work in the informal sector which makes enforcement of the relevant legislation challenging.

The Children (Pledging of Labour) Act, 1933

Under this Act, a person under the age of 15 years is treated as a child. This Act prohibits the making of an agreement to pledge the labour of children in return of consideration and if the conditions under which the agreement is made are such as to be detrimental to the child, the Act makes the agreement void. But this Act is

ambiguous with regard to children who are employed without such agreements. In fact, this Act forbids parents or any person from compelling children to work.

The Employment of Children Act, 1938

This Act applies only to those occupations that relate to transport of passengers, handling of goods and processing work. A child is defined in this Act as a person under the age of 15 years and this Act prevents them from working in the transport of passengers and handling of goods by road, railway or any sea port. This Act makes concessions with regard to children up to the age of 17 years employing in the aforesaid activities but in this case one condition is that the periods of work have to be fixed in such a way as to allow intervals for rest of at least 12 consecutive hours including at least seven consecutive hours between 7 pm and 7 am. Again this Act astonishingly permits children below the age of 12 years to engage in processing activities and for this purpose identifies the workshops where children of this age group may work. Furthermore, children over the age of 15 years and under the age of 18 years are allowed to work under the fixed working hours which the Act specifies.

The Tea Plantation Ordinance, 1962

The Act does not define a child but provides that children under the age of 12 years are not allowed to work in any tea plantation. Moreover, children above the age of 12 years and adolescents between the ages of 15 and 17 years may be permitted to work in tea plantations provided that they are granted a certificate attesting to their physical fitness. But children are not allowed to work other than between 6 am and 7 pm. This Act also contains provisions for violation of the Act.

The Children Act, 2013

This Act principally applies to children who commit anti-social activities but various aspects of child exploitation ranging from begging, exposure to drugs and liquor, brothels and seduction are dealt with in sections 34 to 43 of the Act. This Act also imposes penalties on those who exploit child employees. It provides that whosoever secures a child ostensibly for the purpose of menial employment or for labour in a factory or establishment, but exploits the child for his own ends, withholds his earnings or lives on it, shall be punishable with fine or imprisonment or with both.

The Act further provides that whosoever secures a child ostensibly for any of the purposes mentioned above but exposes the child to the risk of seduction, sodomy, prostitution or other immoral purposes shall be similarly punishable with fine or imprisonment or with both.

The Mines Act, 1923

The Act restricts the employment of children in a mine or any part thereof which is underground. A child is defined in this Act as a person who has not completed his fifteenth year. But a person of 17 years or above may be employed in a mine provided that they are granted a certificate attesting to their fitness. Besides, the hours of work for such persons must be so fixed as to allow an interval of rest of at least 12 consecutive hours including at least seven consecutive hours between 7 pm and 7 am. Therefore, different statutes of the country have defined children differently according to the different labour sectors, though the National Child Labour Elimination Policy 2010 has made the age of child labour specific. In fact, the above provisions of different Acts do not prohibit child labour rather inserts provisions for the employment of children. The reason behind this may be that if child labour is absolutely forbidden, that will severely affect children and their families who depend on the income of children and children may be involved with more exploitative informal activities (which do not come under the purview of the above Acts) than now. So child labour cannot be eliminated from the society totally just now. That's why steps should be taken at first to decrease it gradually. In this case the laws regarding child labour should be more child-friendly. Much has been discussed here up to now about the enactment of laws. At this stage the paper will refer to the enforcement of laws. Indeed, the existing laws of the country are not implemented fully. Though there is a provision of keeping a separate register for working children, most of the factories don't observe that rule. Working conditions are not as per law; medical facilities are not provided and inspections are few and in places where inspectors appear, it is common for them to collude with employers and make out an excellent inspection report for a price without so much as actually observing. Similarly the implementation of the present domestic laws as regards child labour, the law enforcement agencies should be fair and free from politicization

and corruption. Legislative measures for the protection of children and the eradication of child labour have been adopted at the international level.

INTERNATIONAL INSTRUMENTS

The following are the international instruments which are working for the protection of the rights of the child:

ILO Minimum Age Convention C138, 1973

‘The Convention Concerning Minimum Age for Admission to Employment’ is a Convention adopted in 1973 by the International Labour Organization. It requires ratifying states to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work. This Convention replaces several similar ILO conventions in specific fields of labour. However, the minimum age for entry into work should not be less than 15 years and not less than the age of completing compulsory schooling under Article 2 (3) of the Convention or 14 under Article 2(4) for countries “whose economic and educational facilities are insufficiently developed”. By Article 7(4) of the Convention “light work” is allowed for children from the age of 12 in a developing country. The minimum age for hazardous work that is likely to jeopardize the health, safety or morals of young person shall not be less than 18 years under Article 3 (1) of the Convention.

UN Convention on the Rights of the Child (CRC)

This is the most valuable treaty in the armoury of human rights law with which to protect and defend the rights of children the world over. Notwithstanding the fact that the Convention is more comprehensive than any other human rights treaty, it has attracted the greatest number of ratifications. This Convention defines a child as below the age of 18 years. It calls states to respect and ensure the given rights to each child within their jurisdiction without discrimination of any kind. By this Convention a child is to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development under Article 32. To achieve a child’s right to education, states are to make in accordance with Article 28 primary education compulsory

and freely available to all. Every child also has a right to play, rest and leisure under Article 31.

ILO Worst Forms Convention C182, 1999

Under this Convention Child applies to all persons under the age of 18. The Convention Calls for immediate and effective measures to prohibit and eliminate the worst forms of child labour: 1.) All forms of slavery and slavery-like practices, such as child trafficking, debt bondage, and forced labour, including forced recruitment of children into armed conflict; 2.) using a child for prostitution or the production of pornography; 3.) using a child for illicit activities, in particular drug production and trafficking; and 4.) hazardous work.

International Program on the Elimination of Child Labour (IPEC)

IPEC was launched in 1992 to progressively eliminate child labour through strengthening national capacities to address child labour problems and promoting a worldwide movement to combat child labour. While IPEC's goal remains the prevention and elimination of all forms of child labour, the priority targets for IPEC's action are the worst forms of child labour, which are defined in Convention No. 182. IPEC also calls for the provision of alternatives for children and families to ensure that children truly benefit from child labour interventions.

Time Bound Program

The Time-Bound Program is one of the means established by IPEC to help countries fulfill their obligations under ILO Convention No. 182 to take immediate and effective time-bound measures to prohibit and eliminate the worst forms of child labour as a matter of urgency, including: prevent the engagement of children in the worst forms of child labour; provide direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration; ensure access to free basic education and appropriate vocational training for all children removed from the worst forms of child labour; identify and reach out to children at special risk; and take account of the special situation of girls. Bangladesh has ratified the 1989 United Nations Convention on the Rights of the Child (CRC) and the 1999 International Labour Organization Convention on the Worst Forms of Child Labour but not ratified the Minimum Age Convention of 1973. Though

Bangladesh has not ratified this Convention, her domestic legislation prohibits the employment of children in factories below a certain age. It has also begun the process of time bound program.

What should be done?

Economic development that raises the incomes of the poor is the best way to reduce child labor. But this process may be taken long time. Bans on child labor or requirements that children attend school, however politically appealing, are of doubtful effect.

- a. When most children work for their parents on family farms developing countries often lack resources to enforce child labor bans.²⁷ Non-compliance with compulsory schooling laws countries to be a large problem in today's developing world.²⁸
- b. There is no guarantee that such policies will alter local labor markets in a way that increase family income, and thus an economic incentive for children to work will remain. Real-world labor market regulation can affect enough of the child labor market to have general equilibrium effect on wages as required in.²⁹ For example; the high profile ban on child labor in Bangladesh involved mainly children working for pay in the garment industry. This ban allegedly affected the employment of 10000 children, which corresponds to a tenth of one percent of economically active children in Bangladesh. Thus, although a legal ban might reduce child labor, this outcome is not guaranteed, especially when labor laws.
- c. Policies that keep children from working in one type of job might push children into no exporting sectors. In the Bangladesh case, anecdotes abound about children leaving garment factories, for prostitution or work

²⁷ Alan Krueger, 'International labor a Standards and Trade, Annual World Bank Conference on Development Economics' (1997).

²⁸ Drusilla Brown, 'Labor Standards: Where Do They Belong on The International Trade Agenda?' (2001)*Journal of Economic Perspectives*, 15:3, pp. 89-112.

²⁹ KaushikBasuand Pham Hong Van, 'The economics of Child labor' (1998), *American Economic Review*. 88.3 pp. 412-27.

in stone quarries. The employment of children owing to the threat of sanctions, like the Bangladeshi garments industry and Pakistani soccer balls.³⁰

- d. At the consumer level, boycotts of products produced by child labor and more generally ant sweatshop activism have become popular. Such campaigns seek to pressure multinational produces of high profit brand name products to improve their labor practices.
- e. Attempts to require either bans on child labor or compulsory school attendance are subject to the problems above.
- f. It is difficult to distinguish whether these measures reflect genuine interest in the well-being of children in poor countries or whether they are just a palatable excuse for protectionism. Overall, it is difficult to make a strong case for trade policy or consumer boycotts as n effective tool to combat child labor. Consumer activism has brought the problem of child labor into the spotlight, but we are not aware of any systematic empirical evidence of the effectiveness of consumer activism in reducing child labor.
- g. Policies targeted at improving school infrastructure and reducing the cost of schooling provides the most promising targeted ways to reduce child labor. These initiatives might work best when combined with conditional cash transfers programs for households that send children to school, such as Food for Education in Bangladesh and Progress in Mexico. Such Programs have been successful in increasing school attendance, which ameliorates one of the concerns about child labor.
- h. The process of replacing the Children Act, 1974 with a new act is in its final stages. This Act as well as the new draft provides penalties for engaging children in child labor.
- i. UNICEF has also been working with the ministry of Social Welfare and other ministries and NGOs to undertake mapping and assessment of

³⁰Kimberly Ann Elliot, and B. Freeman Richard, 'Can labor standards improve under globalization? Washington, DC' (2003)*Institute for International Economics*, pp. 112-115.

Bangladesh's child protection system. Based on this a child Protection Policy will be developed, including child labor aspects.

- j. Social workers also provide targeted outreach services to children working in invisible location such as small factories or homes, to prevent abuse and exploitation.
- k. UNICEF support drop in centers provide children at risk with various psychosocial services such as referrals to legal aid, support for family reintegration and shelter.

SUGGESTIONS FOR ABOLISHING OR REDUCING CHILD LABOUR

- a. The elimination of child labour is a challenging and praiseworthy job and requires financial, moral and political support from all the tiers of the society. Actually, child labour can't be practically removed from a country such as Bangladesh just now because the problem of child labour is indivisibly rooted in our society, so attempts have to be made in the first place to reduce it.
- b. As poverty is the core reason behind child labour as it drives children to involve in employment, so effective solutions to child labour must be based on the reduction of chronic poverty through broad based economic and social development.
- c. There is a huge population of girls and also boys working in domestic labour that are not necessarily linked with economical facts but with patriarchal roles. As such, with a view to abolishing or reducing child labour, child-centred educative sensitivity and awareness at political, community and family level is essential.
- d. To create such kind of sensitivity educated parents, educated family members and an educated community has to be made and they will actually play an important role in the progressive removal of child labour.
- e. Schooling process has to be changed and an upgraded curriculum to be introduced inclusive of basic idea regarding child labour.

- f. To make education effective vocational training that would enable students to achieve an employment quickly and easily after finishing their schooling period.
- g. School education has to be free.
- h. School feeding programme to be initiated.
- i. School utensils such as pencils, rulers, textbooks to be offered.
- j. Arrangement for transportation to be made and for these a large portion of the budget to be provided.
- k. In our country primary education is free up to class five, school feeding services offered and textbooks given without any cost, although the illegal sale of books by school authorities is very common. Again budget provided for education are not wholly used for its designed purpose because of the corrupted leaders. In order to prevent that, national and popular democratic monitoring of financial investments in education must be enriched. Then take the case of awareness raising. Education makes a person more conscious than in any other ways.
- l. Inclusion of knowledge about child labour in school curriculum may also be used as a method of awareness building. At the same time government and other non-government organizations may make people aware through distributing leaflet among the common mass; showing advertisement, movie and short films on the television.
- m. Imposition of sanctions on the products produced by child labour may help to drive out child labour from the labour market. The products may be boycotted either by consumers or governments.
- n. In rural areas employment opportunities in various sectors has to be created so that the villagers are not inclined to go to urban areas for seeking employment.
- o. Laws against child labour are applicable only to the formal economic sectors. But most children who work in the informal sector, such as small factories, workshops, motor garage, shops, agriculture or domestic work, are not

regulated by law nor are these establishments monitored by any government agency. Again, legislation concerning child labour is proper from the context of prohibiting it but is improper for not implementing the concerned laws. For this reason enforcement procedures has to be strengthened and law enforcement agencies have to be free from any influence.

- p. The government will need to take the lead in pursuing child labour elimination goals, in order to meets it long term development needs.
- q. The adoption of the establishment of an inter-ministerial National Taskforce on Child Labour and Education, a review and effective implementation of the Labour Act, 2006 and the urgent need to increase the capacity of the recently established Child Labour Unit and to ensure that the Unit can bear its responsibilities and function effectively.
- r. Legislation concerning child labour is adequate enough but improper implementation of laws is main obstacle. It is also necessary to bear in mind that only the government can play an effective role in the progressive removal of child labour but the humanitarian and Non-Government Organizations (NGOs) have to come forward to tackle the matter.

CONCLUSION

Children are the future leader of a nation. Bangladesh is obliged under both national and international law to protect and promote the rights and interests of children . The Constitution of Bangladesh and the Children Act, 2013 guarantees basic and fundamental human rights and ensures affirmative action for children. These rights are the guiding principles for formulating policies and laws relating to child development. All children must have to right to maintain their healthy and natural childhood. However, many children in our country are deprived of enjoying a universal right. Children of poverty-stricken families are forced to take dangerous work for the purpose to fulfill their parents wish and uncertain future as well. As Bangladesh is one of the earliest signatories of the Convention on the Rights of the Child (CRC), therefore these initiatives will be widespread and the affluent, elite countries and international organizations will come forward to help our government and NGOs not only in case of financial assistance but also in the actual performance

of the field level work. It is necessary to mention here that the government is committed to protect the child but it lacks depth of understanding and consistent planning. That's why action at the national level is needed now, as timely taken steps can only bring positive impact on decreasing or elimination of child labour from all tiers of the society. But in case of taking action in full conformity with reality, all the factors such as, economic, social, political, cultural have to be taken into consideration. Further, it is not proper in the context of existing social system to refrain children from work which only breed's poverty rather initiatives have to be taken at first to keep them away from exploitative and dangerous works and to provide appointment letter, identity card to ensure the payment of their due wages and other rights as workers, which other adult workers enjoy, has to be ascertained. In order to remove these circumstances, the family age into ensure the evacuation of children, the community and government, non-government should invest efforts and resources to implement national awareness program regarding child labour.

INDIA'S RATIFICATION OF ILO CONVENTIONS 138 AND 182- A WAY FORWARD TO ELIMINATE CHILD LABOUR

Dr. A. Aruna Sri Lakshmi*

ABSTRACT

The ILO's Minimum Age Convention (138) and the Convention on the worst forms of child labour (182) are the two core international labour standards among the eight which lay down the fundamental principles and rights at work. These principles are declared by ILO to be adopted by all the member states whether the member states have ratified these conventions or not in 1998. India has recently ratified these two conventions on 13th June 2017 reassuring its commitment to eliminate child labour. The new amendment effected in 2016 to the Child Labour (Prohibition and Regulation) Act, 1986 which prohibits child labour in all occupations marked a significant place in the legislative progressive history of India. India's commitments to eliminate child labour are strengthened with the new central rules 2017. In this background this paper enumerates the core international labour standards and their status, reasons for non ratification so far, the important features of the amended Act in 2016 herein after called as the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, the central rules of 2017, the role of RTE Act, 2009, the impact of ratification of conventions 138 and 182 by India etc.,

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INTRODUCTION

Child labour has been a major cause of concern all over the world. The ILO has, for a long time, been using the means of adopting international legal standards to combat the persisting problem of child labour.

The member-states of the ILO are of the strong belief that childhood is a period of life which should not be dedicated to any work, but should rather be dedicated to the physical and mental development of the child and his/her education.¹

The first step towards combating the issue of child labour was the adoption of the Minimum Age (Industries) Convention, 1919 (No.5) which was signed at the very first session of the ILO. Several other conventions and recommendations were passed during the period from 1919 till 1972, most of which were directed to specific sectors, like maritime work, industrial work, and underground work.² That's when the need was felt, for having an instrument to target all the sectors, and which could also be applied to national situations.

Subsequently, the Minimum Age Convention (No. 138), along with Recommendations (No.146) were passed by the ILO in 1973. However, child labour still remained as a major aspect of the Labour market, and the need for a specific convention on this topic was raised by the ILO General Assembly in 1996. Therefore, the Worst Forms of Child Labour Convention (No. 182) and Recommendations (No. 190) was unanimously adopted by the ILO in 1999.

13th June 2017 marked a historic moment for India through its ratification of the two core conventions 138 and 182 .These two conventions are the fundamental instruments on elimination of child labour.

THE ILO CORE LABOUR STANDARDS

The ILO has adopted and declared the fundamental principles and the rights at work in 1998 directing all the member states to implement these principles in the International Labour Conference. They are:

¹ Giuseppe Nesi, Luca Nogler and Marco Perlite, *Child Labour in a Globalised World-A legal Analysis of ILO Actions* (Routledge 2016) 45.

² *Ibid* at 55.

- i) Freedom of Association (convention no. 87) and the effective recognition of the right to collective bargaining (convention no. 98)
- ii) The Elimination of all forms of forced or compulsory labour (convention nos. 29 and 105)
- iii) Effective abolition of child labour (convention no. 138) and
- iv) The elimination of discrimination in respect of employment and occupation (convention nos. 100 and 111).

In 1999, the ILO adopted convention no. 182 concerning immediate action for the abolition of the worst forms of child labour which became the 8th core convention. The ILO declaration is significant for the reason that, the declaration requires that all the member states have an obligation to respect to promote and to realise the principles concerning the fundamental principles whether they have ratified the above named conventions or not. Irrespective of the ratification, all member countries need to implement the principles enshrined in the above conventions.

STATUS OF RATIFIED CORE CONVENTIONS BY INDIA

India has so far ratified 6 out of eight core conventions so far. They are:

- i) Forced Labour c. no. 29
- ii) Abolition of Forced Labour c. no. 105
- iii) Equal Remuneration c. no. 100
- iv) Non-discrimination (employment/occupations) c. no. 111
- v) Minimum Age Convention c. no.138 (ratified on 17th June 2017)
- iv) Worst forms of Child Labour c. no. 182 (ratified on 17th June 2017)

India still has not ratified conventions number 87 and 98 of freedom of association and collective bargaining by the government of India perhaps on policy concerns but it has provided constitutional guarantees and legal safeguards.

REASONS FOR NON RATIFICATION OF TONVENTION NO.138-THE MINIMUM AGE CONVENTION

One important reason for non-ratification of the set convention is due to lack of uniform definition of child in the existing labour law scenario to fix minimum age for

admission to employment. Secondly, lack of suitable enforcement machinery and measures that would warrant the children not being compelled by circumstances to seek employment. Thirdly, the practical difficulty of setting up of machinery for the unorganised sectors like in agriculture, cottage industries, small sectors etc. However, the Government's initiative to amend the then existing Child Labour (Prohibition and Regulation) Act, 1986 in 2016 is a landmark step towards ensuring a child labour free society. The amended Act provides for complete prohibition on employment of children below 14 years in all occupations and processes and prohibits employment of adolescents that is between 14 to 18 years in hazardous occupations and processes.

In a country like India, the evil of employment of children in agricultural and industrial sectors is a product of economic, social and among others, inadequate legislative measures.³ For the poverty stricken parents, every uneducated child is an asset for the family and the deep rooted conviction that if a child is educated it results in the loss of income of the family and the desire to educate a child is an expenditure and a liability on the family. However, there are certain other social and legal problems attached to it. The problems are now tackled with the new amendment wherein the age of admission to employment under the central act 2016 is now linked to the age of compulsory education under the Right of Children to Free and Compulsory Education Act, 2009 whereby child labour is prohibited by making RTE compulsory. The RTE Act, 2009 supports the double cause of achieving literacy of children and prohibition of child labour.

DELAY IN RATIFICATION

Despite the fact that the ILO Convention Nos. 138 and 182 have been in place for a couple of decades now, India became a signatory to them, only on 13th June, 2017. The main bottleneck in the way of ratifying these Conventions has been bringing the local laws in sync with the obligations under the aforementioned Conventions. It has always been the practice in India that we ratify a Convention when we are fully satisfied that our laws and practices are in conformity with the relevant ILO Convention.

³ S.C. Srivastava, *Industrial Relations and Labour Laws* (Vikas Publishing House 5th edn 2007) 36.

As discussed earlier, there were multiple legislations dealing with the minimum age of employment and also the conditions of work of children. To bring uniformity in these laws, the CLPRA 1986 was enacted, and it was subsequently amended in 2016 so as to bring the national law at par with the obligations under the ILO. Hence, the amendment paved the way for India's ratification of the Conventions.

ILO CONVENTION NO. 138 - MINIMUM AGE CONVENTION

The ILO Convention concerning the Minimum Age for Admission to Employment came into force on the 19th of June, 1976. The objective of this Convention is to achieve the total abolition of child labour.⁴ Previous conventions of the ILO were directed at specific sectors of the economy like agriculture, mining, etc.⁵ This convention was therefore approved to consolidate all these conventions under a single convention. The Preamble further sets forth that this Convention seeks to adopt certain proposals regarding the minimum age of children for employment.⁶

Article 1 provides that the signatories shall aim to fulfil the objectives set forth in the Preamble, to a level which is fully consistent with the full mental and physical development of the young persons.⁷ No one under the prescribed minimum age shall be admitted into employment or work in any occupation. The minimum age to be specified shall not be less than the age of completion of compulsory schooling and in any case shall not be less than 15 years. A member country whose economy and education facilities are insufficiently developed may initially specify a minimum age of 14 years in consultation with the organisations of the employers and workers.⁸

Each country ratifying this Convention undertakes to:

- a. Pursue a national policy designed to ensure the effective abolition of child labour;

⁴ ILO C. 138, Preamble.

⁵ Creighton 1997 *Comp Lab L J* 371

⁶ ILO C. 138, Preamble.

⁷ ILO C. 138, Art. 1.

⁸ Dr. N. Maheshwara Swamy, *Impact of ILO Standards on Indian Labour Law* (Asia Law House, Hyderabad 2007) 161.

- b. Specify a minimum age for entry to employment or work which will not be less than the ages of completion of compulsory schooling;
- c. To raise this progressively to a level consistent with the fullest physical and mental development of young people;
- d. Guarantee that the minimum age of entry to any type of employment or work, which is likely to compromise health, safety of morals of young persons shall not be less than 18 years.

ILO CONVENTION No. 182 - ELIMINATION OF THE WORST FORMS OF CHILD LABOUR

The ILO Convention No. 182, cited as the Convention for the “Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour” was adopted by the UN on the 1st of June, 1999, to prohibit and eliminate the worst forms of child labour. This Convention reflects widespread recognition over recent years and a global consensus that there should be an immediate end to the worst forms of child labour.⁹

The Convention is not the first attempt by the ILO to ban abusive forms of child labour. In 1973 the ILO Minimum Age Convention (No. 138) was designed to eradicate different forms of child labour by category and age, permitting progressive implementation depending on member states’ level of development.¹⁰

The Convention bans four categories of child labour that no government should be willing to tolerate: (1) modern slavery, debt bondage and similar practices, including forced or compulsory recruitment of children for use in armed conflict; (2) sex work, including pornography and prostitution; (3) illicit activities, in particular drug trafficking; and (4) any other work that by its nature is likely to harm the health, safety and morals of children.¹¹

⁹ ILO Convention No. 182 and Convention on the rights of the child, Youshie Nogouchi, Infocus Programme on Child Labour, ILO

¹⁰ Michael J. Dennis, “The ILO Convention on the Worst Forms of Child Labor”, *The American Journal of International Law*, (1999) 93, No. 4, 945.

¹¹ Convention No. 182, Art. 3.

For the purpose of this Convention, the term child shall apply to all persons under the age of 18. For the purpose of this Convention, the term worst forms of child labour comprise:

- a. All forms of slavery or practices similar to slavery, such as the sale and trafficking of children (debt bondage and serfdom and forced or compulsory labour), including forced or compulsory recruitment of children for use in armed conflict.
- b. The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.
- c. The use, procuring or offering of a child for illicit activities, in particular of the production and trafficking of drugs as defined in the relevant international treaties.
- d. Work which by its nature or the circumstances in which it is carried out is likely to harm the health, safety or morals of children.

This convention 182 calls for international cooperation on social and economic development, poverty eradication and education to realise its terms and provides for broad consultations among government workers and employers, the social partners in the close ILO tripartite structure.¹²

“The convention also requires ratifying States to ‘design and implement programs of action’ to eliminate the worst forms of child labour as a priority ‘to establish or designate appropriate mechanisms’ for monitoring implementation of the convention in consultation with employers and workers organisation. It also says that the ratifying states should ‘provide support for the removal of children from the worst forms of child labour and their rehabilitation; and sure access to free, basic education or vocational training for all children removed from the worst forms of child labour; identify children at special risk; and take into account the special situation of the girls.’

¹² Asha Bajpai, *Child Rights in India*, (Oxford University Press 2006) 195.

An accompanying recommendation defines hazardous work as work which exposes children to physical psychological or sexual abuse; work underground, underwater, at dangerous heights or in confined spaces; work with dangerous machinery or tools or which involve heavy loads; work in unhealthy environment which may expose children to hazardous substances, temperature, noise or vibrations; and work under particularly difficult conditions such as long hours, during the night or where a child is confined to the premises of the employers.”¹³

FACTUAL SCENARIO OF CHILD LABOUR

The matter of child labour has been looming over countries all over the world, and has mainly been a menace in the developing countries. The International Labour Organization (ILO) estimates that the number of children aged five to fourteen years in the year 2005 who were economically active was 246 million, and out of these 61% are in Asia, 32% in Africa, and 7% in Latin America.¹⁴

India is no exception to this fact. The concern over child labour has cropped up mainly during the 20th century. The report on “Women and Child Labour” of the study group commissioned by the Labour Commission [Study Group 2001] illustrates the aspects of children working at unacceptably long hours every day, children having to work in narrow trenches in mines where adults cannot crawl; long and tiring working hours in carpet industry, and work without adequate leaves or even sufficient pay.¹⁵ However, the statistics researched by Mint reveal some 10 hard-hitting statistics on the issue of child labour in India:

- a. One in every 11 children in India is working.
- b. Child labour has been decreasing at an abysmal rate of 2.2% per year from 2001 to 2011, as per an analysis of census data by non-governmental organization CRY¹⁶ (Child Rights and You).

¹³ *ibid* at 196.

¹⁴ Bilal Ahmed Bhat, “Human Rights Perspective and legal framework of Child Labour with special reference to India”, (2010) 2(2) International Journal of Sociology and Anthropology, 20.

¹⁵ Study Group (2001): Report of the Study Group on Women and Child Labour, National Commission on Labour, New Delhi.

¹⁶ Source: International Labour Organization’s World Report on Child Labour 2015 and CRY recent analysis of the Census

- c. 80% of working children are based in rural areas and three out of four of these children work in agriculture, as cultivators or in household industries, most of which are home-based employments.
- d. More than half of the 5.5 million working children in India are concentrated in five states— Bihar, Uttar Pradesh, Rajasthan, Madhya Pradesh and Maharashtra.
- d. Adolescents doing hazardous work form 20.7% of those employed in t this age group, while almost 25% of adults work in hazardous conditions.
- e. Adolescents between 15 and 17 years of age doing hazardous work form 62.8% of the overall child labour population.
- f. Nearly 10% of adolescents working in hazardous conditions are working in family enterprises.
- g. 56% of the working adolescents are no longer studying. And 70% of those in hazardous conditions are not studying.
- h. More boys (38.7 million) than girls (8.8 million) are involved in hazardous work.
- i. While the incidence of hazardous work among adolescents is highest in Nicaragua, the number of adolescents in hazardous work is greatest in India (2.4 million).¹⁷

LEGAL SCENARIO IN INDIA

Constitutional Safeguards

Legally speaking constitutional safeguards and legislative protections were conferred as against exploitation of children.thesafeguards. In fact, the Constitution of India provides for quite some safeguards to protect children and prevent them from exploitation through labour. Article-15(3) authorizes the state for the making any special provision for women and children.¹⁸ Article-24 provides that no child below the age of 14 shall be employed to work in any factory or mine or engaged in any

¹⁷ See <http://www.livemint.com/Politics/ZPALzwgvOLhyMfxWsobcHM/10-alarming-statistics-on-child-labour-in-India.html> (last seen 10/11/2017).

¹⁸ Constitution of India, Art. 15(4).

other hazardous employment.¹⁹ Article 39 (e) proclaims that the State shall endeavour its policy towards securing that the health strengths of the tender age of children are not forced by economic necessity to enter avocations unsuited to their age or strength.²⁰ Article 39 (f) enjoins that childhood and youth are to be protected against exploitation, against moral and material abandonment. In Article 45 also endeavours to provide free and compulsory education for all children until they complete the age of 14 years²¹ now a fundamental right under article 21-A. Article 42 and 43 provide for securing just and human conditions of work,²² and this definitely includes child labourers in its widest sense.²³

The Supreme Court, in a landmark decision, declared free education to age fourteen to be a Fundamental Right.²⁴ The most iconic feature of the Indian Constitution, as regards the development of children can be seen in the form of Article 21A which puts an obligation on the State to provide free and compulsory education to all children in the age of 6-14 years. Furthermore, the 2002 amendment to the Constitution included Article 51-A(k) making it a fundamental duty on parents to provide education to children falling in the age group of 6-14 years.

STATUTORY PROTECTION

Acknowledgment of child labour as a distinct constituent of the workforce has been on India's statute book since at least 1881.²⁵ As a result most of the labour legislations permit the child to work on different age specifics under different legislations. The Factories Act of 1881 was the earliest legislation on this matter, which set the minimum age for child employees at 7 years. Subsequent to the ILO Convention No.5, in 1922, the minimum age in the Factories Act was raised to 15 years. There were various other pre-constitutional laws directed towards child labour in specific industries or sectors.

¹⁹ Constitution of India, Art. 24.

²⁰ Constitution of India, Art. 39(e).

²¹ Constitution of India, Art. 45.

²² Constitution of India, Art. 42 and 43.

²³ CK Shukla and S. Ali, *Child Labour and the Law*, (2006 Sarup and Sons) 40.

²⁴ J.R Unnikrishnan v. State of Andhra Pradesh (1993) 1 SCC 645.

²⁵ Usha Ramanathan, "Evolution of the law on Child Labour in India", International Environmental Law Research Centre, 2009.

In the year 1938, the Employment of Children Act was passed which served as the first enactment squarely addressing the issue of child labour in India. This followed from the twenty-third session of the ILO, held in 1937, which adopted a special article exclusively on India, recommending that children below thirteen years be prohibited from work in certain categories of employment.²⁶

Subsequently, the Labour Investigation Committee (1944-1946), also known as the Rege Committee, found that child labour was extensive in bidi-making, carpet weaving, glass, and other small-scale industries.²⁷ In 1969, the National Commission of Labour, chaired by Justice P.B. Gajendragadkar, had observed that child labour was “noticed mostly in agriculture, plantations and shops.”²⁸

In the meantime, the Factories Act of 1948 prohibited a child under fourteen from working in a factory.²⁹ The Plantations Labour Act of 1951 prohibited the employment of children below twelve, and adolescents between the ages of twelve and eighteen were required to obtain a certificate of fitness.³⁰ Both laws prohibit night work for children. The Mines Act of 1952, and especially since 1984, has categorically rejected the employment of persons below the age of eighteen years,³¹ with the exception of apprentices under the Apprentices Act of 1961, or other trainees under proper supervision who may be as young as sixteen years.³² The Merchant Shipping Act of 1958 prohibits employment of children under fourteen³³

The Gurupadaswamy Committee on Child Labour, in 1979 and thereafter, the Sanat Mehta Committee, in 1986 stressed on the need to have uniformity in defining the age of the child, along with the regulation of conditions of work. Therefore, the Child Labour (Prohibition and Regulation) Act (CLPRA) was passed in 1986, which sought to achieve uniformity in the definition of child labour,

²⁶ *ibid.*

²⁷ Labour Investigation Committee Report, 1944-1946.

²⁸ National Labour Commission Report, 1969.

²⁹ The Factories Act, 1948.

³⁰ The Plantations Labour Act, 1951

³¹ The Mines Act, 1952

³² The Apprentices Act, 1961.

³³ The Merchant Shipping Act, 1958.

prescribing a uniform, age of fourteen years in the definition of a child. It also sought to prohibit employment of children in a scheduled list of occupations and a scheduled list of processes.³⁴ It was further amended in 2016 wherein it prohibited the employment of children (below the age of 14 years) in all occupations, and also prohibited the employment of adolescents in hazardous occupations and processes. It defines “adolescents” as those children who have completed 14 years of age but have not completed 18 years. This amendment was introduced to bring the labour laws in conformity with the Right of Children to Free and Compulsory Education Act, 2009, and to also regulate the conditions of service of adolescents in line with the ILO Conventions 138 and 182.³⁵

Though the CLPRA, on the face of it, seemed to benefit the huge strength of child labourers in India, it still suffered from a lot of loopholes. Despite prohibiting hazardous employment of adolescents, it slashed the list of hazardous activities to include only mining, explosives, and occupations as mentioned in the Factories Act. This rather permits for employment of adolescents in those hazardous forms of employment, which have now been excluded from the list.

JUDICIAL CONTRIBUTION

It must also be mentioned that the Judiciary through its effective directions, has played a contributory role in tackling the problem of child labour. Some such cases include the *People's Union for Democratic Rights v. Union of India*,³⁶ *Labourers Working on Salal Hydro Project v. State of Jammu and Kashmir and Others*,³⁷ *Rajangam, Secretary, District Beedi Workers Union v. State of Tamil Nadu and Ors.*,³⁸ *M.C. Mehta v. State of Tamil Nadu and Ors.*,³⁹ *Bandhua Mukti Morcha v. Union of India and Ors.*,⁴⁰ and *Bachpan Bachao Andolan v. Union*

³⁴ The Child Labour (Prohibition and Regulation) Act, 1986

³⁵ The Child and Adolescent Labour (Prohibition and Regulation) Amendment Act, 2016, Statement of Objects and Reasons.

³⁶ AIR 1982 SC 1480.

³⁷ 1983 Lah I.C. 542.

³⁸ (1992) 1 SCC 221.

³⁹ 1991 SC 283.

⁴⁰ AIR 1984 SC 802.

of India.⁴¹ It is pertinent to mention that the Hon'ble Supreme Court in *M.C. Mehta v. State of Tamil Nadu and Ors.*⁴², gave the following stringent directions to the State Governments and the Central Government that. The Court, while giving many directions issued that a survey of child labour within 6 months must be undertaken.⁴³ The Secretary of the Ministry of Labour of the Union of India would appraise the Court within one year about the compliance of the directions of the Court, which include:

- a. The setting up of the Child Rehabilitation Welfare Fund;
- b. Offending employer to deposit a sum of Rs. 20,000/-
- c. And provide an alternative employment for the adult member of the family;
- d. The cost of education of the child shall be borne by the employer;
- e. And directed that it is the duty of the Inspectors to see that the call of the Constitution is carried out.⁴⁴

THE CHILD AND ADOLESCENT LABOUR (PROHIBITION AND REGULATION) ACT, 1986

As mentioned in the Preamble, the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 is enacted to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto.

Main features of the CLRA as amended in 2016

The substantial changes affected to the Child labour (prohibition and Regulation) Act 1986 in 2016 include the following:

- a. The CLPRA, 1986 has been changed to Child and Adolescent Labour Prohibition and Regulation Act 1986.

⁴¹ (2011) 5 SCC 1.

⁴² AIR 1997 SC 699.

⁴³ Dr. J. N. Pande, *Constitutional Law of India* (Central Law Agency 53rd edn 2016) 361.

⁴⁴ *ibid* at 362.

- b. A complete ban on employment of children who are below the age of 14 years has been imposed in any establishment whether hazardous or non hazardous.
- c. A child is permitted to work only to help in family or in family enterprise or as child artist after the school hours or during vacation.
- d. The age of admission to employment has been linked to the age of compulsory education under the Right to Free and Compulsory Education Act, 2009.
- e. The new Act introduced the concept of “adolescent labour” that is for the first time under the amended Act defined as a person between 14 to 18 years.
- f. The new Act permits adolescent labour in non hazardous processes or occupations.
- g. The number of hazardous occupations processes is reduced from 83 to only 3.
- h. The offences have now been made compoundable and cognizable notwithstanding the provisions of CRPC.
- i. The new Act also provides for setting up of the child and adolescent labour rehabilitation fund.
- j. Now the liability is fixed apart from employer on the parents and guardian of the affected child the act also enhanced the imprisonment and penalties ranging between 6 months to 2 years imprisonment and Rs. 20,000 to Rs.50,000 penalty.⁴⁵

Critical appraisal of grey areas under the new amended Act 2016

The new 2016 Amendment Act which prohibits children in all employments does suffer from certain lacunae which need to be addressed. One such lacuna is the dichotomy persisting in the substituted section 3 which prohibits child labour in

⁴⁵ For details see the 2016 amendment of the 1986 Act

all employments under section 3(1) and allows child work by way of exception under Section 3(2). It is pertinent at this juncture to differentiate between child work and child labour:

*“Child work is a process of socialisation process of the child in helping their parents where they learn certain skills for their future. In the process of socialisation, the parents and family members respect the child’s right regarding their health, education and usual development. But, contrary to this, ‘child labour’ implies something different in which children are being exploited in different ways and deprived of the human rights especially right to health, education and overall physical, mental and social growth.”*⁴⁶

Another grey area is regarding the conditions of work of the children working with the family and adolescents working in non-hazardous employments, which are not completely addressed under the Rules, 2017 too. Monitoring the working conditions of children, identifying the ill treatment meted out by the child working in the family enterprise is a herculean task and requires close scrutiny.

The legislative lacunae of permissible areas of child labour in other enactments like the Payment of Bonus Act, 1965,⁴⁷ the Payment of Wages Act, 1936,⁴⁸ and the Minimum Wages Act, 1948,⁴⁹ which prescribes different wages for different categories of workers, etc. requires immediate attention to bring the necessary explicit statutory amendments.

The possibility of the forsaken children like street children, orphans, migrant children, neglected and exploited children, to be out of the purview of the Act cannot be ruled out unless the rescue and rehabilitation is seriously undertaken by the concerned authorities on whom the onerous responsibility is vested.

⁴⁶ M. P. Shrivastav, *Child Labour Law in India* (Law Publishing House, Allahabad 1st edn 2006) 2.

⁴⁷ The Payment of Bonus Act, 1961, S. 10.

⁴⁸ The Payment of Wages Act, 1936, S. 7(2).

⁴⁹ The Minimum Wages Act, 1948, S.3(3)

Central Rules of Child Labour (Prohibition and Regulation) Amendment Rules, 2017

India with its tightened legislation and the commitment for the elimination of child labour came up with the new stringent and effective amended rules.

The following are the important rules for the effective implementation to curb the menace of child labour.

General Rules

The rules provide that public awareness through all possible means must be brought to discourage the employers or other persons who contravene the provisions of the CLPR Act.

Secondly reporting of Enterprises are instances of employment of children or adolescence by any employer must be promoted it also mandates that the rules may be displayed on the railway coaches in the stations airports etc.

Another significant measure under the rules is that inclusion of rights of the child in the learning material and the syllabus in school education must be promoted and various stakeholders need to be trained and sensitized.

Child work in family enterprise

As the act under section 3 permits a child to help in the family enterprise the rules in this regard as under that the child to help his family without affecting education subject to the following conditions that the work shall not subjected to be hazardous occupation process listed in part A or B part

The work of the child shall not include at any stage of the production supply retail claim that is remunerative for the child or his family or his family enterprise. The child shall only be allowed to help in his family or in a family enterprise when his family is the occupier the child shall not perform any task during the scheduled school hours and between 7 P.M to 8 a.m. The child also does not perform any task which hinders right to education such as homework extracurricular activities. The work performed by a child shall not include in any way substance substitution in any way substitution of the child for an adult or adolescent work the

child shall aid or assist which is not incidental to any occupation work profession manufacture of business which hampers growth education and overall development.

Children as artists

If a child is allowed to work as an artist under exceptional circumstances it cannot work for more than 5 hours with rest interval and any producer who intends to take the child as an artist shall obtain permission from the District Magistrate and also give an undertaking which is valid for 6 months and which should comprise the consent of parents, ensure safety, and that there is no abuse, neglect, or exploitation of the child in any manner whatsoever.

Adolescent workers

Similarly the rules also provide for the hours of work for the adolescence which are permissible under the law another important rule regarding the payment of amount child or adolescent that is collected from the employer through penalty which is held and deposited in the child and adolescence labour rehabilitation fund after attaining 18 years of age by the child of adolescence

Other rules

Another area with regard to the certificate of age or the proof of age is determined through Aadhar card of the adolescence or the date of birth from school or from the municipal corporation or panchayat and a school teacher is competent to lodge a complaint for any such violation and any representative from school Management Committee or the child protection committee or panchayat .It is appreciable to know note that the duties of magistrate include to involving all the personnel like inspectors, SP'S in the local jurisdiction, nodal officers, Assistant Labour Commissioners, District legal services authority, District Child Protection officer in the distric, District Education Officers etc., and order for periodical inspection and monitoring of the rescued children. The rules also specifically indicate that rescue and rehabilitation of the children may be done in accordance with the JJ Act 2015 rules, Bonded Labour System(Abolition) Act 1976 Central sector scheme for rehabilitation for bonded labourers 2016 and any national child labour project(NCLP).⁵⁰

⁵⁰ For details see the central rules of CLPRA, amendment Rules,2017

Thus, these amended Rules for the first time, provided specific framework for prevention, prohibition, rescue and rehabilitation of child labourers and adolescent workers.

THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

It must be also borne in mind that the Right of Children to Free and Compulsory Education Act passed 2009 is a counter-measure for prohibiting children from being economically exploited.⁵¹ The Act of 2009 mandates that all children between the age group of 6-14 years shall be given free and compulsory education in the country. This Act leads to the presumption that if any child is not found in the school is to be considered as a child labourer and thus linked to the age specified under the RTE Act,2009.

IMPACT OF RATIFICATION AND THE WAY AHEAD

Subsequent to the ratification, the Indian Government has now an international obligation to prohibit and eliminate all the forms of child labour - child slavery (including the sale and trafficking of children, debt bondage, and forced recruitment for armed conflict), child prostitution and their use in pornography, use of children for illicit activities such as drug trafficking, and exposure to any hazardous work which is likely to harm the health, safety or morals of children.⁵²

Under the provisions of the ILO Conventions 182 and 138, India will not adhere to a fixed deadline by which the worst forms of child labour must be eliminated.

Though the 2016 amendment of the CLPRA seeks to synchronise the municipal laws with the obligations under the ILO Convention No. 138, there still seem to be some gaps in this area. While the CLPRA permits children above the age of 14 years to be employed in non hazardous activities, Article 3 of the ILO C. 138 clearly sets the bar at 18 years. This disparity between the municipal and international law needs to be addressed. Furthermore, the concepts of “*hazardous employment*” or light work in the Indian context need to be elevated to the international standards.

⁵¹ For details, see the provisions of the Act, 2009.

⁵² ILO Convention No. 182, Art. 3.

The ILO Convention No. 182 is really a boon for the scenario of child labour in India in more than one ways. By classifying the acts of “*use, procuring and offering*” of a child, it covers all the forms of actions by which child labour may be perpetrated. The scope of child labour has also been enhanced to include prostitution, forced labour child trafficking, use of children in illicit activities etc. What this means is that, e.g., one who sells/forces girl child into prostitution, or one who even takes the girl child to force her into prostitution, may be prosecuted for indulging in child labour.

In fact, some of the Worst Forms of Child Labour are already prohibited under various domestic laws in India namely:

- a. Slavery, Debt Bondage and Forced or Compulsory Labour through Bonded Labour System (Abolition) Act, 1976.
- b. Prostitution, Pornography and Pornographic performances banned through Indian Penal Code (IPC), Immoral Trafficking Prevention Act, 1956.
- c. Production and Trafficking of drugs has been banned by Narcotic Drugs and Psychotropic Substances Act, 1985.
- d. Child Labour below 14 years in Hazardous Occupation is prohibited under the Child Labour (Prohibition & Regulation) Act, 1986.

This Convention further allows the signatory countries to undertake programmes to eliminate the “*worst form of child labour*” To ensure a child-labour free society, the Ministry for Labour has also strengthened the National Child Labour Project (NCLP), a scheme which focuses on bridging the gap between education and vocational training of the adolescents.

It is worth mentioning the remarks made by the Director-General Mr. Guy Rider ILO, on the 13th June 2017 when India ratified the conventions 138 and 182 said, “*This is an historic step. From today, Convention 182 will cover more than 99 percent of the world’s children and the coverage of Convention 138 will leap from approximately 60 percent to almost 80 percent. I pay tribute to the Government, employers, trade unions and civil society of India and to all those who have assisted them in building an extraordinary alliance in*

*India in the past decade- an alliance that made this latest great step possible. That strong alliance must now turn its attention to full implementation of these two Conventions, with no child left behind.”*⁵³

The assurance given by the Labour Minister of the Union of India, Mr. Dattatreya is promising better enforcement of the Act, redressal of complaints, efficient child tracking system and a monitoring mechanism, through the digital platform, ‘PENCIL’.

STATE OF ODISHA INITIATIVE TO ELIMINATE CHILD LABOUR

The State of Odisha has taken an early initiative after the recent amendment of 2016 for the effective implementation of the State Plan of Action on elimination of child labour in Odisha. It may be mentioned that the National Law University Odisha which has a Centre for Child Rights, as a specialised research unit, is extending its technical support to the Labour Department of Odisha for effective implementation. By extending technical support, NLUO through its Centre for Child Rights, is helping in capacity building of surveyors, master trainers, data entry operators, data analysis and report formation, which will strategise the action plan and formulate strategy for implementation. Also, NLUO through the Centre is extending hand-holding support to the District Administration for the smooth conduct of the survey through guidance and mentoring. The University is thereby, in its own way, is contributing for the cause of elimination of child labour.

Mayurbhanj district in Odisha is now set to be made as the first child labour-free district in the country.⁵⁴

CONCLUSION

Given the fact that India suffers from socio-economic and legal problems, the Government of India in its commitment to ensure that the menace of child labour is eliminated did steadily progressed with making right to education a fundamental right under Article 21-A⁵⁵ in 2002 which was till then a Directive Principle of State

⁵³ Press Information Bureau of India, See <http://pib.nic.in/newsite/PrintRelease.aspx?relid=165604> (last seen 9/11/2017).

⁵⁴ See <http://incredibleorissa.com/odisha-mayurbhanj-india-first-child-labour-free-district/> (last seen 9/11/2017).

⁵⁵ The Constitution of India, Art. 21-A.

Policy. Sequentially, the Right of Children to Free and Compulsory Education Act was passed in 2009, making free and compulsory education to all children in India, in the 6 to 14 years age group, thereby ceaselessly fulfilling the right to education through 4 A's Framework, i.e., Availability, Accessibility, Acceptability, and Adaptability.

The new amended Act, the Child and Adolescent Labour Amendment Act in 2016, and the amended Central Rules, 2017 reasserted that India did make efforts for the effective implementation. The ratification of the conventions number 138 and 182 strengthens the existing legislations, national policies and the plan of action of India. The ratification enhanced the onerous responsibility of India, its government and all the stake holders. The long standing claim of economic and socio-legal dimensions of child labour problem in India can now be effectively handled as the law is no more a weak law and feeble enforcement but an effective law. The stringent enforcement waits ahead to see total abolition of child labour.

LABOUR LAWS: REVIEW OF RECENT AMENDMENT BANNING

CHILD LABOUR

Mr. Jai Shankar Bajpai*

“If we can’t begin to agree on fundamentals, such as the elimination of the most abusive forms of child labour, then we really are not ready to march forward into the future”

Grace Abbott

ABSTRACT

Child Labour (Prohibition and Regulation) Act, 1986 will now be replaced by ‘Child and Adolescent Labour (Prohibition and Regulation) Act. There are number of changes brought forward in the amendment. It mainly seeks to ban child labour and impose restrictions and cover loop holes not covered under the previous Act. It is an attempt to ban child labour for children below the age of 14 so that they could enjoy their fundamental right to education enshrined under their fundamental rights¹. Some amendments made are open to debate as the aim of Rajya Sabha while proposing some of the amendments is ambiguous. The act in question allows for the children to work after conforming to certain conditions. The question is then upon the validity of these amendments so introduced, that whether they are right in allowing for work or not. The legal proposition has been discussed in this research paper, it has explored the legal ideology and philosophy that the courts have followed while interpreting ‘child labour’. The current amendments are tested upon the touchstone of these ideologies. The new amendment has been stated as a ‘missed opportunity’. Despite the ongoing debate the bill has been passed and its implication have to be now accounted for. The paper enumerates views of the apex court specifically on the topic of ‘child labour’ and has made an attempt to test the new amendments on the touchstone of earlier judgements and ideologies observed by the courts. A comparison has been made between the earlier views and the current scenario.

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¹ The same has been also retreated under the Right to Education Act

INTRODUCTION

The central legislature of India had promulgated legislation Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (“**CL Act**”) to control the child labour practices in India. The central legislature has made substantial changes in the provisions of the Act in the year 2016 and the said amendments have been made effective from July 30, 2016. The new amendments seems advantageous but have certain downsides also. As most of the children which are indulged in labour belong to the downtrodden and weaker section of the society, an act which allows a child to do work in order to to help his or her family runs detrimental to the development of a child. In the past, there have been glorious judgements of the apex court which aimed at protecting a child’s development until the age of 14. The Act provides that a child is permitted to work only to help family, in family enterprise or as child artist after school hours or during vacations. However, the provisions of the act allowing for child labour for the purpose of helping his or her family run detrimental and counter to the constitutional ideology enshrined in various judgements in the past. While considering the matter of child labour sufficient heed should be paid to a child’s development. However, the amendment in question completely ignores the development phase of a child and thus, is against the basic ideology of the constitution which aims to protect the child and his childhood. The amendments made to the act turn away from the brutal reality which is faced by a child indulged in labour. One of the main aim of the act itself was to protect the development of a child and give him a healthy and suitable environment to grow in. By justifying in law the participation of children in work before and after school hours, the Bill denies them the time and space to develop and grow as citizens with similar choices and opportunities that children from affluent families enjoy. Such a proviso would only contribute towards fostering existing inequalities and discriminatory practices in society. The amendments made to the act defeat this purpose. Moreover, when the provisions in question are tested upon the constitutional ideology, they may not stand valid. Thus, while considering the matter of child labour or any law for that matter, attention must be paid to the judicial ideas which are a product of precedents. For the time being, the act in question has been passed and implemented. However, it may face the brunt of time as and when the judiciary comes to take hold of the matter.

THE QUESTIONABLE PROVISION IN ‘CHILD AND ADOLESCENT LABOUR (PROHIBITION AND REGULATION) ACT.

“Section 3(1) states that No child shall be employed or permitted to work in any occupation or process. (2) Nothing in sub-section (1) shall apply where the child,

- a) *helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;*
- b) *works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed.*

Provided that no such work under this clause shall affect the education of the child”

The issue debated upon this section is that whether it subtly allows for child labour. It could be a form of ‘disguised child labour’ at its best. The act overlooks the fact that some children are indulged in labour in their own homes. This is the case of millions of children involved in *bidi, bindi, bangles, papad* and readymade food producing industries. This kind of work involves the whole family to work and contribute. It is the kind of work in which poor landholders are tied to the creditors who provide them with seeds and fertilisers, often forcing them into a long-term contract on adverse terms and conditions which forces the entire family to work as cheap labour on their own farms.

Children perforce get trapped in this vicious cycle of oppression and work as farm labour along with the entire family especially during peak seasons at the cost of education.

LEGAL POSITION AND IDEOLOGY ON CHILD LABOUR

In the case of *Sheela Barse v. Union of India*² the Supreme Court observed: If a child is a national asset, it is the duty of the State to look after the child with a view to ensuring full development of its personality.

²SheelaBarse v. Union of India AIR 1986 S.C. 1773.

In *Bachapan Bachao Andolan Vs. U.O.I & Ors*³, SC held that, no child shall be deprived of his fundamental rights guaranteed under Constitution of India and bring to child traffic and abuse. Articles 23, 39, 14 and 21 of the Constitution of India guarantee every child to be freed from exploitation of any form. There was violation of various laws concerning child labour and their abuse and traffic. Concerns of child and the paradigm of child rights had been addressed suitably in various international conventions and standards on child protection including the UN Convention on the Rights of the Child (UNCRC), 1989. India has ratified the UN Convention on the Rights of the Child in 1992. Convention prescribes standards to be adhered by all state parties in securing the best interest of the child. Integrated Child Protection Scheme seeks to create database and knowledge base for child protection services; it needs to strengthen child protection at family and community level.

Supreme Court of India in its most celebrated ruling of *M.C. Mehta v. State of Tamil Nadu*⁴. The court stated that the actual number of working children is up to 100 million. All the big and small industrial cities and areas and organized and unorganized establishments are full of 'child labour problem' like in Sivakasi, Surat, Firozabad, Mirzapur, Moradabad, Ludhiana etc. The case examined the gravity, magnitude, ramification, causes and effects of the problem of child labour in India and policies, programmes and statutory provisions to meet the menace. The court gave the slogan, "Let us all put our head and efforts together and assist the child for its good and greater good of the country. Let the child of the twenty first century find himself into that heaven of freedom of which our poet laureate Rabindranath Tagore has spoken in Gitanjali". Hence the court ruled that the children working in the hazardous employments must be withdrawn from work and rehabilitated while the working conditions of the children in other employments must be regulated and improved upon. The court however did not discuss upon the serious and emerging issue of child soldiers in India.

³ *Bachapan Bachao Andolan Vs. U.O.I & Ors* AIR (2011) SC 3361.

⁴ *M.C. Mehta v. State of Tamil Nadu* (1997) 21- II- LLJ-724 (SC).

Again, in the case of *M.C. Mehta v. State of Tamil Nadu*⁵ the courts observed “On discontinuation of the employment of the child, his education would be assured in suitable institution with a view to make it a better citizen. It may be pointed out that Article 45 mandates compulsory education for all children until they complete the age of 14 years; it is also required to be free. It would be the duty of the Inspectors to see that this call of the Constitution is carried out. On discontinuation of the employment of the child, his education would be assured in suitable institution with a view to make it a better citizen. It may be pointed out that Article 45 mandates compulsory education for all children until they complete the age of 14 years; it is also required to be free. It would be the duty of the Inspectors to see that this call of the Constitution is carried out.”⁶ It explained the ideology that education of these children must take place and no hindrance whatsoever should not be caused in the process. The new amendment made is counter to this and causes a hindrance or rather becomes an obstacle in the way of carrying out or bringing about the effect of Article 45 of the Constitution. As working in their own homes would cause problems in keeping up the studies.

Again, in *Bandhua Mukti Morcha v. Union*⁷ of India the courts expressed views which are being threatened by the new amendment. The apex court observed “Child of today cannot develop to be a responsible and productive member of tomorrow’s society unless an environment which is conducive to his social and physical health is assured to him.” Also, it was observed that “Children embody the joy of life in them and in the innocence relieving the fatigue and drudgery in their struggle of daily life.” The apex court was of the idea that child has to be relieved of fatigue and drudgery so that they have adequate amount of time and energy to concentrate on their academics. If the new amendment allows for working of children in their own homes, that would amount to going against these views. This would amount to deprivation of environment and also the ample opportunity of time to study.

⁵ *Supra* Note 3.

⁶ *Supra* Note 3.

⁷ *Bandhua Mukti Morcha v. Union* (1984) AIR 802.

In this case only the court took the stand that nobody should be forced by their economic necessity to enter into such work which causes a hindrance to their own welfare. Section 3(a) explains that they can do so if it is for the helping of the family to conduct their business which enables them to earn their livelihood. If the family members then force the child to work for such a cause then that would again amount to exploitation. It would give rise to disguised exploitation as Section 3(a) can justify a child working for his family.

These children are not aware of their own rights; thus, they are consequently bereft of their rights as they are many a times unable to contest them. Again, in this case it was explained that “*Due to poverty, children and youth are subjected to many visible and invisible sufferings and disabilities, in particular, health, intellectual and social degradation and deprivation. The Convention on the Rights of the Child which was ratified by the Government of India on November 20, 1989 recognised the rights of the child for full and harmonious development of his or her personality. Child should grow up in a family environment, in an atmosphere of happiness, love and understanding.*” The basic characteristics of the environment have been explained in these lines and being allowed to work for their family would result in deprivation of their environment which should otherwise result in their environment.

The courts used the word “invisible suffering” in this case⁸, it would be pertinent to note that allowing children to work for their families would do full justice to the words “invisible suffering”.

The state as it seems is causing a hindrance in its own effort to provide for education. The effort which was explained and defined in the case of *Unni Krishnan v State of Andhra Pradesh*⁹, the apex courts observed that “*It would be incumbent upon the State to provide facilities and opportunity as enjoined under Article 39(e) and (f) of the Constitution and to prevent exploitation of their childhood due to indigence and vagary. As stated earlier, their employment either forced or voluntary is occasioned due to economic*

⁸ *Supra* Note 5.

⁹ *Unni Krishnan v State of Andhra Pradesh*(1991) 2 SCC 716.

necessity; exploitation of their childhood due to poverty, in particular, the poor and the deprived sections of the society, is detrimental to democracy and social stability, unity and integrity of the nation.” The state has taken upon the duty to provide education primarily to these children but by then allowing them to work for their families they are causing hindrance to their own efforts to provide education and healthy environment to these children.

Working anywhere, even in their homes could prove to be counterproductive in a child’s life. The conditions that a child is subjected to when he is engaged in a work was explained in the case of *Bachpan Bachao Andolan v. Union of India*,¹⁰ wherein the conditions of children engaged in circus work were explained, it was contended that “Daily Routine hindering their All-round Development in the circus, their daily routine starts with practising even before the sunrise (rigorous training session initially) mostly accompanied with verbal and physical abuse and harsh physical punishments at times, for the slightest error or no error at all. From afternoon onwards until midnight, they are on the stage, performing and entralling the audience with their vivacity and wit. They cannot share their agony and grievances or raise their voice against the torturous life they are forced to lead. For them, there is no education, no play, no recreation and their life is confined to the circuses without any exposure to the outside world. All this prohibits them from knowing the other opportunities available.”

The legal consequences of the such conditions were explained, they were as:-

1. Deprivation of the children from getting educated thereby violates their fundamental right for education enshrined under Article 21A of the Constitution.
2. Deprivation of the child from playing and expression of thoughts and feelings, thereby violating the fundamental right to freedom of expression.
3. Competency to enter into contract for working in circus.

¹⁰BachpanBachaoAndolan v Union of India (2010) SCC 180.

4. Violation of statutory provisions of law like Employment of Children's Act, 1938, The Children (Placing of Labour) Act, 1933, The Child Labour (Prohibition and Regulation) Act, 1986, Minimum Wages Act, 1976, The Prevention of Immoral Traffic Act, Equal Remuneration Act, 1976 and Rules made thereunder and the Bonded Labour System (abolition) Act, 1976 read with rules made their under, the Factories Act, 1948, Motor Transport Workers Act, 1961 etc.
5. Existing labour laws and legitimacy of contracts of employment for children.
6. The legitimacy of contracts of employment for children and working conditions.

These would then be the tests that Section 3(a) of the new act would have to pass in order to stand valid in the eyes of law.¹¹

Indian Nobel peace prize winner Kailash Satyarti said the bill was a “missed opportunity” for India.”The definition of family and family enterprises is flawed. This Bill uses Indian family values to justify economic exploitation of children. It is misleading the society by blurring the lines between learning in a family and working in a family enterprise,” he said in a statement, adding that the government had failed its children once again.¹²

The amendment has a new section added to it allowing for adolescents (between 14 to 18 years of age) to work in industries other than mining, inflammable substances or explosives in accordance with Factories Act of 1948. Thus, it is allowing for adolescents to work in all the other sectors.

The glaring loopholes provided in the Child Labour Act itself allow employers to escape the application of the law quite easily. First, while the Act applies generally to all workshops which make use of child labour in prohibited processes, it exempts those workshops “wherein any process is carried on by the occupier with the aid of his family and in Government run schools or training

¹¹ *Supra* Note 9.

¹² *India child labour bill amendments criticised by UN*, BBC (27 July 2016), <http://www.bbc.com/news/world-asia-india-36901465> (Accessed last on 3/01/2017).

programmes.”¹³ Thus, the exceptions provided in the law, eat up the law itself. Because of this exemption, it becomes very difficult for the law enforcement authorities to prosecute an employer for violating the Act.

In *Bandhua Mukta Morcha v Union of India*,¹⁴ the state’s duty was explained and it was observed that “*It would, therefore be incumbent upon the state to provide facilities and opportunities as enjoined under Article 39(e) and (f) of the Constitution, and to prevent exploitation of their childhood due to indigence and vagary. As stated earlier, their employment – either forced or voluntary is occasioned due to economic necessity; exploitation of their childhood due to poverty, in particular, the poor and the deprived sections of the society, is detrimental to democracy and social stability, unity and integrity of the nation.*”

The duty of the state to provide for proper facilities and opportunity to children was observed in this case. The said amendments run counter to the state’s duty. The state if approves to such amendments would simply put obstructions on its own path to curb child labour.

The ideology of these duties were explained in the case of *Re, Dr Giovanni Marco Muzzu*¹⁵ it was observed “The constitutional provisions reflect the great anxiety of the Constitution makers to protect and safeguard the interests and welfare of children in the country.” Such ideology if has to be protected then heed must be paid to the implications of the new act. Such ideologies will be threatened when children will start to work under their families, which would run detrimental and counter to their welfare and development.

The old age problem of economic conditions being the reason for their working was explained in the case of *Labourers Working on Salal Hydro Project v State of Jammu and Kashmir*¹⁶, it was observed” We are aware that the problem of child labour is a difficult problem. . . .The possibility of augmenting their meagre

¹³ Child Labour (Prohibition and Regulation) Act, 1986, Section 3.

¹⁴ *Bandhua Mukta Morcha v Union of India*, AIR 1997 SC 2218 : (1997) 10 SCC 549.

¹⁵ *Re, Dr Giovanni Marco Muzzu*, AIR 1983 Bom 242

¹⁶ *Labourers Working on Salal Hydro Project v State of Jammu and Kashmir*, AIR 1984 SC 183.

earnings through employment of children is very often the reason why parents do not send their children to schools and there are large drop-outs from the schools. This is an economic problem and it cannot be solved merely by legislation. So long as there is poverty and destitution in this country, it will be difficult to eradicate child labour. But even so an attempt has to be made to reduce, if not eliminate, the incidence of child labour.”

The judiciary recognizes the economic conditions which may be a reason to allow these children to work for their families. They said, it should be noted that such an allowance must not become detrimental to the child's welfare, if a child is able to work for his/her family without hampering his/her welfare then only such an amendment would run parallel to the constitutional ideology.

In *Unnikrishnan case*¹⁷ and now in Article 21-A education up to the age of 14 years has been declared to be a Fundamental right, right to health, right to potable water, meaningful right to life, all these rights have been declared to be fundamental rights. The child is equally entitled to all these fundamental rights.

Also, there are several statutes which expressly prohibit the employment of children below the age of 14 years such as the Apprenticeship Act, 1961, the Factories Act, 1948 and the Mines Act, 1952. Despite this India continues to host the largest number of child labourers in the world today.

The new amendments must be tested upon the touchstone of these acts and the ideology of the constitution. The said amendments must be in consonance with the constitutional philosophy and subsequently the act expressly prohibiting child labour.

PROBLEMS AND DIFFICULTIES IN IMPLEMENTING THE LAW

One reason for non-implementation of these social laws has been the perceptions of the lawmakers as embodied in the law are at variance with the prevailing practices in society and with the perceptions of the public at large. Apart from this, in the matter of child labour laws, it is to be mentioned that there are many reasons, both intrinsic and extrinsic which contribute to poor implementation. While intrinsic reasons

¹⁷ *Supra* Note 8.

would include legal difficulties inherent in the legislation itself, extrinsic reasons would include (a) difficulties arising out of social environment, i.e. attitude of employers, attitude of parents of the child and attitude of law enforcement officers; and (b) physical and logistical difficulties.

In cases where the authorities manage to prosecute an employer for employing child labour, it is very difficult for him to be convicted in a court of law since a plea that they are the children of the family and are therefore covered by the exemption provided under the Act is always taken. On the other hand, if children are found in larger units like a glass factory, the employer invariably pleads that the children are present only for the purpose of meeting their parents or bringing them lunch.¹⁸ In either of the cases it is very difficult for the authorities to disprove such claims since the burden of proof is on them and to prove their contention they have to collect evidence, gather witness' and ensure that they turn up in the court, etc., which is a herculean task.

Another major loophole in the Child Labour Act is the requirement of proving that the child is below 14 years of age. Again, the burden of proof is on the enforcement authorities. Since birth certificates are not common in the rural areas or among the rural poor, there is no reliable evidence to prove the age of the child. In the event of dispute between the employer and the Government Inspector as to the age of the working child, as per the Act "the question shall be referred by the Inspector for decision to the prescribed medical authority."¹⁹ Therefore, the inspector has to get the child medically examined by a competent medical practitioner to prove that the child is indeed below 14 years of age. All these require commitment, time, money and effort, and even so, are not always successful since employers are known to bribe the medical authorities.²⁰ Even when all these are done and the prosecution takes place, the courts generally pass light sentences.

¹⁸ Ruma Ghosh Singh and Rajeev Sharma, *No Colour in Little Firozabad Lives: A Study of Child Labour in the Bangle Making Units of Firozabad*, (2002).

¹⁹ *Supra* Note 13.

²⁰ Human Rights Watch, *The Small Hands of Slavery* ed. 39 (1996).

PROBLEMS ARISING DUE TO ENVIRONMENT OF THE CHILD

Non-sensitisation of the evil effects of child labour on the employers of children, on the parents of child labour and the general public at large, seems to be a major reason for non-enforcement of child labour laws.

- (a) Attitude of parents -Poverty stricken parents find it necessary for a child to contribute to the family income as soon as he is old enough to do so. Child labour is thus, seen by the parents and society as a means to supplement the family income, however small it may be. This perception is widely shared by different sections of society including those belonging to the enforcement machinery as well as judiciary. Any action for rigorous enforcement of child labour laws with the objective of eliminating child labour is seen as working contrary to the economic well-being of the family. This results in lack of support from the parents and society in enforcement activities.
- (b) They do not find any use in sending the children to school because it does not give them any incentive. For them, the earlier the children start working and earning, the better it is. Most of them are not even aware of any law which prohibits their children from working. They also do not have time to think or are not aware of the debilitating effects on the mind and body of the child if he starts working young. In the struggle for survival, nothing else matters. In this situation, the enforcement of child labour law becomes a difficult task to achieve.

RIGHT OF CHILDREN TO FREE AND COMPULSORY

EDUCATION ACT, 2009

As a sequel to the Constitution (Eighty-Sixth Amendment) Act, 2002 which inserted Article 21-A in the Constitution to provide for free and compulsory education for all children in the age group of 6 to 14 years as a fundamental right, the Central Government has, after a gap of seven years, enacted the Right of Children to Free and Compulsory Education Act, 2009. It is considered to be an antidote to child labour since the child cannot be at school and at work at the same time. However, since the success of any enactment depends on its implementation, it is yet to be

seen how this law is going to be implemented along the length and breadth of the country. Nevertheless, it is a legislation which is in the right direction and hopefully should have great impact on the vexed question of child labour.

THE ULTIMATE AIM AND PROBLEMS RUNNING PARALLEL TO THE AMENDMENT

The ultimate aim of preventing child labour is to take steps to supplement Educational Rehabilitation of these children with economic rehabilitation of their families so that they are not compelled by their economic circumstances to send their children to work.²¹ If due to the new amendments, a child is allowed to work for his or her family it would run counter to the aim discussed above. If a child is engaged in such a work then “Education Rehabilitation” of the child would be difficult in the light of balancing the work life and academics of a child. Merely, a blurred line between these two would be drawn. Also, the ideology that a child must not be compelled by his or her economic circumstances to work must be taken into account. If a child is working with his or her family it would then again construe to mean forcing of a child due to his or hers economic condition. The clause so introduced allowing a child to help his or her family could run counter to all these ideologies and would serve the purpose of defeating the ultimate aim of eradicating child labour. The question then comes up that what if the family is indulged in ‘hazardous work’. The questions of similar nature have to be answered and studies must be made to understand the implications of enacting the bill. Surprisingly, such a situation was discussed in the case of *M.C. Mehta v. State of Tamil Nadu*²² wherein it was explained by the Judges as “We are of the opinion that whenever a child above the age of 14 years is forced to work, it has to be treated as an offence under Section 374 IPC and it is to be dealt with sternly. The problem, however, may arise when a child between 14-18 years of age is committed to labour by the parents willingly and with their consent. It may be difficult to prohibit the same. Having regard to the age of the child fixed under the Child Labour Abolition Act, we are of the opinion

²¹ Ministry of Labour and Employment of India, *Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked & Migrant Child Labour*, 2008 at 16.

²² *Supra* Note 3.

that in such circumstances, the case can still be brought before the State Commission formed under the CPCRA Act, 2005 which has the jurisdiction to look into the matters of violation of child rights. The task of this Commission is akin to that of Human Rights Commission with the only difference that the State Commissions, established under the CPCRA (Commission for Protection of Child Rights) Act, would be dealing with the human rights of children. We, thus, hold that as and when any matter is brought to the notice of the State Commission (or for that matter suo motu cognizance taken by the State Commission) involving violation of child rights even where a child above the age of 14 year is employed, the State Commission under the CPCRA Act will have the jurisdiction to deal with the same and pass necessary directions". Thus, the clause in question of the recent bill must be made in consonance with CPCRA Act or it could again arise as an important question of law as to whether which one of the said clauses in both these independent acts would prevail in a questionable situation of a child being employed by his or her own family.

Another question that is imposed upon the said amendment is whether it is in ignorance of Section 374 of the Indian Penal Code, 1860 providing for prevention and punishment for unlawful compulsory labour. The question to be answered by the courts is whether the said amendments stand valid in the face of constitutional ideology adhered by the judiciary till this day.

CONCLUSION

The new amendments run detrimental and counter to the constitutional ideology of child labour and it is in ignorance of the welfare of a child. If children are allowed to work under their family, it would go against their welfare and academic environment. There has been no general law which exclusively deal with employment of children, though all the above-mentioned legislations have special provisions dealing with children's employment incorporated in them. Apart from the above, there are also points of difference in the various enactments relating to employment of child labour as regards minimum age of employment, medical examination and working hours. Thus, the existing legal framework for employment of children in India was rather dispersed and patchy. Although the Child and Adolescent Labour (Prohibition and Regulation) Act was passed as a result of recommendations of

various committees, the law has not made any perceptible inroads in the battle against child labour. First of all, the Act is not one which is meant to eliminate child labour but only to prohibit certain hazardous employments and to regulate the rest. By not prescribing a minimum age for employment and allowing the children to be employed in all occupations other than those prohibited under the Act, the law has in a way only legalised child labour. Also by exempting family labour even in the hazardous employments, the law has given a hand to the unscrupulous employer to employ children and claim them as members of his family. This is especially true in employments like those in carpet, matches, fireworks, beedi making, etc. which are all home-based cottage industries. Thus, while it may be true that child labour may have come down in factories and organised sectors, their number definitely has gone up in informal sectors. The fallout of the law has, therefore been that child labours which otherwise would have been protected by law, are now without any legal protection, their employment now being in the informal sector where no law can effectively reach. Thus, the law which was enacted for protecting the child labour has in a way, served as an instrument in their exploitation. However, it is hoped that the new law, the Right of Children to Free and Compulsory Education Act, 2009, if implemented in its true letter and spirit, will go a long way in the reduction of child labour in the country.

CHILD LABOUR- A CURSE FOR HUMANITY

Dr. Chandan Kumari Sahu*

Abstract

No nation in any part of the world can afford to ignore children because they are national and also International assets. The WHO and UNICEF are going ahead to protect the children and planned for their welfare because most of them are the weakest and most vulnerable segment of the society. Unfortunately, in our country like India, children face problems of child labour, sexual abuse and child trafficking and in some instances all the three together.

The problem of child labour is being discussed with an introduction that such a child-hood period is most precious in human life which shapes for development as adult by childhood education, self-learning, playing with peer groups and intercommunication with them and also learning the vast nature around them and became better human being both in private and public life and also learn developing of rights and responsibilities. This paper deals with prohibition of employment of children in certain occupations and processes. The health and safety provisions have been also been discussed. Under the subtitle “Judiciary fight against child exploitation”, details is being discussed with various examples of case laws and judicial decisions made in favour of child labour to protect them and arrange their welfare.

The paper further deals with child work leads to child labour and accelerations of Socio- Economic complications. Honest and dedicated persons who love for the welfare of children should be recruited in the job because their dedication will result in eradication of this “evil” of the 21st century.

KEY WORDS : Child trafficking; Sexual abuse; Hazardous industries; Health and safety provision; Illiteracy; Child labour reborn

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INTRODUCTION

*“One of the luckiest things that can happen to you in life is, I think, to have a happy childhood.”*¹

Childhood is the most significant period in a human being. This period shapes the child for development as adult and future life through formal education, self learning, playing and intercommunication with friend circle, learning the vast nature around being observed and enjoyed, slowly grows into all adult as a better human being both in private and public life aware of rights and responsibilities. However not all children are being privileged to develop enjoying their childhood period by entering into the first step of shaping life by education. These millions of unprivileged group of children by fault not of their own, not admitted in nursery school for preprimary education are being forced by their illiterate poor parents for toiling at inhuman working condition to earn their livelihood as being designated “childlabour” a terminology sounds gracefully “inhuman”.

NATIONAL AND INTERNATIONAL CONCERN TO PROTECT CHILD LABOUR

In a civilized society, the importance of child welfare cannot be under estimated because the welfare of the entire community, its growth and development, depends on the health and well being of its children. Children are a “*Supremely important national asset*”² and the future well-being of the nation depends on how its children grow and develop. However, these wishful and optimistic sayings look shallow and no more than a rigmarole when one encounters the reality of child labour and exploitation in the unorganized and organized sectors of the economy. In several cases, the sectors of work, in which street children are engaged, do not ensure any protection at work with regard to the physical capacity of the child, regularity of income or any long term benefits.

¹ Available at: https://www.brainyquote.com/quotes/quotes/a/agathachri401066.html?src=t_childhood

² Mamta Rao, Law relating to Women & Children, Eastern Book Company, Lucknow (UP), 2005, P. 388

The hallmark of culture and advance of civilization consists in the fulfillment of our obligation to the young generation by opening up all opportunities for every child to unfold its personality and rise to its full stature, physical, mental, moral and spiritual. It is the birth right of every child that cries for justice from the world as a whole.³

This issue of child labour has been widely researched and debated for decades but it is still a significant issue for many developing nations. In each country child labour is caused by unique mix of level of economic development in the country, social attitudes towards children, cultural factors, educational quality and quantity, duality in labour market, labour laws governing labour markets and the stringency with which they are enforced.

There has been great concern for the welfare of children at the international and national levels. Mr. Kofi A. Annan, former Secretary General of the United Nations, observed that: *“There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that there lives are free from fear and want and that they grow up in peace”*⁴. The problems relating to children are basically a gift of poverty and illiteracy but there are certain other causative dimensions of the problem, including at some places, the social structure. Besides these, to employers, child labour is profitable as the wages of children are small, their complaints few and they accomplish in some industries and occupations as much as adults. Employers, therefore, do not hesitate in exploiting children in their own interest without any consideration to their needs for healthy growth and development. This exceptional vulnerability of children to exploitation gained international attention and led to the passing of various instruments to protect the rights of children.

³ Justice V.R Krishna Iyer, “Jurisprudence of Juvenile Justice : A preambular perspective”, reproduced from the book “Law relating to Women & Children”, Mamta Rao, Laws relating to protection of children, Eastern Book Company, Lucknow (UP), 2005, P. 388.

⁴ Kofi A. Annan, “Forwarding a Report on The State of the World’s Children, 2000, reproduced from the book ‘Law relating to Women & Children’, Mamta Rao, Laws relating to protection of children”, Eastern Book, Company, Lucknow (UP), 2005.

The first impression of international concern over the “*situation of children*”, came in 1923 when the council of the newly-established non-governmental organization “Save the children International Union” adopted a five-point declaration on the rights of the child. This Geneva Declaration was endorsed the following year, 1924, by the fifth Assembly of the League of Nations. In 1948, the General Assembly of the United Nations approved an expanded version of that text and, in 1959, went on to adopt a new declaration for child welfare and protection. The convention on the Rights of the child, 1989 marked the culmination of the efforts to bring the international community to recognize the needs of children.⁵ Article 25(2) of the Universal Declaration of Human Rights (UDHR) says that; “Motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock shall enjoy the same social protection”. However, the responsibility of the family, which is the natural and fundamental group unit of society for the care and education of dependant children, has been recognized by virtue of Article 10(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 10(3) of the ICESCR provides that:

“Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage and other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals, or health, or dangerous to life or likely to hamper their moral development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law”.

Article 24 of the International Covenant on Civil and Political Rights (ICCPR) provides:

- a. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status of a minor on the part of his family, society and the state;

⁵ Justice Gulab Gupta, “Human Rights and Fundamental Freedoms in India”, M.P. Human Rights Commission, Bhopal 2002, P.195.

- b. Every child shall be registered immediately after birth and shall have a name;
- c. Every child has the right to acquire nationality”.

Article 26 of the UDHR contemplates that everyone has the right to education. Parents have a right to choose the kind of education that shall be given to their children.

CHILD WORK LEADS TO CHILD LABOUR

In India between the ages 5 to 14 a child work is considered by the parents to engage the child to work in domestic core with family values and structure; so that the child is being made to contribute to the well being of the family. Child Work includes domestic cores and assists the mother in house hold activities like learning the house, washing clothes, cutting vegetables for the girl child and the boy-child is engaged in minor gardening, poultry and even in agriculture like grazing the cows and bullocks, raring goats and poultry etc. These works are not called child labour. However in illiterate poor rustic families in interior of the country from hamlets and villages the parents send their children for engagement in various light jobs for earning to compensate living expenses. Such children are called child labour category which turns into taking them away from attending schools but they earn monetary benefits. Earning by such children go to their parents for which Govt. of India formulated: The Children (Pledging of Labour) Act, 1933: Act No.2 of 1933 dated 24th February 1933. This Act (1933) provides, an agreement to pledge the labour of a child in return for any payment or benefit, undertaken by the parents/ guardians has become outdated after nearly century by now. An agreement to pledge the labour of a child shall be void⁶ But poverty has an obvious relationship with child labour so parents of such child labourer's are not withdrawing from engaging their children from the employers. Child labourer income accounted upto 37% of total house hold income as per a study undertaken which concludes that a child labourer's income is important to substantiate the livelihood of a poor family. Thus creating

⁶ M.L. Bhargava's, "The Children (pledging of labour) Act, 1933, Child Laws", Kamal Publishers, New Delhi, 2008, P. 7.

awareness among such poor parents have not resulted fruitful because of no alternative solution found so far.

CHILD LABOUR ACCELERATES SOCIO-ECONOMIC COMPLICATIONS

The twin factors are (1) poverty and (2) the lack of a social security network form the basis of the worst type of bonded child labour. For the poor, there are few sources of bank loans, governmental loans or other credit sources, and even if sources are available, few of them living in poverty qualify or they hesitate to go for any loans for fear that a brief may be demanded or owing to fear of penalty if unable to pay the loan. Here enters the local money lender, for an average of two thousand rupees, parents exchange their child's labour to local money lenders (Human Rights watch 1996). Since the earnings of bonded child labourers are less than the interest on the loans, these bonded children are forced to work, while interest on their loans accumulates. A bonded child can only be released after his/her parents make a lump sum payment, which is extremely difficult for the poor.

Though poverty is one of the basic causes of child labour, it is not the only factor. Inadequate school facilities or even the expense of schooling leaves them with little else to do but work. The attitudes of parents also contribute to child labour. Some parents feel that children should work in order to develop skills useful in the job market, instead of wasting time in formal education.⁷

Since independence, India has committed itself to be against child labour. Article 24 of the Indian constitution clearly states that "No child below the age of fourteen years shall be employed to work in any factory or mine or employed in hazardous employment".

Article 39(e) Directive Principle of State Policy such that, "the health and strength of workers..... and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength". These two Articles show that India has always had the goal of taking care of its children and ensuring the safety of workers. The Bonded Labour system Act of 1976 fulfills the Indian constitution's directive of ending forced labour.

⁷ S.C. Gupta, "Child, Labour, 151 Essays", Arihant Publications (India) Limited, Meerut (U.P.) P.20.

The Act “*frees all bonded labourers, cancels any outstanding debts against them, prohibits the creation of new bondage agreements, and orders the economic rehabilitation of freed bonded labourers by the State*”. In regard to child labour, the Indian government enacted the child labour Act in 1986. The purpose of this act is to “Prohibit the employment of children who have not completed their 14th year in specified hazardous occupations and processes”. This shows that the government of India can make laws against any inhuman activities but cannot implement because many political leaders running the Government themselves own the factories where children are exploited.

The most comprehensive of all child labour laws passed in India is the Child Labour Prohibition and Regulation Act of 1986 (CLPRA). The beginnings of this Act could be traced to a non-governmental organization based in Bengalure, India. This group argued that “Poverty was the main cause of child labour and that, therefore, the attempt should be to regulate the conditions under which children work rather than prohibit such work”. This argument resulted in widespread discussions between two groups of activists. While one supported the regulation of child labour, the other insisted that prohibition would be the only solution to the problem. Prior to the creation of the Act, “the child Labour Prohibition and Regulation Bill was introduced in both houses of parliament” with the following statement of objects and reason.

There are a number of Acts which prohibit the employment of children below 14 years and 15 years in certain specified employments. However, there is no procedure laid down in any law for deciding in which employments, occupations or processes the employment of children should be banned. There is no law to regulate the working conditions of children in most of the employments where they are not prohibited from working and are under exploitative conditions.

The introduction of this Bill generated a debate in the Indian Parliament with some members voicing their apprehensions and reservations with regards to different aspects of the Bill. Even so, the CLPRA was passed in 1986, and it continues to be the principal enactment on the issue of employment of children. This Act does not call for an outright ban on child labour, but instead permits

employment of children in industries that are not specified in the Act. Although the Act has been criticized for the above reason, it must be noted that the attempt to contextually address the problem of child labour in India is evident in this Act.⁸ S.C. Gupta, *Child Labour*, 151 Essays, Arihant Publications (India) Limited, Meerut (U.P), P.21.

THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

After a plethora of laws containing provisions to prevent child labour, it was soon realized that child labour is still a problem. Taking this into consideration efforts were made to regulate the conditions of child labour in order to avoid exploitation in areas where child labour could not be avoided. The Child Labour (Prohibition and Regulation) Act, 1986 repealed the Employment of Children Act, 1938. The main and the most important point was that this Act aimed at identifying more hazardous processes and industries with a view to banning child labour in these industries and regulating conditions for children in non-hazardous occupations.

PROHIBITION OF EMPLOYMENT OF CHILDREN IN CERTAIN OCCUPATIONS AND PROCESSES

Among the major occupations set forth in part A are those connected with:

- a. Transport of passengers, goods or mail by the railway;
- b. Cinder picking, clearing of an ash pit or building operation on the railway premises;
- c. Work in a catering establishment at a railway station, involving movement from one platform to another or into or out of a moving train;
- d. Work relating to construction of a railway station in close proximity to railway lines;
- e. A port authority within the limits of any port.

Some of the processes mentioned in part-B are :

- a. Bidi making;

⁸ *ibid*, p. 21.

- b. Carpet weaving;
- c. Cement manufacture;
- d. Cloth printing, dyeing and weaving;
- e. Manufacture of matches, explosives and fire works;
- f. Mica- cutting and splitting;
- g. Shellac manufacture;
- i. Tanning;
- j. Wool clearing;
- k. Building and construction industry.

Section 14 of the Act provides punishment up to one year (minimum being 3 months) or with fine upto Rs.20,000 (minimum being ten thousand) or with both, to one who employs or permits any child to work in contravention of the provisions of section 3.

HEALTH AND SAFETY PROVISIONS

The appropriate government may, by notification in the official Gazette, make rules for the health and safety of children employed or permitted to work under section 13 of the Act. The rules may provide for all of any of the following:⁹

- a. Cleanliness;
- b. disposal of wastes and effluents;
- c. Ventilation and temperature;
- d. dust and fumes;
- e. artificial humidification;
- f. lighting;
- g. drinking water;

⁹Mamta Rao, "Law relating to Women & Children", Eastern Book Company, Lucknow (U.P), 2005, P.425-429.

- h. latrines and urinals;
- i. spittoons;
- j. fencing of machinery;
- k. work at or near machinery in motion;
- l. employment of children on dangerous machines;
- m. instructions, training and supervision in relation to employment of children on dangerous machines;
- n. device for cutting off power;
- o. self - acting machines;p
- p. easing of new machinery;
- q. floor, stairs and means of access;
- r. pits, sumps, opening in floors, etc.;
- s. excessive weights;
- t. protection of eyes;
- u. explosive or inflammable dust, gas, etc.;
- v. precautions in case of fire;
- w. maintenance of building; and
- x. safety of buildings and machinery.

JUDICIARY FIGHT AGAINST CHILD EXPLOITATION

Throwing light on the problem of child exploitation in *Sathyavan Kottarakkara v.State*¹⁰, the High Court held :

“ Exploitation of children in any form which has the tendency to exploit them either physically, mentally or otherwise is objectionable. Any attempt in this direction should be put an end to achieve the goals enshrined by the Indian constitution, makers, which are reflected in various provisions of the

¹⁰ AIR 1997 Ker 133.

constitution, namely Articles 21, 39, 41, 45 and 46. The Government of India, in pursuance of the constitutional provisions of clauses (e) and (f) of Article 39, evolved a National Policy for the welfare of children. In a civilized society the importance of child welfare cannot be over emphasized because the welfare of the entire community, its growth and welfare depends on the wellbeing and health of its children. Children are a 'supremely important national asset' and the future well-being of the nation depends on how its children grow and develop. Children need special protection because of their tender age and physique, mental immaturity and incapacity to look after themselves. There is a growing realization in every part of the globe that children must be brought up in an atmosphere of love and affection and under tender care and attention so that they may be able to attain full emotional, intellectual and spiritual stability and maturity and acquire self-confidence and self-respect and a balanced view of life will full appreciation and realization of the role which they have to play in the nation-building process without which the nation cannot develop and attain real prosperity because a large segment of the society would then be left out of the developmental process. In India, this consciousness is reflected in the provisions enacted in the constitution".

Reacting liberally to the problem of child labour in *People's Union for Democratic Rights v. Union of India*¹¹, a liberal interpretation was given to the term 'hazardous employment'. The Supreme Court held that the term was wide enough to include employment in construction work and directed that the schedule to the Employment of Children Act, 1938 should be suitably amended to include the construction industry in it. It was held by the Court 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. This is a constitutional prohibition which even if not followed up by appropriate legislation must operate proprio vigore".

¹¹ (1982) 3 SCC235;1982 SCC (L&S) 275.

In *M.C. Mehta v.State of Tamil Nadu*¹², the petitioner by way of public interest before the Supreme Court highlighted the problems of employment of children in match factories in Sivakasi, Kamraj District of Tamil Nadu. Judicial notice of frequent accidents occurring in match factories was taken. Considering the health hazards involved in the employment of children in match factories, directions were given against employment of children in that area.

In *Bandhua Mukti Morcha v.Union of India*¹³ a public Interest Litigation was filed alleging employment of children aged below 14 in the Carpet Industry in the State of U.P.Reports of the 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 facilities and opportunities for proper development of his personality.

In *Bapuji Education Association v. State*¹⁴, Justice Rama Jois of the Karnataka High Court held that the right of an individual to have and/or to impart education is one of the most valuable and sacred rights.... that among various types of personal liberties, which can be regarded or included in the expression “personal liberty” and in Article 21, education is certainly foremost.

Then came another landmark judgment, *Unni Krishnan v.State of A.P*¹⁵, in which the basic question was whether the constitution of India guarantees a fundamental right to education to its citizens. It was held that Article 21 guarantees no fundamental right to professional education and as regards the question whether the right to primary education mentioned in Article 45 of the constitution is fundamental or not it was held that right to education is a fundamental right. The Court observed:

“ The fundamental purpose of education is the same at all times and in all places. It is to transfigure the human personality into a pattern of

¹² (1992) 1 SCC 283

¹³ (1997) 10 SCC 549

¹⁴ AIR 1986 Kant. 119

¹⁵ (1993) 1SCC 645

perfection through a synthetic process of development of the body, enrichment of the mind, sublimation of emotions and illumination of the spirit. Education is a preparation for a living and for life. Education is a social and Political necessity in a country like India”.

The Parliament and State legislatures made various welfare enactments have so far remained on paper and illusory and are not being implemented fruitfully. The right to life of the child driven to labour is not made a reality. The problem has not changed. Unless pragmatic, realistic, constructive steps and actions are taken, the children belonging to weaker sections of the society can not develop qualitative childhood, enjoy and build their personality. Child labour must be eradicated. Alternatively education, health care, nutritious food must be provided start with ban of employment of children from the most hazardous activities and bonded labour.

ILLITERACY IS THE MAIN REASON OF CHILD LABOUR

The problem of illiteracy is the main reason of child labour. It has been observed that “the overall condition of the education system can be a powerful influence on the supply of child labour”. Dropout rates measured by the department of education show that 35% of males and 39% of females dropout. The concept of compulsory education, where all school aged (6-14) children are required to attend school, combats the force of poverty that pulls children out of school. Policies relating to compulsory education not only force children to attend school, but also a contribute appropriate funds to the primary education system, instead of higher education. To make state’s children attain requisite skills to become independent successful persons in life, the Government has taken an important initiative in the form of right to education. It came to force from 1st April 2010. It makes education as claimable right for the child and provides provisions so that every child may get an opportunity to attain education. This is meant to be a serious blow to child labour as children have been given a fundamental right, with violation challengeable in the courts. This step could positively lead to empowerment of Indian children.

The problem of child labour still remains even though all of these policies are existent. Enforcement is the key, aspect that is lacking in the government’s efforts. No enforcement data for child labour laws are available. “A glaring sign of

neglect of their duties by officials charged with enforcing child labour laws is the failure to collect, maintain and disseminate accurate statistics regarding enforcement efforts". Although the lack of data does not mean enforcement is non-existent, the number of child labourers and their work participation rates show that enforcement is existent, but ineffective. The problem of child labour has social, economical and political faces. It can not be eliminated by focusing on one determinant, e.g. education, or by brute enforcement of child labour laws. The Government of India must ensure that the needs of the poor are filled before eliminating child labour. If poverty is eradicated, the need for child labour will automatically diminish. No matter how hard India tries, child labour always will exist unless the policy makers and bureaucracy start honestly working in this direction. The development of India as a nation is being hampered by child labour. Children are growing up illiterate because they have been working and not attending school. A cycle of poverty is formed and the need for child labour is reborn after every generation. India needs to address the problem by tackling the underlying causes of child labour through governmental policies and with the coordination and cooperation of the NGOs and the enforcement of these policies honestly in true spirit. Without wiping out the causes permanently, we cannot eradicate the typical problem of child labour. The half hearted measures are not sufficient. If we could eradicate poverty, child labour will automatically say good bye to India.

CHILD LABOUR EXPLOITATION

The problem of child labour exploitation is a major challenge to the progress of developing countries. Children work at the cost of right to education which leaves them permanently trapped in the poverty cycle, without the education and literacy required for better paying jobs. This is particularly serious in India as it tops the list with the highest number of child labourers in the world. The 2001 national census of India estimated the total number of child labourers, aged 5-14 to be at 12.6 million. Out of the 12.6 million, 0.12 million engaged in hazardous jobs. However, according to informal labour force statistics, the problem seems to be more severe than reflected. Child labour is estimated to be as large as 60 million in India, as many children are 'hidden workers' working in homes or in the underground economy. In the long run, this phenomenon will evolve to be both a social and an

economic problem as economic disparities widen between the poor and educationally backward states and that of the faster-growing states. India has the highest number of labourers in the world under 14 years of age. Although the constitution of India guarantees free and compulsory education to children between the age of 6 to 14 years and prohibits employment of children younger than 14 in any hazardous environment, child labour is prevalent in almost all informal sectors of the Indian economy.

Child labour supports the source of income of the poor. A study conducted by the ILO Bureau of statistics found that “ children’s work was considered essential in maintaining the economic level of households, either in the form of work for wages, of help in household enterprises or of household chores in order to free adult household members for economic activity elsewhere”.

In some cases, the study found that a child’s income accounted for between 34 and 37% of the total household income. This study concludes that a child labourer’s income is important to the livelihood of a poor family. The fact that child labourers are being exploited is clear from a study that shows that children for the same type of work, are paid less than their adult counter parts. Although 39.5% of employers said that child workers earn wages equal to adults, if the percentage of employers admitting that wages are lower for children are added up, a figure of 35.9% is found. That percentage of the population of India living in poverty is quite high. Poverty has an obvious relationship with child labour, and studies have revealed a positive correlation as such. Poor families need money to survive, and children are a source of additional income¹⁶.

THE STATUS OF CHILD LABOURERS IN SUNDARGARH DISTRICT, ODISHA : OBSERVED AS A TOTAL FAILURE

To abolish child labour system Central Govt. Started National Child Labour Project. The project was adopted all over the country since 2007. Three years later this

¹⁶ S.C.Gupta, “Child Labour, 151 Essays”, Arihant Publications (India) Limited, Meerut (U.P), P.19.

project was started in Odisha. 40 child labour schools were opened in Sundargarh district including Rourkela Town. Efforts were made to bring the child labourers into the mainstream by engaging them in education. These child labourers were provided with Mid day meal and other facilities including a monthly stipend of Rupees 150/- per month. The family members of these child labourers involved were called for awareness program. The Central Govt. was spending crores of rupees in this Project. The Mines, Industries of Sundargarh District including Rourkela township areas of child labourers were getting special benefit. After 3 months of coaching these children depending on their merit were examined as in classes 3rd, 4th and 5th and were also issued such class pass certificates. Efforts were made to take strong action at different places to reduce child labourers. Parents of such child labourers even were called and warned who engage their children in jobs. Cases were registered against the Hotel owners who engaged child labourers. This project was implemented by 31st march 2014. By the time the project was closed, there were more than 2000 child labourers studying in different child labour schools of Sundargarh district. Government orders were issued for continuing their studies by enrolling names in Govt. Primary Schools. According to Govt. report, 1650 child labourers of the district enrolled their names and continued studies. Addresses and whereabouts of some child labourers were not traced. The advantages and allowances for child labourers were not available and for this reason the status of child labourers reached to a state of affairs as before. The families who were not getting food to eat at home, engaged their children as child labourers. Such children are now seen in different Motor Garages. *“They are learning works and not engaged in jobs”* is the answer given by the Motor Garage owners. The child labourers are again seen in various hotels in the district including Rourkela town as before. Child labourers are found begging at the Bus stand and Railway Station. Several child labourers are engaged as domestic servants. Now no new programme is being implemented by Government so these child labourers have returned back to their original work. Children are not enrolled in schools and not going to study. To a question asked to Sri Bichitrananda Patnaik, Dist. Child Labour Project Director he answered that if there will be any special

complain made we shall take definite action. After the closer of child labour project, all these children were admitted in schools. “In the near future vocational training programme shall be started for the child labourers”, he said. Thus the child labour project in Sundargarh District, Odisha became total failure.¹⁷

PLANTATION LABOUR KNOWN AS FAMILY LABOUR

Let us also discuss another specific issue like plantation labour commonly known as “family labour” as against “individual” child labour. As per section 4(a) of the Act it covers in the first instance all tea, coffee, rubber, cinchona, cordamory plantations and areas 10.117 hectares or more in which, 30 or more persons are employed or were employed on any day of the preceding 12 months. Further, the State Government is empowered to extend all or any of the provisions of this Act to any land used or intended to be used for grooming and plantation even if it measures less than 10.117 hectares and the number of persons employed is less than thirty.

Section 24 prohibits the employment of children under 12 years. Section 26 says that an adolescent between 15-18 years cannot be employed for work unless he is certified fit for work by a surgeon which is valid only for a year. Section 34 makes use of a false certificate of fitness punishable by imprisonment which may extend to one month or with fine or both.

This act is, however, more comprehensive in the sense that this Act alone makes the provisions for education as a responsibility of the employer vide sections 5,6 & 7 and so also housing, medical and recreational facilities. Perhaps the legislatures were moved to make all these provisions in this Act because of the complaint that plantation labour is commonly known as “family labour” as against “individual” child labour¹⁸. There are numerous Acts to safeguard the children from labour to earn and maintain their day to day living, even staying with their very poor families/parents who engage them for their own earning. But this Plantation Labour Act provides one specific provision like Education as a responsibility of

¹⁷ Child Labour, Sambad, English Version dated 17th March 2017.

¹⁸ P.L. Mehta and S.S. Jaiswal: Child Labour and the Law- Myth and Reality of Child Labour Welfare, Deep and Deep, New Delhi, 1996.

the employer. This provision of education to the child labourers if properly implemented will empower such to be educated children to lead their life as well as look after their parents/families for a bright hopeful future for future generation of coming centuries.

CONCLUSION

Childhood is the most precious period of a person's life. The example of Sundergarh District Child Labour Project implemented as per enactment of Parliament and State legislature is being observed unpractical and illusory. Sincere and dedicated and committed person have not been engaged so the project have failed. Efforts must be made again and again without blaming to law. Steps must also be taken to enable the children belonging to weaker section of society to enjoy their childhood and develop their personality. The author emphasizes that child labour must be eradicated through well planned, focused poverty elimination programme by engaging suitable willing persons in the project. While exploitation of the child must be progressively banned and simultaneously alternatives arrangement for the child should be evolved including providing education, health care, nutritious food, shelter and other means of livelihood with self respect and dignity of the person.

Ensuring justice to child labourers is the responsibility to each and every citizen, Government and Non-Govt. Organization who work and fight for welfare of these unfortunate children.

It is most unfortunate that millions and millions of such child labourers are now working in different industries including hazardous establishments like crackers and glass factories. Governments apathy towards these children is well known. Lakhs of them in glass and cracker establishments have not been made free from bondage. The Govt. have waken up from their long slumber of several years and constituted a National Commission for children to give protection and proceed ahead for their welfare and make them fit to join the main stream of children above poverty line. Let us see and observe the prospective future of bonded child labourers should be transformed as free human beings.

PUBLIC INTEREST LITIGATION AS A JUDICIAL RESPONSE TO CHILD LABOUR IN INDIA: A PERSPECTIVE

Dr. Nabamita Paul Ray*

ABSTRACT

The paper seeks to analyse the mechanism of public interest litigation [PIL] with respect to child labour in India. In the analysis of the cases, an effort is made to examine how the problem of child labour has been viewed by the judiciary especially the Supreme Court and what efforts have been made by the Court to take care of this problem. Judiciary in India under its policy for attainment of social justice has taken upon itself a pro- active role to protect children in general and child labour in particular. The first part of the paper introduces the concept of public interest litigation, the second part studies the concept of public interest litigation with respect to children, the third part precisely analyses the various public interest litigations in respect to child labour before 1996 as well as the contemporary jurisprudence in the topic. In this part an attempt has been made to discuss few cases decided by the Courts on the issue of child labour to assess the role played by them in prohibiting, ameliorating or alleviating the employment of children and their working conditions. The next part concludes the paper. The primary take away from the conclusion is that the effective implementation of the court orders is the key to solving the problems of child labour in India if we limit our-self to the ecosystem of the Indian judiciary.

KEY WORDS: Public Interest litigation, Child labour, Supreme Court, Judiciary, India, Poverty

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PUBLIC INTEREST LITIGATION¹: NATURE AND OBJECT

A novel and recent feature of the Indian Legal System is the rapid growth and development of public interest litigation. In a number of cases, the Supreme Court as well as many High Courts has entertained petitions and letters not only by the person or persons who can be said to be aggrieved or adversely affected in strict sense of the term by any action or omission by the respondents but acting *pro bono publico*. Public Interest Litigation (hereinafter PIL) is a totally different field of litigation from the ordinary traditional litigation which is essentially of an adversarial character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and the other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as it happens in case of ordinary litigation but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of a large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed or un redressed. Public Interest Litigation is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of the Constitution. In public interest litigation, the role held by the court is more assertive than in traditional litigation actions; it is creative rather than passive, and it assumes a more positive attitude in determining facts.²

PUBLIC INTEREST LITIGATION IN REFERENCE TO CHILD

Justice, Equality and Liberty are the cornerstones of the Indian Constitution and for adhering to these objectives we have three organs namely, legislature, executive and the judiciary³. Each of them is supreme in the sphere allotted to them, however

¹ In common parlance it is defined as litigation for the protection of the public interest. It will be also known as Social Interest Litigation.

² C.K. Takwani” Lectures on Administrative Law”, Third Edition, 1998, Eastern Book Company p 301

³ Edited by NirmalKantiChakraborti,” Law and Child”, Second Edition, 2011, R. Cambray&CCo. Private Limited,p300

the Constitution accords a dignified and crucial position to the judiciary in particular. Judiciary in India under its policy for attainment of social justice has been very active to give effect to the rights of the children in general and child labour in particular. PIL was formulated in order to answer the needs of the people who cannot be heard. As we know, children because of their tender age are unable to raise their voices and go to the court and fight for their rights. Thus in that case PIL becomes an effective weapon to fight for their rights and justice.⁴

For the last few decades, the concern for children and their rights have increased. In many cases the issues and concerns for the welfare of the children have been addressed through PIL. In the contemporary society exploitation of children takes place through different forms like child labour, bonded labour, child trafficking etc. PIL seems to act to bring these issues to the eye of law. Further adding to this what the litigation does is it acts as a mechanism to make law more realistic and approachable. It gives the power to any individual or to any organisation to bring the violations of the rights of the children to the eyes of law. It is primarily through PIL that the courts have expanded the scope of fundamental rights by interpreting them liberally.⁵ It is only because of the court's liberalizing the requirement of standing, and opening its door to the public spirited citizens *pro bonopublico* to take up the causes of the downtrodden, poor, illiterate, disadvantaged and impoverished segments of the society, no case on the abuse of child labour would have reached the court, questioning the violation of the fundamental rights of thousands of vulnerable children. It is an accepted fact that child labourers are the most unfortunate children of our country. They are unfortunate not because they come from a background of deprivation; not so much they are deprived of the benefits of education or are cheated of their childhood, but because their own parents who should normally be watching of their interest are often instrumental in their exploitation, may be compelled by poverty, or custom or ignorance. The Court has mostly been sympathetic to such children and to the cause of child labour in general.

⁴ David Friedman, "Public Interest Litigation and Constitutional Theory in Comparative Perspective" *The Modern Law Review*, 55(1) 44 (1992).

⁵ Clarke D. Cunningham, "Public Interest Litigation in the Supreme Court of India: A Study in the Light of American Experience", 29 *JILI* 494-823(1987)

INSTANCES OF PIL AGAINST CHILD LABOUR POSITION BEFORE 1996

*Peoples Union for Democratic Rights v. Union of India*⁶, popularly known as the (Asiad Case) is a writ petition brought by way of public litigation in order to ensure observance of the provisions of various labour laws in relation to workmen employed in the construction work of various projects connected with the Asian Games. The matter was brought to the attention of the Court by the first petitioner which is an organisation formed for the purpose of investigating and inquiring into the conditions under which the workmen engaged in various Asiad projects were working. The letter was treated as a writ petition by the Court and notice was issued to the Union of India, Delhi Development Authority and Delhi Administration which were arrayed as respondents. It was alleged by the petitioners inter alia, that, there was violation of Article 24 of the Constitution and of the provisions of the Employment of Children Act, 1938, in as much as children below the age of 14 years were employed by the contractors in the construction work of the various projects connected with the Asiad games. It was also alleged that there was violation of Article 23 since the workers, including the children, were not being paid the minimum wages under the Minimum Wages Act, 1948.

As regards the violation of the provisions of Article 24 are concerned, the court held that it embodies a fundamental right which is plainly and indubitably enforceable against everyone and by reason of its compulsive mandate, no one can employ a child below the age of 14 years in a hazardous employment, and since construction work is a hazardous employment, no child below the age of 14 years can be employed in construction work and therefore, not only are the contractors under a constitutional mandate not to employ any child below the age of 14 years but also it is the duty of these authorities to ensure that this constitutional obligation is obeyed by the contractors to whom they have entrusted the construction work of the various Asiad projects.

So far as the violation of the provisions of the Employment of Children Act, 1938 was concerned, it was the case of the authorities that no complaint with regard to the violation of the said Act was at any time received by them and that

⁶ AIR 1982, SC 1473

there was no violation of these provisions by the contractors. It was further contended that unfortunately the construction industry did not find a place in the schedule to the Employment of Children Act, and the prohibition enacted in section 3(3) of the Act against the employment of a child who had not completed his fourteenth year could apply to employment in the construction industry. According to the court this was a sad and deplorable omission which must be immediately set right by every State Government by amending the schedule so as to include construction industry in it in the exercise of the power conferred under Section 3A of the Act. The court held that construction work was clearly a hazardous occupation and it was absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. That would be in consonance with Convention No 59 adopted by the International Labour Organisation and ratified by India. Apart from the requirement of the convention, because of the Constitutional prohibition no child below the age of 14 could be allowed to be engaged in construction work. Therefore, there could be no doubt that notwithstanding the absence of specification of construction industry in the schedule to the Act, no child below the age of 14 years could be employed in construction work and the Union of India as also every state government must ensure that this constitutional mandate was not violated in any part of the country.

Labourers Working on Salal Hydro Electric Project v. State of Jammu and Kashmir,⁷ was a public interest litigation based on a report published in the Indian Express dated 26.8.1982 to the effect that a large number of migrant workmen from different States including the State of Orissa were looking on the Salal Hydroelectric Project in difficult conditions and they were denied the benefits of various labour laws and were subject to exploitation by the contractors to whom different portions of the work were entrusted by the Central Government. The Court directed the Labour Commissioner, Jammu and Kashmir, visit the site of the Salal Hydroelectric Project and ascertain:

1. Whether there is any bonded labourers employed on this project and if so, to furnish their names

⁷ (1983) 2SCC181

2. Whether there are any migrant workers who have come from any other states;
3. What are the conditions in which the workers are living; and
4. Whether the labour laws enacted for their benefit are being observed and implemented. Pursuant to this order made by the court, the Labour Commissioner, Jammu, visited the site and submitted an interim report and a final report.

It was pointed out in the final report that some minors were found to have been employed on the project site but the explanation given was that these minors accompany their male members of the family on their own and insist on getting employed. The Court recalling its earlier judgement in the *Asiad Case* wherein it had observed that construction work is a hazardous employment and therefore under Article 24 of the Constitution no child below the age of 14 years can be employed, observed that it was aware that the problem of child labour is a difficult problem and it is purely on account of economic reasons that parents often want their children to be employed. The possibility of augmenting their meagre earnings through employment of children is very often the reason why parents do not send their children to schools and there are large scale drop outs from school. This is an economic problem and it cannot be solved merely by legislation. So long as there is poverty and destitution in this country, it would be difficult to eradicate child labour, because it is absolutely essential that the child should receive proper education with a view to equipping itself to become a useful member of the society and to play a constructive role in the socio economic development of the country.

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 and other hazardous employment and no child below the age of 14 years can therefore be allowed to be employed in the construction work by reason of the prohibition enacted in article 24 and this constitutional prohibition must be enforced by the central government.

*In Bandhua Mukti Mocha V. Union of India*⁸, The Supreme Court found that the State of Uttar Pradesh had not yet filed the list setting out the particulars of the criminal cases which have been filed against carpet manufacturers and are pending trials in the courts despite its directions to the State Government to do so within four days from the date of its order on 18.08.1986. the Court also found that inspite of the assurance given by the State Government that it would do the needful to rehabilitate the children employed in the carpet manufacturing industry within a short time it had not put forward any scheme.

The Court observed that *“it is a matter of regret that the orders made by this court should be blatantly flouted by the State Government. It looks as if the State Government is not interested at all in eliminating child labour in the carpe manufacturing industry though the said child labour is prohibited under the Employment of Children Act 1938, nor does the State Government seem to be interested in providing for the rehabilitation of the said children”*⁹.

*M.C. Mehta v. State of Tamil Nadu*¹⁰ is another public interest litigation concerned with the problem of employment of children in match factories of Sivakasi in Kamaraj District of Tamil Nadu. Sivakasi has been the traditional centre for manufacture of matchboxes and fireworks for almost the whole country and therefore lot of child labour employed in most of these factories.

Manufacturing process of matches and fireworks is a hazardous one. Despite the improved techniques adopted and special care taken, fatal accidents occur almost every year. Working conditions and the process of manufacturing have serious health hazards in the normal course. Therefore, in the light of the constitutional provisions contained in article 39(f) the court was of the view that employment of children within the match factories directly connected with the manufacturing process upto final production of match sticks or fireworks should not at all be permitted.

⁸ 1986(Supp) SCC553

⁹ *ibid*

¹⁰ (1991) 1SCC 283

The Court further held that it was necessary that special facilities for improving the quality of life of children should be provided. This would require facilities for education, scope for recreation as also providing opportunity for socialisation. Facility for general education as also job oriented education should be available and the school time should be adjusted so that the employment is not affected. The Court also opined that compulsory insurance scheme for a sum of Rs. 50,000 should be provided for both adult and children employees taking into consideration the hazardous nature of employment. The premium for the group insurance policy should be the liability of the employer to meet as a condition of service.

In *M.C. Mehta V. State of Tamil Nadu*¹¹, is another public interest litigation by the petitioner seeking compensation by the petitioner seeking compensation to the heirs of 39 people who died in a cracker factory fire accident at Sivakasi. Although the court had not permitted children to be employed in the factory area excepting in the packing portion, it was not sure whether among the 39 people dead there were children also as there were no records of those deceased persons regarding their age. After ordering the State of Tamil Nadu to pay the heirs of the deceased employees the insured sum of Rs. 50,000, as compensation, the court required the employers to maintain a list of employees indicating their age so that in future in the event of their having an accident of this nature, it would be easier to identify the victims and also to enquire whether the place of employment was within the permissible area in case of a child being involved in the accident.

*Rajangam, Secretary, District Beedi Worker's Union v. State of Tamil Nadu*¹², was a letter petition addressed to the Supreme Court of India by the petitioner complaining about manipulation of records regarding employees, non-payment of appropriate dues of work taken, failure to implement the provisions of the labour laws, prevalence of contract labour system and exploitation of child labour by owners of beedi factories in the State of Tamil Nadu. On the basis of the report submitted by the Society for Community Organisation Trust appointed by

¹¹ 1991(2) SCALE 464

¹² (1992) 1SCC 221

the apex court to investigate all the allegations, the court issued certain guidelines interalia, (a) tobacco manufacturing has indeed health hazards (b) 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 and the incidence should not be passed on to the workman.

PATH-BREAKING CASE IN 1996

The case of *M.C.Mehta V. Union of India*¹³, became instrumental in changing the landscape of the child rights scenario and related jurisprudence in India. M.C. Mehta filed a PIL in the Supreme Court of India alleging that many children were being employed in several hazardous industries particularly in the fire crackers and matchstick industries in Sivakasi in Tamil Nadu. The Constitution provides “no child below the age of fourteen years shall be employed to work in a factory or mine or engaged in other hazardous employment.”¹⁴ Child labour is a huge problem which is a socially acknowledged reality but the PIL indented to bring about this crucial issue in the eyes of law. As of December 1 1985, there were 221 registered match factories in Sivakasi; these factories employed 27,338 workmen of which 2,941 were children¹⁵. With the help of this PIL, Mehta raised his concern for the future and safety of these children who were working in these factories. In a larger perspective if we see then it is a case of mass violation of human rights. Moreover, the conditions in which these children were working were also very perilous to their health and overall well-being. This judgement examines the continuation and the reasons for child labour despite the enactment of Chid Labour (Prohibition and Regulation) Act, 1986.

With regard to the International Commitments, the Court noted that Indi is a Party to the convention on the Rights of the Child. In its instrument of accession to the Convention, India has undertaken “to take measures to progressively implement the provisions of article 32 particularly paragraph 2(a) in accordance

¹³ 1996 6 (SCC) 756

¹⁴ The Constitution of India Article 24

¹⁵ M.C. Mehta V. State of Tamil Nadu, 1996 6 SCC 756, para3

with its national legislation and relevant international instruments to which it is a state party”¹⁶. As regards the domestic legislation is concerned, the court after a detailed reference to all the laws regarding child labour opined that the “legislature has strongly desired prohibition of child labour”¹⁷.

In the course of the hearing, the Supreme Court of India appointed a Committee which would visit the site and make a report pertaining to the different aspects of the matter. This Committee was appointed earlier on the same issue to understand and find solution to the problem of child labour in Sivakasi. The Committee submitted its report on November 11, 1991 and gave several recommendations. It recommended that the state of Tamil Nadu should be directed that children should not be employed in hazardous industries of any sorts. Children must also have a separate premise where they should not work more than six hours. Proper transport facilities, recreation facilities and education should be provided around the factories. The recommendations were also made on providing the basic diet in or around the factory. It recommended to start a National Commission on Children’s welfare which would prepare a scheme for abolition of child labour.

AFTER EFFECT OF THE JUDGEMENT AND POSITION AFTER 1996

The Supreme Court identified that Sivakasi is not the only centre where child labour is prevalent rather the court recognised that child labour was an all pervasive national problem in India even after 50 years of independence and despite the enactment of various legislations¹⁸. The Supreme Court highlighted the causes of child labour as poverty, low wages of an adult’ unemployment, absence of scheme for the family allowance, migration to urban areas, large families, children being cheaply available, non-existence of provisions available for compulsory education, illiteracy of ignorance of parents and traditional attitudes¹⁹. Further the Supreme Court gave the following directions:

¹⁶ Ibid Article 32 of the Convention states that the State Parties shall take action to provide a minimum age for admission to employment, as well as to regulate the hours and conditions of employment and sanction employers that violate such provisions.

¹⁷ Id at para 22

¹⁸ ibid

¹⁹ Ranjan K. Agarwal, “Barefoot Lawyers: Prosecuting Child Labour in the Supreme Court of India, The”²¹ *Ariz J. Int’l & Comp L.* 663 (2004)

- a. The state government must conduct a survey in their respective states within a period of six months on the issue of child labour.
- b. The offending employees have to pay a sum of Rs. 20000 for every child who is employed in lieu of infringement of the Child Labour (Regulation and Prohibition) Act 1986.
- c. The inspectors who are appointed under section 17 of the Act should bear the responsibility of implementing the above direction. The sum should be deposited in a fund which would be called child labour rehabilitation cum welfare fund.
- d. The state should ensure that the child who is employed in a factory, his parent or guardian should also be provided employment too. If the State government fails to do that then the state government has to contribute Rs. 5000 to the child rehabilitation cum child welfare fund.
- e. On the discontinuation of the employment, the child has to be assured admission education in an appropriate institute. The inspectors will further make sure that these directions are carried on.
- f. The district collector would be responsible for monitoring the functioning of the inspectors. While the secretary of the labour department would be monitoring the scheme.

*People's Union for Civil Liberties v. Union of India*²⁰, is a public interest litigation under Article 32 of the Constitution based on the report of a non-governmental organisation- Campaign Against Child Labour.

It was reported that one Rajput had procured five minor children from the State of Tamil Nadu by paying Rs. 500 to Rs. 1500 to their parents and took them to Maharashtra and forced them into bonded labour. One of them was beaten to death and the remaining went missing. The trial court convicted the procurer of murder, under the orders of the apex court the Maharashtra police traced three of them but the fourth, real brother of the deceased still remained untraced.

²⁰ (1998) 8SCC 485

Agreeing, with the contentions of the counsel appearing for the petitioner that these boys were entitled to compensation, the court directed the State of Maharashtra to pay a sum of two lakhs to the brother of the deceased who was still untraced. Likewise, the State of Tamil Nadu was directed to pay Rs. 75,000 each as compensation to the other three boys. The Court, thus, upheld the claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed by the Constitution²¹.

*Bandhua Mukti Morcha v. Union of India*²², is another public interest litigation filed by the petitioner organisation seeking issue of a writ of mandamus directing government to take steps to stop employment of children in carpet industry in the State of Uttar Pradesh; to appoint a committee to investigate into their conditions of employment and to issue such welfare directives as are appropriate for total prohibition on employment of children below 14 years in carpet industry and to accord to them facilities like education, health, sanitation, nutritious food etc.

It was contended by the petitioner that the employment of children in carpet industry being hazardous employment is violative of article 24 of the Constitution and derogatory to the mandates contained in articles 39(e) and (f) and article 45 of the Constitution read with the Preamble. Pursuant to the filing of the petition, the court appointed a Commissioner to find out how many children below the age of 14 years are working in the carpet industry. Subsequently it appointed another committee to go around Mirzapur and other places where carpets are being weaved to find out whether children are being exploited and to submit a comprehensive report.

The report of the Committee disclosed the enormity of the problem of exploitation to which the children were subjected. It was disclosed that children between the age of 5 and 12 were being kidnapped from villages and taken to Mirzapur for being engaged in carpet weaving centres. They were forced to work

²¹ Nilabati Bahera v. State of Orissa, (1973) 2SCC 746; and Rudul Sah V. State of Bihar, (1983) 4SCC 441 were referred to

²² (1997) 10 SCC 549

all day and were being treated as slaves and were subjected to physical torture. Most of them belonged to scheduled caste and scheduled tribes.

The Court held that the Convention on the Rights of Child which was ratified by the Government of India, recognises the rights of the child for the full and harmonious development of his personality. Article 24 of the Constitution prohibits the employment of children below the age of 14 years in any factory or mine or in any other hazardous employment, but it is a hard reality that due to poverty, the child is driven to be employed in a factory, mine or hazardous employment. Pragmatic, realistic and constructive steps and actions are required to be taken to enable the child belonging to the poor, weaker sections, dalits, tribes and minorities, enjoy their childhood and develop their full blossomed personality- educationally, intellectually and culturally. Child labour therefore, must be eradicated through well planned, poverty-focussed alleviation, development and imposition of trade actions in employment of children²³.

In this case also the Court reiterated the directions given in the *M.C. Mehta V. State of Tamil Nadu*²⁴ as feasible and inevitable. It also gave a number of directions on the identification, release and rehabilitation of child labour. It also directed the Government of India to convene a meeting with the State Government to evolve principles/policies for progressive elimination of employment of child below fourteen years in all employments consistent with the schemes laid down in the *M.C. Mehta's Case*²⁵. It also directed the State of Uttar Pradesh to investigate into the conditions of employment below fourteen years of age; and provide facilities like education, health, sanitation, nutritious food etc.

In Delhi High Court in its own motion V. Government of NCT of Delhi in 2009, observed,

.....constitutional mandate and statutory provisions with regard to children were not being vigorously implemented and there was a lack of co-ordination between different agencies of the Government of NCT of Delhi and other authorities.

²³ Id at 554

²⁴ (1996) 6SCC 756

²⁵ *ibid*

In furtherance of the above, also adopted the Delhi Action Plan for total abolition of child labour and directed the authorities to implement the same. The Delhi Action Plan was a policy measure which was framed under the directions of Delhi High Court by the National Commission for Protection of Child Rights when it realised that the funds collected under the direction of the Supreme Court in the *M. C. Mehta Case* were not properly utilised and also not being collected in the due manner. Under this Plan different roles and responsibilities were assigned to different departments/ authorities like the Delhi police, Department of Labour, Women and Child Welfare Department, Education Department, Health Department, Municipal Corporation of Delhi and Deputy Commissioner of the concerned district.

The Government quoted a report of Ministry of Women and Children Development in its submission before the Supreme Court in the case of *BachpanBachaoAndolan v. Union of India*²⁶, and identified the following as the reasons for limitations in effective implementation.

- a. Poor implementation of existing laws and legislation
- b. Lack of linkages with essential lateral services for children, for example, education, health, policy, judiciary, services for the disabled etc.
- c. No mapping has been done of the children in need of care and protection or of the services available for them at the district, city or state levels.
- d. Lack of coordination and convergence of programmes/ services.

Work supervision, monitoring and evaluation of the juvenile justice system.

CONCLUSION

From the foregoing survey of cases on child labour it may be said that the Supreme Court has taken a conciliatory position of the problem and has accepted the inevitability of child labour in the country. In none of the cases brought before it, has the court called for an immediate ban of child labour.²⁷ The liberalisation of the concept of *locus standi*, to make access to the court easy, is an example of the

²⁶ (2011) 5SCC 1

²⁷ Thomas Paul , Judicial Response To Child Labour in India: A Human Rights Perspective, Asia Law Quarterly , Vol 1 No.1 83

changing attitude of the Indian Courts. It is generally seen that the working children by and large come from families which are below the poverty line, and there are no means to ventilate their grievance. Their fundamental rights are often breached with impunity. Keeping in view the pitiable conditions of the child workers, the apex court has shown its sensitivity towards the poor people by relaxing the concept of *locus standi*.

It is important to understand the here that the directions passed by the Supreme Court can only be successful only when there is proper implementation of the same by the executive. The problem of implementation has been acknowledged by the government in the case of *Bachpan Bachao Andolan V. Union of India & Oths*²⁸. The Supreme Court in this case played an even more proactive role and directed the Child Welfare Committee must directly come under the supervision of the District Judge / High Court and also that the above implementation must also be overseen by a Court monitored mechanism. Hence, it can be suggested here that the Court has also proactively taken upon to oversee the implementation of the M.C. Mehta judgement but also various antecedent laws pertaining to the subject matter of child labour. Once again in this judgement the Court reminded the Government of coming out with policy imperatives in the field of Child Labour with special reference to UN Protocol to Prevent, Suppress and Punish Trafficking in Persons its Preamble and Articles 1, 2, 3 and 5. India being a signatory to the Protocol and Article 5 obligation of member countries to adopt legislative and other measures to stop trafficking and child labour.

The problem of child labour can only be solved when worked through a holistic approach where every order passed by the court is seriously implemented and a strong check and balance system for implementation of the laws and regulations are placed in the society by all organs of the government.

²⁸(2011) 5 SCC 1

CHILD LABOUR: THE CONSTITUTIONAL COURTS PERSPECTIVES AND INTERPRETATIONS

Ms. N. Bhagya Lakshmi*

ABSTRACT

Childhood is an essential and powerful experience in each individual's lifetime. It is the most vital and impressionable period of learning. A growing phenomenon is using children as domestic workers in urban areas. The conditions in which children work is completely unregulated and they are often made to work without food, and very low wages, resembling situations of slavery. There are cases of physical, sexual and emotional abuse of children as domestic workers.

Child labour is an invasive problem throughout the globe, especially in developing countries. Throughout all of the highs and the lows, childhood is remembered forever. It is more common in underdeveloped countries. Child labour, by and large, is a problem of poor and destitute families, where parents cannot afford education of their children. They have to depend on the earning of their children. It is great social problem.

The problem of child labour in India is so huge that it demands support and contribution from every part of society to completely eradicate this problem. In recent times, government has taken some concrete steps for improving the situations of child labourers. Providing free education, encouraging parents to send their kids to schools with awareness campaigns and allocation of funds towards child health and development etc are some of the steps taken by the state.

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 endeavored 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

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INTRODUCTION

Child labour is economically unsound, psychologically disastrous and ethically wrong. It should be strictly banned. Childhood is an essential and powerful experience in each individual's lifetime. It is the most vital and impressionable period of learning. Throughout the highs and the lows, childhood is remembered forever. Child labour has been an international concern because it damages, spoils and destroys the future of children. The problem of child labor is a serious matter not only in India but also in other developing countries. The general improvement in socio-economic conditions of people will result in gradual elimination of child labour. Parents of the children also must be aware that the child labour is an evil. Their contribution is more helpful in eradicating child labour rather than legislations. Children are the hope and future of a nation.

The prevalence of child labour is a blot on society. It is a national disgrace that millions of children in this country have to spend a major part of their daily routine in hazardous works. The problem of child labour in India is the result of traditional attitudes, urbanisation, industrialisation, migration, lack of education, etc. Child labour is especially prevalent in rural areas where the capacity to enforce minimum age requirements for schooling and work is lacking. Children work for a variety of reasons, the most important being poverty and the induced pressure upon them to escape from this plight. Though children are not well paid, they still serve as major contributors to family income in developing countries.

The law in India says that any child below age of 14 years cannot be employed either in a factory or office or restaurant. In fact, India's international business has been severely affected in many cases because of child labour in violation of human rights, have been used in some stage or the other in manufacturing, packaging or transportation of those items¹. And, in a large number of cases of export of ready-made garments, prawn and several other items from India has been rejected on grounds of child labour being used. Truly speaking child labour is frequently utilized in India in various places of production and service e.g., small scale industry, restaurant service, domestic aid, shopkeeper's assistant, stone breaking, book binding, in fact in every house-hold industry.

¹ 'Small change: Bonded Labour in India' (Human Rights Watch March 2015) 3

CAUSES OF CHILD LABOUR

Poverty and lack of social security are the main causes of child labour. In a developed society where every citizen counts and all citizens have to have proper education, health care supports, games and entertainment and complete his education so that when he is a fully grown adult he can get a full employment with standard salary. The increasing gap between the rich and the poor, privatization of basic services and the neo-liberal economic policies are causes major sections of the population out of employment and without basic needs. This adversely affects children more than any other group². Entry of multi-national corporations into industry without proper mechanisms to hold them accountable has led to the usage of child labour. Lack of quality universal education has also contributed to children dropping out of school and entering the labour force. A major concern is that the actual number of child labourers goes undetected. Laws that are meant to protect children from hazardous labour are ineffective and not implemented correctly.

A growing phenomenon is using children as domestic workers in urban areas, to reduce the labour cost in a production organization. Miscellaneous reasons for engaging the children as domestic aid are that they are less doubtful about dishonesty or less liable to misbehave or be violent. The conditions in which children work is completely unregulated and they are often made to work without food, and very low wages, resembling situations of slavery. There are cases of physical, sexual and emotional abuse of child domestic workers³.

Children are always considered next to the pious versions of the Almighty who always strive to inculcate happiness, joy, innocence and hope. The future of a nation is determined by the way it treats its children and its women, after all, children imply a hope, a hope to strengthen not only the economy of the country, but also to provide the country with skilled human resources who have access to the basic amenities essential for the existence coupled with the tenets of the education in India.

² 'Abolition of Child Labour- A Brief Note' (National Advisory Council Report 2011) 31-35

³ Jinesh Chandra Kulshresta, 'Child Labour in India' (New Delhi 1978) 145

Overburdened, debt-trapped parents fail to understand the importance of a normal childhood under the pressures of their own troubles and thus it leads to the poor emotional and mental balance of a child's brain which is not prepared to undertake rigorous field or domestic tasks. National and multinational companies also recruit children in garment industries for more work and less pay which is absolutely unethical.

Family structure and matrimonial disputes between the couple are also one of the reasons for increasing child labour. Radical changes have taken place and are taking place in spheres of civic, social, economic and cultural life which are affecting the pattern of family living. Children particularly living in the modern family have become vulnerable to exploitation and this may lead to working condition.

Traditional factors such as rigid cultural and social roles in certain countries further limit educational attainment and increase child labour. Working children are the objects of extreme exploitation in terms of toiling for long hours for minimal pay. Their work conditions are especially severe, often not providing the stimulation for proper physical and mental development. Many of these children endure lives of pure deprivation. The lack of enforcement of labour restrictions perpetuates child labour. To reduce the labour cost in a production organisation they are showing their interest towards child labours⁴.

CHILD LABOUR LAWS IN INDIA

The problem of child labour in India had become an issue of concern for one and all post Independence. The drafting committee of the Indian constitution wanted to formulate laws on their own without seeking recommendations from other countries with this regard. Since, India had been under the exploitative regime of the British, it only made sense that the provisions were devised keeping in mind the forms of exploitative labour that India had witnessed under the atrocious regime. Legislation has been able to control child labour in the formal sector to some degree. As a result, child labour is most prevalent in the highly unmonitored, informal and rural sectors.

⁴ The right to children free & compulsory education by Mishra

The primitive laws that were formed to prohibit child labour in India were when the Employment of Children Act, 1938 was passed. But this act failed miserably because it failed to address the cause of poverty as it is poverty that drives children into forced labour. The Indian Parliament time and again has passed laws and acts to ensure the protection of children from child labour. The fundamental rights enshrined in our Constitution prohibit employment of child labour below the age of 14 years in any factory or mine or in any hazardous work under Article 24.⁵ Apart from this, it is also provided under Article 21-A that State shall provide infrastructure and resources for free and compulsory education for the children between the age of 6-14 years of age⁶.

There exists a set of laws which under the Constitution govern the protection of children from child labour. The Factories Act of 1948 prevents the employment of children below 14 years in any factory. The Mines Act of 1952 prohibits the employment of children below the age of 18 years. The Child Labor (Prohibition and Regulation) Act of 1986 prevents the employment of children below the age of 14 years in life-threatening occupations identified in a list by the law. Further, the Juvenile Justice (Care and Protection) Act of 2000 made the employment of children a punishable offence. Ironically, despite this huge array of laws, there seems to be no improvement in the working conditions of the child labourers and employers also freely flout the provisions of the Act⁷ covering the prohibition of child labour.

It needs to be highlighted that the violation of these provisions means a deprivation of the basic human rights and demeaning the childhood of the children. The law also is not very clear as to how where can the children work. The Juvenile Justice (Care and Protection) Act of 2000 also exempts the family of the child labourer from its purview if they all are working with the same employer as that of the child. Although it prohibits the employment of children in certain hazardous industries and processes, it does not define what constitutes hazardous work. It only provides a list of hazardous occupations. Abolition of child trafficking, elimination of poverty, free and compulsory education, and basic standards of living can reduce

⁵ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1999)

⁶ D.D. Basu, *Introduction to the Constitution of India* (Nagpur, LexisNexis Butterworth)

⁷ Juvenile Justice (Care and Protection) Act of 2000

the problem to a great extent. Although the Constitution of India guarantees free and compulsory education to children between the age of 6 to 14 and prohibits employment of children between the age of 14-18 years in hazardous occupations, child labor is still prevalent in the informal sectors of the Indian economy.⁸

ADJUDICATION BY JUDICIARY

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.

In *Peoples Union for Democratic Rights v. Union of India*⁹ commonly known as 'Asiad workers case', it was brought to the notice of the Supreme Court that children below 14 years of age were 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. Bhagavathi and Justice Bahrul 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 by the appropriate legislation, must operate "proprio vigore" . Construction work plainly and indubitably is a hazardous employment and it is clear that by a reason of constitutional prohibition no child below 14 years can be allowed to be engaged in construction work*". And specifically in Employment of Children Act, 1938, no child below 14 years can be employed in construction work. The Supreme Court¹⁰ observed that "*there can be no doubt that notwithstanding the absence of specification of construction industry in the schedule to the Employment of Children Act, 1938, no child below the age of 14 years can be employed in construction work and the union as also every state government must ensure*

⁸ Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, 1999

⁹ AIR 1982 SC 1473

¹⁰ AIR 1982 SCC 1481

that the constitutional mandate is not violated in any part of the country”. The Judgment was an eye opener about the lacunae of the law and the need to reform in order to be comprehensive. In accordance with this judgment, the construction work has been added as item No.7 as a prohibited occupation in part ‘A’ of Schedule to the Child Labour Act of 1986.

*In Labourers, Salal Hydro Project v. State of Jammu and Kashmir*¹¹ Bhagavati 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 was constrained to remark that the problem of child labour is a difficult problem and it is purely an account of economic reasons that parents often want their children to be employed in order to be able to make both ends meet. 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 labour¹².

In *M.C. Mehta v. State of Tamil Nadu and others*¹³ Supreme Court allowed children to work in a prohibited occupation like fireworks. Ranganath Mishra and M.H.Kania JJ. opined that “*the provisions of Article 45 of Constitution in the Directive Principles of State policy still remained a far cry and though according to this provision all children up to the age of fourteen years are supposed to be in the school, but economic necessity forces grown-up children to seek employment*”. Children can, therefore, be employed in the process of packing of fireworks but packing should be done in an area away from the place of manufacture to avoid exposure to accident. It is a matter of surprise that the Supreme Court in this case allowed the children to be employed in match factories of Sivakashi in Madras and said that, the children must be provided basic diet during working period. This judgment is not in accordance with the constitutional spirit. Further Supreme Court in *M.C. Mehta v. State of Tamil Nadu and others*¹⁴, popularly known as ‘Child Labour Abolition Case’ has held that the children below

¹¹ (1983) 2 SCC 181 (SC); AIR 1984 SC.177.

¹² *ibid* 191

¹³ AIR 1997 SCC 283

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 Committee¹⁵ was also constituted to visit the area and report on the various aspects of the matter.

The Supreme Court of India in *Rosy Jacob v. Jacob A, Chakramakkal*¹⁶ observed that “*The children are not mere chattels; nor are they mere play things for their parents. Absolute rights of parents over the destinies and the lives of their children have in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society...*”

In *Sheela Barse v. Union of India*¹⁷ 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.

CONCLUSION

The child labour laws need to be strictly enforced by the Government. The general public needs to be made aware of the severe consequences of child labour. An increase in employment opportunity for adults would help in overcoming the problem of poverty and child labour. Government should ensure that every child gets the opportunity to go to school. The owners of factories and mines should take the pledge of not engaging children in their place of business.

¹⁴ (1996)6 SCC 756

¹⁵ The Committee consisting of Shri R.K.Jain a Senior Advocate, Indira Jaisingh, another senior advocate, and Shri K.C. Dua Advocate, submitted its Report on 11 November, 1991

¹⁶ AIR 1973 SC 2090 [15]

¹⁷ (1993) 4 SCC 204

Child labour must be eliminated as quickly as possible, before many more children get trapped, like the millions who already have in the past. Secondly, many children are too young to realize that what is happening to them is wrong and illegal. Children under the legal age to work in these developing countries, have more important things they should be involved with than labour. Each child deserves a good education, as well as the opportunity to enjoy life, learn new things, and most importantly have fun. Hard labour at an early age can really affect a person's outcome in the future. Without eradicating poverty it is more difficult to abolish child labour. Finally child labour is a bonded labour, children are not voluntary involved in labour work for their livelihood, only rich people will get benefit with these children as a labourers by paying low wages. There must be a special awakening to check this evil. Each individual should also take responsibility of reporting about anyone employing a child below the age of fourteen years. However, considering the magnitude and extent of the problem, concerted efforts from all sections of the society is needed to make a dent. Measures need to be taken not only to stop this crime against children, but also to slowly, steadily and surely provide every child a well-deserved healthy and normal childhood.

AN ASSESSMENT OF NIGERIAN CULTURES WITHIN THE EXISTING ANTI CHILD LABOUR REGIMS

Mr. Aderonke Adegbite*

ABSTRACT

Applicable International Law Regimes mandate against child labour in any form, especially through excessive exposure to manual, domestic and agricultural hazards. The above position is notwithstanding the contemporary situation in developing countries, that are pervaded by varying manifestations of child exploitation. The irony is that, as Nigeria remains rated by the World Trade Organisation and World Bank as a “Developing Country of Low Income”, the country equally plays host to an impressive log of United Nation (UN), AU and International Labour Organisation (ILO) Anti Child Labour Treaties. In fact, the nation actively participates in international child rights conventions, without prejudice to her own territorial multi-conceptual human right and labor related rules. Unfortunately, notwithstanding Nigeria’s prominent commitment to universal child rights institutions, child exposure to unhealthy hassles has derived a seemingly legitimate feature on her highways, public spaces and other domestic settings. More importantly, the continuous quantity of Nigerian children in overtly exploitative occupations within and outside her jurisdiction should provoke concerns about a possible nexus between this menace and the country’s multi-indigenous socio-culture. If there are confirmed contradictions between the Nigerian formal child rules and indigenous values, then the need for a total review of the existing legal framework becomes pertinent.

The paper examines the available international and local provisions against child exploitation in Nigeria and considers the efficacy of same, within the dictates of the prevailing socio-cultural milieu. It discusses the various manifestations of child labor in the country vis-a-vis the existing formal laws and their receiving culture/customs. The work also makes appropriate recommendations for a national re-assessment of the presently culturally stifled framework.

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INTRODUCTION

The ILO's inaugural Maternity Protection Convention and Minimum Age(Industry) Convention of 1919¹, epitomized the organization's "Decent Work Agenda" *vis-a-vis* child welfare and care. What the organization intended was a world less of exploitations, social injustice and of course the total abolition of child labour. Against this backdrop, the organization drafted its first major encompassing treatise, against the use of young children as laborers in 1973. The Minimum Age Convention of 1973² (hereinafter 1973 Convention), which was also ratified by Nigeria in 2002 was proclaimed to define minimum and fair ages for children participation in menial, industrial, agricultural and other exploitative fora. The 1973 Convention in the bid to tolerate the peculiarities of state parties, especially the developing countries³, prescribed all member countries as independent determinants of territorial child labor ages⁴. Each participating state was allowed to re-adjust its jurisdictional age, in line with its own socio-legal peculiarities.

According to Article 2(1)(3) and (4) the 1973 Convention, "*each member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory.....*

Subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.....

¹ ILO, 'Convention Concerning the Employment of Women Before and After Childbirth' (ILO 1919) <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C003> accessed 12 November 2017.

² Apart from the Minimum Age Convention, 1973 (No. 138) i.e ILO, 'Convention Concerning Minimum Age for Admission to Employment' (ILO 1973) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138> accessed 12 November 2017, other pre 1973 Conventions relating to children were, the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965

³ Agomo CK, *Nigeria Employment and Labour Relations Law and Practice* (Concept Publications Lagos Nigeria 2014) 83, 84.

⁴ ILO, 'Convention Concerning The Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour' (ILO 1999)(adopted at the Geneva, 87th ILC session (17 Jun 1999) entered into force 19 November 2000.Preamble <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182> accessed 11 November 2017.

the minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years..... Notwithstanding the provisions of paragraph 3 of this Article, a member whose economy and educational facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.....”

The further proviso was tempered thus;

“Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organizations of employers and workers concerned, where such exist, authorize employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity”

Other forms of exceptions from the purview of the 1973 Convention can be seen in Article 5, which excludes families and small scale holdings from the jurisdiction of the Treaty. Also, Article 9 which provides as follows;

“all necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention. National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention”

Notwithstanding the subjective content, the positions of 1973 Convention, were subsequently credentialed by other International Human Right and Transnational Crime regimes⁵. An assessment of Article XXXII of the UN Convention on the Rights of the Child 1989⁶ and Article XV African Charter on

⁵Invariably the interpretation and application of the said condition for employing little children have become culture and value subjective.

⁶Art XXXII(2), UNICEF, ‘The United Nations Convention on the Rights of the Child’ (UNICEF 1989) <https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf?_ga=2.88770461.762319299.1494846603-1666708173.1494846603> accessed 12 November 2017.

the Rights and Welfare of the Child 1990 (1990 Charter) revealed that the duo expressly referenced the ILO while establishing their own rules for the implementation of legislative, administrative, social and educational measures against child labor⁷. Article XV(2) of the 1990 Charter provides that;

“states parties to the present charter shall take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International Labour Organization’s instruments relating to children.....”

In addition, Nigeria is also a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000, Supplementing the United Nations Convention against Transnational Organized Crime⁸. With regards to Children , Article 3(c) of the anti-crime treaty provides that;

“the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in sub paragraph (a) of this article...”

A general overview of the above referenced conventions on labor , human rights and transnational crimes respectively, echo similar perspectives on the international standards on child labor. It may be deduced that;

- a. The ILO excludes employers that are families or other small-scale holdings that produce for local consumption and do not employ hired workers.
- b. State parties are afforded independent attitudes towards the creation, admissions or ratification of requisite anti-child labor programmes within their territories

⁷This short coming is obvious from the general assessment of the several unascertainable Municipal Laws prohibiting Child Labour in Nigeria. Also relating to same, is the inadequate penal regime of the Nigerian Labour Act 1974 e.g Nigerian Labour Act 1974,s 73.

⁸Nigerian Child Rights Act 2003,s 28(1d)

- c. Specified minimum ages for participation in employment or potentially exploitative labour are elastic and subject to individual state party's socio-cultural, economic and developmental status.
- d. Under the ILO rules, terms such as 'Child Labor', 'Light Work', 'Minimum Age', 'Appropriate Authorities for Enforcement', 'Association of Employees' and 'Workers' do not have all encompassing definitions.
- e. The Conventions by reference condoned the use of young children for light works that do not harm a child's health and development, and that does not interfere with his or her attendance at school⁹.
- f. The ILO has no specified protocols for the enforcement of penalties and liabilities in respective Conventions.¹⁰
- g. 'Child Trafficking' is equally classified as worst form of child labour

The above permissive background impacted the children related provisions of the present Nigerian Labour Act 1974 (hereinafter the Labour Act) and the Childs Rights Act 2003 (hereinafter CRA 2003). By virtue of Section 59(1a) and 28(1b) of both laws respectively, children can be employed by family members on light work of agricultural, horticultural or domestic characters. Also, while the CRA 2003 allows the employment of children as domestic helps within their own home or family environment¹¹, the Labour Act refrains from prohibiting the employment of young persons as domestic servants¹². Furthermore, while the Labour Act defines a child as any person below 12 years, the age of childhood under the CRA 2003 is 18 years, but with regard to the relevant provisions of other International Instrument¹³.

Flowing from the expensive but ineffective back ground, in 1999 the ILO converged for the purpose of redefining child labour and in order to attain a

⁹ Nigerian Labor Act 1974, s 25

¹⁰ An attempt to coordinate resulting disparities on mandatory child labor ages may be gleaned at CRA 2003,s 29 in respect of the application of the Nigerian Labor Act, s 58,59,60,61,62,63.

¹¹ The Worst Forms of Child Labour Convention No 182 (n 4)

¹² ILO Convention 1999, art 4

¹³ Article 1 of the 1999 Treaties inaugurated rules against all forms of slavery or practices similar to slavery, such as the sale of a child ;trafficking of children; debt bondage or any other form of bonded

more specific regime, capable of identifying realistic issues on extremely harmful labour practices against children. The Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour¹⁴ (hereinafter 1999 Convention) without prejudice to the 1973 Convention out-view later conventions and equally subjects the identification and definitions of other worst forms of child abuse to the discretion of individual state parties¹⁵. On a progressive note, 1999 Convention identified very contemporary and rampaging forms of child exploitations. The 1999 Convention also encouraged the creation and empowerment of other independent regimes for the purposes of attending to pending issues on child labor within States territories. The Convention;

- a. enhanced rejuvenated regimes towards immediate, effective prohibition and elimination of the worst forms of child labor as a matter of urgency¹⁶.
- b. highlighted specific expectations from States governmental policies and laws on free and affordable education, elimination of illiteracy, poverty and discrimination against the girl child

labour or serfdom; forced or compulsory labor. These are in addition to the provisions of the Nigerian Criminal/Penal Code on child abuse. Furthermore , a contemporary paramilitary approach is presently levied against the use of little children as domestic servants and slaves, as issues on child trafficking are the primary responsibility of the National Agency for Prohibition of Trafficking in Persons (NAPTIP). The National Police Force (NPF) and the Nigerian Immigration Service (NIS) also have anti-trafficking units responsible for combating trafficking. UNICEF has also joined the International Labor Organization (ILO) in a specific call to prevent and eliminate child labour in mines , quarries and other hazardous labour sites. The Nigerian Federal Ministry of Employment, Labor, and Productivity coordinates all efforts to combat child labor through its Inspectorate Department, which includes a Child Labor Unit.

¹⁴ OAU, 'The African Charter on the Rights and Welfare of the Child' (Organisation of African Unity 1990) <http://www.achpr.org/files/instruments/child/achpr_instr_charterchild_eng.pdf> accessed 12 November 2017. The UN Convention on the Right of the Child 1989, and its additional Protocols on child abuse, also the Cocoa Protocol i.e Harkin Hengel Protocol 2001, for the growing and processing of cocoa beans and their derivative products in a manner that complies with ILO Convention 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labor, Nigeria has implemented the West African Cocoa Agriculture Project (WACAP) for the purpose of reducing the hazardous participation of children in agricultural production etc.

¹⁵ National Survey on Child Labour (NGA_2000_CLS_v01_M), sponsored by the International Labour Organization –Funding Statistical Information and Monitoring Programme on Child Labour .

¹⁶ The present issue on child exploitation is not only applicable to exploiters but is beginning to relate to situations where children themselves undergo excessive work and labour in order to fend for themselves.

- c. encouraged the Nigerian government to ratify and domesticate other applicable Human Right Rules, in respect of the identified worst forms of employment and labor.¹⁷
- d. In addition to other indigenous researches, necessitated United Nation International Children Emergency Fund's (hereinafter UNICEF) active involvement in the elimination of child labour in Nigeria.¹⁸

Nevertheless, in 2010, the ILO still realized that out of the 306 million children currently involved in work worldwide, 215 million are child labourers¹⁹. Also more importantly that, about two thirds (64 percent) of the child laborers were actually unpaid family workers while five percent were self-employed.²⁰ This investigation further revealed that children in less enlightened environment are more likely to be exposed to indigenous labour than their counterpart in the urban parts. In a later investigation, the Sub-Saharan African region is estimated to have twenty one percent (21%) of the world total number of children between the ages of 5-17 in child labour.²¹ These reports invariably underscored the concerns that, despite all other efforts, the inability to suppress family/communal exploitation of children is capable rendering previous achievements almost insignificant .

The issue becomes more worrisome as the various international and local regimes continue to expend resources on a population, that is tolerant of the child's obligations to economically scramble with adults for survival.

In Nigeria, the tendency to excuse child labour under socio- cultural disguises has also instigated the existence of less expectant indigenous labour laws. Many of

¹⁷ Accelerating action against Child Labour, Global Report under the follow-up to the ILO Declaration on fundamental Principles and Rights at Work. Report to the International Labour Conference, 99th Session 2010. ISBN: 978-92-2-121873-9<www.ilo.org>.Retrieved on 23rd March 20017)

¹⁸ See the Human Development Report 2012 <www.hdr.undp.org> Retrieved 23rd March 2017 .

¹⁹ International Covenant on Civil and Political Rights (Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966,entered into force 23 March 1976), art 18(4), United Nations Convention on the Right of the Child 1989 , art 20 and 21 also para. 12 of the preamble.

²⁰ Nigerian 1999 Constitution, chapter 4

²¹Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, International Covenant on Economic, Social and Cultural Rights 1966

the available local and international child's right regulations, although with ideal provisions, consistently refer to state parties and indigenous child care-takers as requisite obligors towards the achievement of a child labour-free society.²²

Irrespective of the underlying shortcomings and limitations as previously identified, the contemporary law on the protection of children in Nigeria is the CRA 2003. The CRA 2003 in consonance with the provisions of the 1999 Constitution of the Federal Republic of Nigeria²³ ironically reflects the country's familiarity with the original mandate of the Universal Declaration of Human Rights 1948²⁴.

Conclusively, available information reveals that Nigeria does not lack requisite exposures to international rules against child exploitation. However, how Nigeria's socio-culture, has made her a consistent "State Party of Concern" within the available international bodies is the essence of this work.

CHILD LABOUR

The idea that any person, whether adult or child, should not be subjected to inhuman circumstances either at work or within his personal space is universally sanctioned. By the Article 4 and 5 of the Universal Declaration of Human Rights 1948 respectively²⁵;

"no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms and that, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"

As further provided in the UN Declaration of the Right of the Child 1959 at principle 9;

"the child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any

²² International Covenant on Civil and Political Rights art 8, Nigerian Labor Act s73, also the Nigerian 1999 Constitution s34(1)

²³Art. 3(a,d)

²⁴ Section 34(1)

²⁵ Art. 3(b)

occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development....”

According to the 1973 Convention, child labour implies any employment of a child under 12 years, non-light employment of children between age of 12-14 years and hazardous work done by children aged 15–17 years. It includes any form of unsuitable work done by children younger than specified ages, that interferes with their education and restricts their physical, moral, emotional and psychological development.

The 1989 Convention and the Article XV 1990 Charter respectively recognized;

“... the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development”.

Also the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children 2000, supplementing the United Nations Convention against Transnational Organized Crime defines a child to be any person under 18 years. Accordingly;

“exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”²⁶

From the above, it may be deduced that child labour involves not only all worst forms of child employments, but is actually connotative of any act that exploits a child.

According to the Section 17(f) of the Nigeria 1999 Constitution²⁷;

“Children young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect”

²⁶ Preamble to the UN CRC 1989, para 4

²⁷ This includes all efforts to attend directly to the consequences of Child Labor as, Premature Deaths, injuries and abuses, Sexual abuse, Drugs Use, Physical abuse, emotional maltreatment, deprivation of family love and affection, Physical neglect Lack of access to educational, religious and medical outfits.

All considered frameworks posit that child labour manifests in several ways which are also determinable by concerned states parties. In addition to the identification of the worst form of child labour, the regimes resonate the intentional prohibition of duties and obligations that are hazardous or injurious to a child's physical growth and development. The gamut of the rules connotes that, the rationale behind the treaties with emphasis on 1990 Charter is to prohibit any form of exposure in the form of employment, whether domestic or industrial, that deprives children of their childhood, whether psychologically, mentally, physically, socially morally or educationally.

The conclusion is such that, employment exposures are exploitations in so far as they hinder children's overall development. Child labour is prohibited irrespective of the employers' or exploiters' intentions or consent of the victims²⁸. The general instruction being that no person should exploit the vulnerability of the children in any way that disables their access to the right to childhood²⁹, right to survival and development, right to education, right to leisure, play and cultural/recreational services, right to the appropriate protection and provisions from the State, guardians and parents³⁰.

In Nigeria, it has been confirmed that child exploitations manifests through child hawking, child begging, child domestic servitude, apprenticeship, child home training, and other familial³¹ exploitation of children in need of care and affection. A report³² on the "closer to source" forms of child labor shows that in Nigeria, children mostly serve private households and as domestic workers they are equally used for other related agricultural and industrial undertakings.

²⁸ It may be emphasized that the term "family" in the Nigerian the traditional sense, consists of not only the parents and children, but also the step parents, extended family and any other persons integrated by affinity.

²⁹ UNICEF Information Sheet 2006 on Child Labour in Nigeria, and also the Nigerian Federal Government *Draft on National Policy on Child Labor*, 2006, 3.

³⁰ "Values" have been justified to be the factors that must be considered when taking a decision in order for the decision to be perceived as just (Beck, 1990; & Aslam, 2008). Meanwhile, Raths, Harmin and Simon (1966) described values as attitudes and beliefs that an individual is proud of and willing to publicly affirm

³¹ Part 1, Chapter II and Section 20 of the Childs Rights Act.

³² See The Restatement of Customary Law in Nigeria; Nigerian Institute of Advanced Legal Studies 2013 at Pg 308-309

ADDRESSING CHILD LABOUR UNDER THE NIGERIAN INDIGENOUS AND SOCIO-CULTURAL MILIEU

Addressing a cultural issue in the course of an international assessment of a phenomenon is bound to reflect the ever conflicting concepts between the human right universalists versus relativists. The major obstacle towards the enforcement of many of the UN Conventions is serially described as the inability of such treaties to put relative values and cultures into consideration. Invariably the provisions of the ILO conventions are perceived to be hinged on universal ideals without relevant consideration of relative cultural or traditional values³³. For example, it is presumed that the stage of childhood in the Africa, is not only delicate, but also very demanding and formative. It is obvious that this indigenous perspective does not tally in any way with the universal appeal for the total dependence of children on their guardians and the State for provisions, protections and preventive care.³⁴ Invariably, the cultures expect that in addition to being brought up, children owe themselves, their guardians and the community a larger obligation to continually mould themselves, act responsibly and reciprocate the care given to them³⁵.

Nigerian multicultural societies,³⁶ within the larger African jurisprudence emphasise the need for young persons right from childhood ,to acquire requisite knowledge, stamina and character in order to participate successfully in the social-cultural milieu. The child also has requisite obligations to run errands for elders including parents. He/she is expected to assist with or perform other domestic chores³⁷. Amongst the Yorubas no work can be excessive as it is said;

“Ise ki pa eeyan, aise re ni pa eniyan- Working does not kill rather, what kills, is the refusal to work....”

³³ It is an established fact that Nigeria is Africa’s most populous country, with a population of over 170 million people and more than 250 ethnic groups (CBN, 2012; & Action aid, 2013).

³⁴ which in the indigenous societies involves searching for and drawing water where same is unavailable, fetching firewoods, the duties to monitor and look after younger siblings especially toddlers, laundry, hawking etc.

³⁵ CRA 2003,part 11

³⁶ Across Nigerian indigenous cultures, it is the practice for new brides or new mothers to scout for younger members of their extended family for the purpose of assisting them with errands and domestic tasks.

³⁷ Adelaja O.O, *Child Labour in Nigeria Historical Perspective* ; ‘*The world of Child Labour: An Historical and Regional Survey*’, p232,Routledge New York, Ed. Hugh Hindman ,2015.

Within the Nigerian Communities, a female child is generally trained to multitask in the course of handing domestic chores, while her male counterpart is preferred for menial and more physically demanding jobs. There is no specific age for economic responsibilities as most cultures are only particular about the legality of the child's source of income. Children are taught the value of money at tender ages and the capacity of a child to assist an otherwise low income earning parents is mostly applauded. Child abuse is not considered from the work load or manual exposure of the child. What constitutes unfair treatment is however, when the child works hard, without commensurate care or compensation from the guardian or parents.

Apart from the training cultures, other identified consequences of the existing attitudes are;

a. Child fostering. It has been shown that the traditional foster culture, due to its informality has become one of the means of recruiting children for hard labour. Such cultural exchange in children outside the provisions of the CRA 2003³⁸, although in favour of the African context of communalism potentially harbors incidental occurrences of child sale, child trafficking and child domestic servitude. In such improper instances, children are handed over to other family members or even strangers in order to relieve parents or guardian of some obligations, to be otherwise performed by the fostering parent in a perceived better environment. In other situations, parents willingly give their children out as domestic helpers to newly wedded or new parents³⁹. The negative implication is that such children end up being used as errand children, house maids or simply for excessive hard work without corresponding care from the fostering parties. Such children are given inadequate period of rest and the accompanying exhaustion from running menial errands ensures that they have limited capacity towards developmental activities. For example, a study on house-helps and child fostering, conducted by the Child Protection Network in Nigeria in 2012, found that such hapless children had lower intelligence than those children who were well-nurtured. Informal child transfers

³⁸ Nigeria OVC Situation Analysis 2008.

³⁹ While boys are more likely to undertake activities in agriculture (62.8% for boys versus 37.2% for girls) and industry (68.5% for boys versus 31.5% for girls), girls outnumber boys in services (47.4% for boys versus 52.6% for girls).

within circumstances induced by poverty and illiteracy coupled with the hike in crime tendencies are discovered to be the not too far basis for the abandonment and consequent utilization of children as the means to an end.

b. Cultural Segregation. This is reflected through the traditional attitude towards children from perceived inadequate or abnormal families or background. Such discriminations affect children with physical and mental disabilities, recalcitrant children, children from broken homes and those whose parents have disabilities, cultural issues or ailments. The mentioned sectors are mostly accorded the lassie-faire attitude in issues of concerns within the larger community. Invariably, many of these isolated children fend for themselves in many possible ways, without any direct social benefits from the government.

c. Cattle Rearing. The nomadic agricultural business of rearing cattle is very prominent amongst the Fulanis in Nigeria. These livestock farmers at the indigenous levels mostly trek long distances with capable members of their families in order to feed and breed the lives stock, throughout the varying weathers of the years. In Nigeria it is common to see children as young as seven-eight years in this occupation and independent of any parental support of guardian⁴⁰. Such children obviously do not go to school since cattle rearing is perceived as more economically sustainable than education. Such exposure to perpetual wandering and dangers invariably determines the children's access to other social and developmental activities.

d. Parental/Spousal Loss. The UNICEF/Child info data base⁴¹ estimates the number of orphans to be 9.7 million. This figure, according to UN represents not only children who have lost both parents but also those who have lost a father but have a surviving mother or have lost their mother but have a surviving father. The situation is such that guardians tend to rally round orphan when such children have some estates to confer. However orphans from otherwise poor families are generally seen as being under God's care. Such parentless children fend for

⁴⁰ Nigeria OVC Situation Analysis 2008.

⁴¹ Ibrahim AN, Talib AT et.al Cultural Dynamics of Child labour in Yobe State Nigeria, "10 SR Journal of Humanities and Special Science's, Vol 20, 2015. Ladan, Education in Nigeria: 'A Retrospective', Daily Trust, 28th August, 14 2009.

themselves and their siblings by begging for alms or indulging in other desperate measures. Predictably, due to their vulnerable circumstances, parentless children, abandon children and other types of children in need of care and protection are preferred by recruiters and agents alike, for child trafficking purposes.

e. Apprenticeship. In Nigeria , apprenticeship is an age-long method used for training young people in trades and crafts, agriculture, business, and catering. The traditional ingrain of a successful apprentice/child is that he must be able to endure all forms of treatment from his/her master and master’s family members. The child’s schedule in addition to learning the trade is to run errands and also respond gratefully to all forms of treatments in the course of serving and learning from the principal.

f. Family sizes. Nigeria is the sixth most populous country in the world, and the largest in Sub-Saharan Africa. Also, it has one of the fastest population growth rates in the world. (NPC, 2012). Presently Nigerian population is estimated to be about 167 million (NPC, 2012). Notwithstanding the accompanying population explosion and its negative implications, the pre-existing cultural preference for large family sizes still subsists within the traditional extended family system. The condition has also not deterred the compulsion for child bearing, especially in the rural areas.(Economic Communities of Africa,2001).

g. Lack. The Millennium Development Goals Report, 2006, emphasized that while progress was being made in improving access to primary education, there were disparities in progress, and that the poorest, often those in rural areas, are being left behind. The report states further that “high rates of poverty in rural areas limit educational opportunities because of demands for children’s labour”. In response, a non governmental organisation, the Concerned for Working Children, Child Labour opined that;

“the equation between child labour and education is not a simple equation...The present strategy of removing a child from work and putting him/her into an education institution has not worked because the economic and social problems that pushed this child into the labour market have not changed and remain a driving force for both the family and the child. Formal

education is not a magic wand...Schools do not solve poverty, deprivation, unemployment and discrimination”.

h. Gender roles. Gender roles and birth order, also dictate the tasks given to children, the conditions of work and educational opportunities. Cultural apportionment of responsibilities to children due to their sexes necessitates several investigations on children participation in domestic and other hard tasks.⁴² It is discovered that the girls face the double burden of performing household chores within their own households combined with other indigenous agricultural and production activities. Among the northerners for example, while also struggling against the existing poverty at home, a major economic rationale behind girls hawking, include girls bonding and also the anticipation of incidental exposure to suitors⁴³. Such girls equally work towards their marriage trousseau, as that remains a major way by which she is expected to contribute to her spouse’s income.

SOCIO-CULTURAL IMPACT ON THE NIGERIAN LEGAL FRAMEWORK AGAINST CHILD LABOUR

As discussed, a prominent feature of the Nigerian legal system is her commendable participation in varying frameworks on child protection. Nigeria despite the hurdles in the internalization of several ideal concepts still boasts of several other contradicting laws and commitments⁴⁴. While the CRA 2003 is the further internalization of the 1989 Convention, in addition to her multifaceted domestic byelaws and customs, Nigeria also remains an acceding party to the

⁴² According to UNICEF (2011) the ugly situation may not be unconnected with the general inefficient implementations of government policies on human development.

⁴³ The ACRWC was in fact inaugurated by the AU as a result of the perceived inadequacy of the UN version in the African Society. Such perception is equally reflected by the hesitation and reluctance of many of the Nigerian States to domesticate the provisions of the CRA.

⁴⁴ The World Trade Organization based on the World Bank Report ranks Nigeria not only as a developing country, but also as a Low Income Country. It admits that the living conditions and wages system in countries and Nigeria is incomparable with the conditions in the LMIC and other developed jurisdiction.

1990 Charter⁴⁵. Further implications of the “Conventions friendly” status may also be observed from the multi-collaboration of the available Labor Act, Criminal Code, ILO, TRASDOC, African Union Youth Charter etc.

How Nigeria has fared in meeting up with the expectations of all the above ideologies remains a persistent academic and human rights issue. It is obvious that while all regimes aim at removing all forms of abuses against children, they do not rely on the same methods or values. It is not therefore surprising that Nigeria has consistently been granted exemptions from basic requirements of treaties, being a developing nation worthy of special attention. It is notorious that Nigeria, most times, accedes to treaties and does not domesticate them unless pressurized to do so. In fact the recent trend is that Nigerian states in the process of domesticating the CRA 2003 fraudulently amend tangible provisions to suit their relative traditional ideas and culture.

In addition, a more worrisome attitude stems from the governments persistent refusal to give life to the essence of its own grundnum on child labor. The Nigerian government has expressly refuted its responsibilities towards the Fundamental Objectives and Directive Principles of State Policies, at Chapter II, Section 17(f) of the 1999 Constitution;

“that children, young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect”

The non justifiability of the above provision is also without prejudice to procedural lacks in the enforceability of Chapter IV especially at Section 33, 34 and 35 of the same Constitution.

CONCLUSION

It is obvious that the attempt to eradicate child labour in all forms requires more than the present military and penal attitude by legal framework. As stated earlier it is only realistic that promoting formal education and other child

⁴⁵ The World Trade Organization based on the World Bank Report ranks Nigeria not only as a developing country, but also as a Low Income Country. It admits that the living conditions and wages system in countries and Nigeria is incomparable with the conditions in the LMIC and other developed jurisdiction. Invariably this type of grouping dictates that the child labour standard in Nigeria is permissibly lower to that of her counterparts.

developmental processes in itself has also not achieved the required feat in the continuously porous system. In a situation where more families live below the average survival line, there is bound to be concerted efforts of all available persons including little children for survival. From the analysis, it may be reasoned that the main cause of the abusive exposure of children is also well connected to the cultural compulsion to have young ones, without corresponding ability to care for them. While family planning or family population regulations has always been met with cultural excuses, the unavoidable reality is that until the Nigerian psyche is completely leveled up to the fact that children are not meant to be produced for pleasure or at constant instances of sexual relations, the problem may not cease.

More importantly, the above position is not independent of the governments inability to stick to a given labor law regime on children. The menace on ground is also well proven to be the unhealthy effects of unco-ordinated policies towards regulating rural-urban migration, unemployment, impacts of parental deaths HIV/AIDS and other causes of underdevelopment. Many of these inadequacies are also linked to the mismanagement of the cultural shock received in the process of the assimilation of foreign cultures. Persistent inequality between children is also the implication of the inability of the locales and under privileged to cope within the capitalist nature of economic disparities. The situation has also become extremely pitiable, where previous indigenous sources of cultural and national survival⁴⁸ have been abandoned for modern/imported money making trends.

RECOMMENDATIONS

1. There is a need to meticulously coordinate the underlying expectations of the available enforcement regimes in Nigeria. It is either the country aligns its general laws with universal ideas and continues to alleviate anti progressive cultures or that it refrains from importing redundant rules in the process of resolving her own problem in her own peculiar manner.
2. The government must rededicate its obligations towards achieving UBE, the millennium goals and the other contemporary mandates capable of promoting a child labor free society. There is the more important need for the government to change its pessimistic approach to the content of the Fundamental Objective of States Principle towards children.
3. The government, in addition to overhauling the present police reporting systems, should empower the Nigerian Police Force Children Welfare Department. This also relates to the adequate funding of the requisite paramilitary institutions involved in the repatriation, emancipation, development and co-ordination of used children. The above renovations should also include the adequate funding and co-ordination of applicable Community Welfare Departments and Officers.
4. The National population data system is overdue for re-evaluation and update. The government and officials alike must put on concerted and incorruptible efforts towards ascertaining the population growth rate vis a vis the available economic resources. This also includes the creation of tangible preemptive measures against incidents and menaces of overpopulation. All children given birth to within the Nigerian system should be wanted, but when not, there must be clear cut rescue establishments for such children in need of care and attention.
5. Strategies to suppress child labor must heavily reflect available governmental partnership with indigenous locales. This process should include the reassessment of such incidents not only as crimes or beaches in human rights, but also as the reflection of other persons legitimate cultural belief on the essence of children and basis for procreation. This in course may

likely initiate a “down to up”, “indigenes to government” initiative on children care. Such process of relieving suffering children may require requisite enlightenment and reorientation of parent/guardian/rulers/elders cultural perspectives on children’s economic values.

6. The persistence of the problem, despite the bogus international financial commitments can also be traced to the inability of specified funds to reach the designated quarters at the local levels. International or local Funds for the abolition of Child Labor must be accounted for. Officials and representative of active bodies alike, may also be implored, to humanely focus on issues as against personal aggrandizement.
7. The use of familiar values in the enlightenment of persons may also be preferred to the “individualistic versus communalistic” campaigns on a cultural issue that relates to children. Regimes should realistically but proactively influence available cultures and bye laws. According to the 1999 constitution;

“the state shall preserve and promote the Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives as provided in this chapter.”

**CHILD LABOUR AND EDUCATION IN INDIA:
AN OVERVIEW OF ISSUES AND DIRECTIONS**

Ms. Sarojitha Arokiaraj & Mr. Bestin Samuel*

ABSTRACT

Child is the inspiration and the aspiration of tomorrow. A child is a part of the society in which he lives. Due to his immaturity, he easily motivated by what he sees around him. Hence, a juvenile due to his vulnerability, deserves special care and protection from the state which is considered to be their fundamental rights. This privilege under the Constitution leads to the enactment of successive laws for the protection of child. The recent legislations, Juvenile Justice (Care and Protection of Children) Act, 2015, Child & Adolescent Labour (Prohibition & Regulation) Act, 2016 etc are the best example in this regard

The issue of child labour is closely related with human capital formation of a country as early entry in labour market leads to the refutation of normal childhood and absconding from proper schooling, implying a loss in future scope of better earning. The recent study of ILO shows that the incidence of child labour in the developing countries and also it reveals that India is top among the other developing countries in this regard. The recent study by Montreal-based UNESCO Institute for Statistics and Global Education Monitoring stated that India has 47 million youth of secondary and higher secondary school-going age dropping out of school. According to data put out by the Ministry of Human Resource Development (MHRD), the national dropout rate at the primary level was 4.34 per cent in 2014-15, and it was even higher at the secondary level, at 17.86 per cent. There are many reasons why a child might drop out

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from school, which range from migration of families and child marriage, child labour, to lack of school infrastructure such as drinking water and toilets etc. In this paper the author is trying to figure out the root causes of child labour and how it is connected to school drop outs. The author is trying to substantiate her argument with the help of statistical and empirical data's. Further it would be dealing with the issue of quality education and the role of the state to ensure the same.

INTRODUCTION

It is an informative as well as an appalling exercise to determine the number of children working in India. As per Census 2011, the number of Indian children¹ (between 5-14 years of age) working is 4.35 million.² The number almost doubles – to 8.22 million- if marginal workers are also included.³ The figure touches 35.38 million if we were to include children in the age group of 5-19 years. Significantly, the non-economic contribution of children is often not counted – girls who stay at home to take care of younger siblings and tend to domestic needs.

*International Labour Organisation (ILO) defines the term child labour as:*⁴

“...work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children; interferes with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely, or requiring them to

¹ This number refers to ‘main workers,’ defined by the Census as “a person spending 180 days or more in a year engaged in economic activities.

² Office of the Registrar General & Census Commissioner, India, Census 2011 <www.censusindia.gov.in/2011census/B-series/B-Series-01.html> accessed May 2015.

³ Marginal workers are defined by the Census as persons “spending less than 180 days in a year engaged in economic activities.’

⁴ Paola Perezniето, Andres Montes, Solveig Routier and Lara Langston, “The costs and economic impact of violence against children’ ODI <https://www.childfund.org/uploadedFiles/public_site/mediaODI%20Report%20%20The%20cost%20and%20economic%20impact%20of%20violence%20against%20children.pdf> accessed Jan 2017.

attempt to combine school attendance with excessively long and heavy work.”

Child labour has a huge economic impact on the country; it is estimated that the annual loss of income globally because of lost years of schooling and children’s involvement in hazardous work is equivalent to \$97.6 billion.⁵ However, the impact on children is beyond economic terminology and political considerations.

LOCATING CHILD LABOUR

Locating India’s child labour in an occupation or industry spectrum throws up largely predictable results, not dissimilar to trends among adults. Majority of children are engaged in agricultural labour. According to Census 2011, 40.1% children were engaged as agricultural labourers, 31.5% as cultivators and 23.8% in other areas of work. The other sectors include manufacturing, construction, trade and hotels, community and social services. Increasing number of children are trafficked for labour to work in the embroidery sector, domestic work (especially girls), sweetmeat shops, *beedi* & cigarette making, fireworks, brick kilns, mines, quarries and other unorganised occupations often in extremely exploitative work environments.

Home-based sectors also hold a substantial number of children in work. A report on Bonded Child Labour in India says that historical economic relationships based on the hierarchy of caste also contributes to bonded child labour.⁵ In the current context of globalized economies, bigger industries are broken down to smaller units and exploit the poverty of families by engaging the whole family in labour including the child. Industries at risk of child labour in supply chain include carpet making, mining, clothing and textiles, ship breaking and cotton supply.

Supply chains form a crucial location in the context of child labour. A study notes that 64% of supply chain auditors have encountered child labour during their on-site inspections.⁶ Maplecroft Child Labour Index 2012 which evaluated the extent of child labour in countries, highlights the supply chain of companies are

⁵ Small Change: Bonded Child Labour in India’s Silk Industry, Human Rights Watch, January 2003

⁶ Reuters, ‘Most auditors in Asia find child labour in supply chains, survey finds’ Financial Express (Jakarta, 22 June 2016)

exposed to the risk of child labour. Emerging economies like India are classified as under extreme risk.⁷

The social location of children involved in work also needs to be considered, especially since children from Scheduled Castes/Scheduled Tribes (SC/ST) communities are most likely to be child labourers. Children from STs are twice as likely to work as child labour than the children from the upper castes.⁸ The retention rates of children enrolled in class 1, till they complete class VIII are lower for SC and ST children than the national average. Only half of the ST children enrolled in Class I are able to complete Class VIII.⁹

A DETRIMENTAL IMPACT

While poverty is the most important driver of children being pushed into labour, other reasons ranging from absence of quality education systems, caste based discrimination in schools, displacement due to development projects, distress migration due to failing agriculture and disasters and absence of adequate social protection measures are also prevalent. How exactly does this complex and multi-layered phenomenon impact childhood?

It is very difficult to measure the magnitude of loss that a child faces due to child labour. However, it is estimated that children who forego school in order to work reduce their potential lifetime earnings by an estimated 13-20% and increase their likelihood of being poor in later life by as much as 30%.¹⁰ Thus the vicious cycle of poverty and lack of opportunities keep these families trapped in deplorable living conditions. The effect is not restricted to mere income poverty; it shrinks the human capabilities necessary for human development.

It has been observed that most children who work are enrolled in schools in their neighbourhood but they rarely attend classes. In spite of being in schools,

⁷ Maplecroft, Brazil, China, India, Indonesia and Philippines expose companies to high levels of supply chain risk <https://maplecroft.com/about/news/child_labour_2012.html> accessed 10 April, 2015

⁸ NSSO SC / ST - India Human Development Report 2011, Towards Social Inclusion

⁹ Education statistics at a glance, Government of India, Ministry of Human Resource Development, Bureau of Planning, Monitoring & Statistics, New Delhi, 2014

¹⁰ Ilahi, N., Orazem. P., & Sedlacek, G. (2005) How does working as a child affect wage, income and poverty as an adult? Social Protection Discussion Paper Series, No. 0514 Washington, DC: World Bank.

these children hardly learn, play or have leisure. Working from home means their work hours extend till late in the night and begin early in the morning, affecting their health and development. To be able to meet the target set by middlemen/contractors the whole family engages in strenuous labour so that they will earn their basic minimum for survival.¹¹

Another factor pushing children to work is the climate related disasters, where children are usually the most vulnerable. A study concluded that households' coping mechanism to manage shocks have negatively impacted on children's well-being by increasing their vulnerability to malnutrition, school withdrawal, exploitative forms of child labour, inadequate parental care and nurture and, ultimately, poverty.¹² Education stands tall among most of the other ill-impacts, as one of the most potent as well as life-defining.

EDUCATION AND AN APATHETIC RELATIONSHIP

Education and child labour are inextricably linked. Child labour robs a child of their chance to access quality education by affecting school attendance and learning capacity, resulting in low literacy rates and poor scholastic performance which leads to dropping out from school. Consequently, it perpetuates the cycle of poverty by increasing the risk of unemployment. Considering this, government initiatives had been aiming to both increase enrolment as well as retention - *Sarva Siksha Abhiyan* and the Right of Children to Free and Compulsory Education (RTE) Act, 2009 have in fact enabled more children to access schools in the country than ever. However, Census 2011 says that 29 million child labourers below 19 years were either just literate or below matriculation level. It is evident that access to schools alone has not ensured retention or quality of education.

This assumes significance against the backdrop of the fact that a sound education system is essential to mitigate the ill-effects of child labour. Questions

¹¹ These observations have been noted from World Vision India's Key Informant Interviews conducted in its projects in multiple locations within the country.

¹² Fiona Samuels, Maja Gavrilovic, Caroline Harper and Miguel Niño-Zarazúa, 'Food, finance and fuel: the impacts of the triple F crisis in Nigeria, with a particular focus on women and children' (2011) ODI < <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7359.pdf> > accessed 04 May 2017

rise regarding the quality and capacity of the Indian education system on the whole – is it equipped to prevent/address child labour? A report from the Government of India finds that quality deficiencies in Early Childhood Care and Education (ECCE) services, low enrolment rates in elementary and higher education, higher drop-out among children from disadvantaged groups in elementary and secondary education, deficiencies relating to teacher quality, unsatisfactory level of student learning and teacher attendance as issues that need immediate attention for every child to have quality education.¹³ A study by Michigan University concluded that the most qualified or effective teachers are disproportionately concentrated in the schools and classrooms of wealthier children.¹⁴

Education becomes a mandatory prerequisite for sustained income. While child labour, materialising out of a debilitating need for additional income, might offer a bare minimum for survival, it cannot in the least substitute a skill-based job. India's need for skilled manpower by 2020 is estimated to be 109.73 million. According to the National Sample Survey (NSS) 68th Round¹⁵ (published in September 2015), only 2.4% of persons aged 15 years and above have technical degrees or diplomas or certificates, despite 46.1% of literates having completed levels of secondary education and above. It also notes that about funding, please see if it works. It also more than 40% of people aged 5-29 years were not 'currently attending' any educational institution. Almost all child labourers fall into this category, and lose out on the narrative of economic growth by virtue of losing out on education.

THE STATE AND THE SCHOOL

In the global stage, India has ratified the United Nations Convention on the Rights of the Child (UNCRC) where the Article 32 demands the government to protect children from work that is dangerous or might harm their health or their education.¹⁶

¹³ Education For All, Towards Quality with Equity, India. National University of Educational Planning and Administration, New Delhi. August 2014

¹⁴ Amita Chudgar, Thomas F. Luschei, 'Study of Teachers for Children Marginalized by Social Origin, Economic Status, or Location' (2013) Michigan University <https://www.unicef.org/education/files/Final_Report-Teachers_for_Marginalized_Children.pdf> accessed 5 May 2017

¹⁵ http://mospi.nic.in/Mospi_New/upload/nss_report_no_566_21sep15.pdf

¹⁶ The United Nations Convention on the Rights of the Child, UNICEF (1990) <https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf?_ga=2.88770461.762319299.1494846603-1666708173.1494846603> accessed 15 May 2017

India has also recently decided to ratify ILO's Minimum Age Convention, 1973 (No. 138)¹⁷ and the Worst Forms of Child Labour Convention, 1999 (No. 182).¹⁸ The Sustainable Development Goals also commits to take immediate and effective measures to elimination of the worst forms of child labour and by 2025 end child labour in all its forms.¹⁹ In the context of India's legal and policy framework, the key cogs which heavily influence child labour include, apart from the Constitution, the Child Labour (Prohibition and Regulation) Amendment Act, 2016 prohibiting all forms of child labour for children below 14 years. This was the amendment of the landmark Child Labour (Prohibition and Regulation) Act, 1986. Apart from this, the main legislations are the RTE Act, 2009, guaranteeing education for all children in the 6-14 age group and the Juvenile Justice Care and Protection Act 2000 (amended in 2006 and 2011) protecting children from exploitation.

In spite of all these commitments, Section 5 of the recently amended child labour act remains a cause of concern.²⁰ Primarily, the Act now legitimises the idea that certain levels of child labour are acceptable as long as they don't interfere with formal schooling, despite the fact that all forms of child labour have serious impacts on children. It needs to be noted that A Young Lives longitudinal study found that children spending three or more hours at work at age 12, are highly unlikely to complete secondary education.²¹ The exceptions proposed in the Act feature the apparently 'non-hazardous' family enterprises and audio-visual entertainment industry. Considering the highly decentralized and unregulated nature of the so-called "family enterprises," identifying and responding to violations becomes virtually impossible. The exceptions made to the Act only strengthen the structure of this

¹⁷ C138 – Minimum Age Convention, 1973 (No.138). International Labour Organization. < http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138 > accessed 15 May 2017

¹⁸ C182 – Worst forms of Child Labour Convention, 1999 (No.182). International Labour Organization. <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182> accessed 15 May 2017

¹⁹ Sustainable Development Goals, UNDP <<http://www.undp.org/content/undp/en/home/sustainable-development-goals.html>> accessed 15 May 2017

²⁰ Child Labour (Prohibition and Regulation) Amendment Act, 2016. S 5.

²¹ Dr Renu Singh, 'The Amendment to Child Labour Act is Welcome, But it is hardly enough,' Firstpost (14, May 2015)

vicious circle of the ‘child labour-exists-due-to-socio-economic-conditions’ notion. Significantly, the government release said that “while considering a total prohibition on the employment of child, it would be prudent to keep in mind the country’s social fabric and socio-economic conditions.”²² This would reinforce the caste-based hierarchy of labour and children inheriting occupation from parents.

Higher rates of school dropout and higher percentage of out of school children are prevalent among the most marginalized communities. This would increase the equity gap and leave them without much scope to improve their situation and the caste based hierarchy of labour and children inheriting occupation from parents.

Despite having legislations and policies in place - which evidences a huge commitment to protection of children - it is imperative that it has to be backed by adequate budgetary allocations, a systemic capacity to deliver, political will and attitudinal change. The budgetary provisions for children that have usually seen a very low share around 4% of the total budget, saw it further going down to 3.2% in the Union Budget 2017-18.²³ Of this, 2.34% is for education and a mere 0.05% for child protection. Despite the recommendations for a 6% GDP spending on education from the Kothari commission half century ago, the allocation remains less than 3%.²⁴

EQUITABLE, QUALITY EDUCATION – THE WAY FORWARD

John Dreze and Amartya Sen shed light on one of the most pressing questions – why are so many children out of school in India? According to them, the first myth related to this is that poor parents lack interest in education – a vast majority of Indian parents in fact value education for their children. The second myth, Dreze and Sen say, is that the poor are dependent on child labour. The time and effort required of poor parents to send their children to school is a massive investment,

²² Approval to move official amendments to the Child Labour (Prohibition and Regulation) Amendment Bill, 2012. Press Information Bureau, Government of India Cabinet. May 2015 < <http://pib.nic.in/newsite/PrintRelease.aspx?relid=121636> > accessed 15 May 2017

²³ Expenditure Profile 2017-18, Volume I, Statement 12. Union Budget 2017-18.

²⁴ Education and National Development – Report of the Education Commission. Ministry of Education, New Delhi 1966.

and causes easy discouragement when they face poor access to and quality of education.²⁵ In the context of child labour, this amply highlights the reason for not just the high prevalence of child labour but also the critical value of quality and access to education.

Economies that don't respond to child labour effectively condemn children, families and their communities to a bleak future both socially and economically. Strengthening the policy environment where every child under the age of 18 would have access to free, quality education is most essential to address child labour. As Weiner states, "compulsory primary education is the policy instrument by which the state effectively removes children from the labour force."²⁶

Facilitating a total elimination of child labour up to the age of 18 is crucial. Age-appropriate rehabilitation for children engaged in labour is necessary if they are to be integrated to the mainstream non-working population below 18 years of age. These needs to be supported by an efficient implementation of Right to Education Act along with a higher budgetary allocation of 6% GDP, an access to quality ECCE through Integrated Child Development Scheme (ICDS) to prepare the child for school, providing vocational / skill training for children in the age group 15-18 years and addressing social determinants to ensure an equitable access to education to be by bridging gender and social divides.

That child labour is a direct result of poverty is obvious – equally obvious should be the fact that healthy household incomes and guaranteed social protection schemes are the best antidotes. Social protection schemes like Mahatma Gandhi National Rural Employment Guarantee Scheme (MNREGS), Public Distribution System (PDS) need to be implemented effectively so that these could be a buffer in times of economic shocks, for the most vulnerable populations. A collective social participation is also essential if any of these efforts are to bear fruit. Community participation in planning, implementation and monitoring of services for children, especially, strengthening the functioning of School Management Committees is of

²⁵ John Dreze, Amartya Sen, *India: Development and Participation*, OUP, New Delhi, 2002

²⁶ Myron Weiner, *The Child and the State in India: Child Labour and Educational Policy in Comparative Perspective*, Princeton University Press. 1990.

paramount importance. Fully functional Child Protection Units across the country (at district, village and ward levels) would greatly contribute to micro-level monitoring. In order for children continue to remain in school even during times of crisis or shocks, well-designed social protection services need to be in place.

The most frustrating as well as fearsome aspect about child labour is that it does not achieve what it apparently sets out to achieve - a departure from poverty. While poverty remains the push factor, child labour does not resolve the issue but rather compounds it. At this juncture access to quality education assumes significance as a route out of the circle of poverty. However, quality education must not stop at primary level if young people are to be adequately prepared for the labour market and for decent work within it, rather than being confined to low-skilled, unprotected jobs in the informal economy. It needs to be noted that there is no single solution per se for eradication of child labour. As ILO notes, a combination of economic growth, respect for labour standards, universal education and social protection, together with a better understanding of the needs and rights of children, is essential²⁷. For the country with the highest number of people below 25²⁸, access to quality education holds the biggest stake in this narrative of redemption and is indeed the best way forward.

²⁷ International Labour Organization, 'Child labour and education' <<http://ilo.org/ipec/Action/Education/lang—en/index.htm>> accessed 15 May 2017

²⁸ Ministry of Skill Development and Entrepreneurship, *National Policy for Skill Development and Entrepreneurship 2015* <<http://msde.gov.in/assets/images/Skill%20India/policy%20booklet-%20Final.pdf>> accessed 15 May 2017

CHILDREN CAUGHT IN CONFUSION

Mr. Saema Jamil*

ABSTRACT

This paper would analyse various legislations relating to child rights especially from the perspective of the definition of the term “child” in different laws and the autonomy given to a child to take decisions. It would then give suggestions as to how the laws can give better and more meaningful rights to children. The paper would be divided into three parts. The first part would discuss the Child Labour Act with special reference to the Child Labour (Amendment) Act, 2016 and investigate its effect on the right to education. The second part of the paper would analyse sexual autonomy of married girls between the age of fifteen and eighteen and children (boy and girls) who have attained puberty but have not attained the age of eighteen. The last part would conclude the paper by suggesting certain amendments in the current law.

INTRODUCTION

First and foremost, a caveat: this paper would approach the issue of child rights from a theoretical and normative angle rather than from a practical perspective. It would critically analyse a few selected laws dealing with child rights and suggest changes in them. The author believes that the issue of child rights has received attention and constant attempts are being made to address the challenges that India faces. However, India is struggling and having a tough time in making up its mind as to who qualifies to be a “child” and what are the rights of a child. India is also confused about whether a child has agency or not. The courts have held that a minor cannot enter into a valid contract¹ because a minor does not have the capacity to contract and give a valid consent. However, the recent Child Labour (Regulation and Prohibition) Amendment Act 2016 (hereinafter 2016 Amendment Act) permits a child below the age of fourteen to work in a family enterprise and a

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¹ *Mohiri Bibee v. Dharmodas Ghose* (1903) 30 Cal. 539.

child between the age of fourteen and eighteen to work in non-hazardous occupations or processes. Similarly, a child marriage is still valid under most personal laws (though voidable under Prohibition of Child Marriage Act 2006). Also, sexual intercourse without the consent of the wife in case of a child marriage is not rape if the wife is between the age of fifteen and eighteen². Thus, if a child marriage despite prohibition takes place and is not annulled, the law says, “Too bad. Now face the consequences. Nobody will come to your rescue”. But again a girl of 17 years of age who voluntarily has sexual intercourse with a boy would be given forced, unwanted protection (paternalism) and the boy would be tried for rape.

This paper would analyse these issues in detail and make suggestions as to how the laws can give better and more meaningful rights to children. The paper would be divided into three parts. The first part would discuss the Child Labour (Regulation and Prohibition) Act 1986 (hereinafter 1986 Act with special reference to the 2016 Amendment Act and investigate its effect on the right to education. The second part of the paper would analyse sexual autonomy of married girls between the age of fifteen and eighteen and children (boy and girls) who have attained puberty but have not attained the age of eighteen. The last part would conclude the paper by suggesting certain amendments in the current law.

INTERFACE BETWEEN CHILD LABOUR LAWS AND THE RIGHT TO EDUCATION

There are several Acts that deal with child labour laws. These are: The Factories Act 1881, Children (Pledging of Labour) Act 1933, the Employment of Children Act 1938, the Factories Act 1948, Employment of Children (Amendment) Act 1951, the Motor Transport Workers Act 1961, the Apprentices Act 1961, the Beedi and Cigar Workers (Conditions of Employment) Act 1966, Employment of Children (Amendment) Act 1978 and the 1986 Act. The 1986 Act is the most comprehensive of these Acts. It banned the employment of children below the age of fourteen years in specified occupations and processes, laid down procedures to

² Editorial Note: The Supreme Court of India in *Independent Thought v. Union of India* on October 11, 2017 (Writ Petition (Civil) No. 382 of 2013) held that exception 2 to Section 375 of Indian Penal Code is unconstitutional which decriminalised sex with a minor wife aged between 15 and 18 years with or without her consent.

decide modifications to the schedule of banned occupations or processes and regulated the conditions of work of children in employment where they are not prohibited from working. The Act only prohibited child labour in selected formal sectors and thus did not ban child labour in its entirety.³ The argument in favour of this was that the social and economic realities of India must be kept in mind while enacting laws.

The Constitution of India contains sufficient provisions to protect child rights but all of these rights have not been elevated to the position of fundamental rights and are hence, not enforceable.⁴ India has also ratified the Convention on the Rights of Children and has been taking steps to ensure compliance of domestic laws with it. The National Plan of Action for Children 2005 (hereinafter 2005 Plan) inter alia stated that the objective was to completely abolish child labour and to progressively eliminate all forms of economic exploitation of children.⁵ The introduction of the 2005 Plan declared that “*the State shall work to progressively extend these guarantees and protections to all children upto the age of 18 years.*”⁶ The recent National Plan of Action for Children 2016 (2016 Plan) again focuses inter alia on child education and abolition of child labour. Some of the key areas pointed out are:

- a. Improve retention and reduce drop-out rates at elementary level,
- b. Provide education/vocational training to all children in the 15+ age group,
- c. Develop and provide facilities and opportunities for children’s play and recreation
- d. Eliminate all forms of child labour across the full span of childhood⁶

Sarva Shiksha Abhiyan was launched in 2000-2001 to ensure universalisation of elementary education by 2010. The 86th Constitutional Amendment 2002 introduced Article 21A in the Indian Constitution which states

³ Past tense is being used to refer to the Act because the Act has been amended in 2016 and some of these features have been altered.

⁴ The Constitution of India 1950, Arts. 15 (3), 21, 23, 24, 39 (e) & (f), 41, 45, and 51 (k)

⁵ Department of Women and Child Development, ‘National Plan of Action for Children’, (2005) 3< Available at <http://www.childlineindia.org.in/pdf/NationalPlanAction-2005.pdf>>

⁶ ibid 2

that the State shall provide free and compulsory education to all children between the age of six to fourteen years in such manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education Act, 2009 was subsequently enacted to give effect to the right created by Article 21A. It puts an obligation on the State to provide free and compulsory education to children and to ensure enrolment and attendance of students. India is a signatory to various international conventions on child rights and has been bringing in amendments to comply with them.⁷

Thus, it is apparent that the policy of the State is to gradually implement changes and ultimately abolish child labour and improve educational standards quantitatively as well as qualitatively. However, the State has not only failed to attain this objective (which is fine because bringing change is a process and requires constant effort) but also perhaps abandoned the goal in its entirety (this is highly problematic). The recent 2016 Amendment Act seems to have relinquished all goals to abolish child labour and to make literate India into a reality.

The 2016 Amendment Act allows children who have not attained the age of fourteen years in two situations:

- a. If they are helping their family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations
- b. If they work as an artist in an audio-visual entertainment industry subject to prescribed conditions and safety measures.

However, the provision clarifies that the activities must not hamper their education at school.⁹

⁷ Department of Women and Child Development, 'National Plan of Action for Children, 2016 Putting the Last Child First', 18-19 <Available at http://wcd.nic.in/sites/default/files/National%20Plan%20of%20Action_0.pdf >

⁸ India became a State Party to United Nations Declaration on the Rights of the Child, 1959 and adopted the National Policy on Children, 1974 to conform to it. It also ratified the Convention on the Rights of the Child in 1992 and is a signatory to the World Declaration on the Survival, Protection and Development of Children.

⁹ Child Labour (Prohibition and Regulation) Amendment Act, 2016, s 5

The Government has defended this 2016 Amendment Act on the ground that it absolutely prohibits child labour for children below the age of fourteen instead of banning child labour only in 18 occupations and 65 processes and totally prohibits adolescents (children between the ages of 14 and 18) from working in hazardous industries. The exception of allowing children to work in family enterprises has been introduced keeping in mind the socio-economic backwardness in the society.¹⁰

There has been a public backlash against the 2016 Amendment Act as it is seen as a retrograde step.¹¹ The author also believes that the 2016 Amendment Act would have negative repercussions. Most importantly, work after school or during vacations is going to eat into the time of the students and they would not be able to utilise their intellectual capabilities to the fullest. It would result either in drop outs or in the child getting involved in the family business as soon as he attains the age of fourteen years. This would mean that the effort of the State to get the child enrolled in a school and to provide education till fourteen would go down the drain. Also, it would lead to difficulty in determining whether the child is working in a family enterprise or in an enterprise run by a faceless owner employing a single family.

On the positive side, the punishment for contravening the provisions of the 2016 Amendment Act has been increased to a maximum imprisonment of two years and fine upto fifty thousand rupees.

There is no doubt that the new 2016 Amendment Act is in compliance with International Labour Organisation Conventions 138 and 182¹² but the question that needs to be addressed is whether mere compliance is enough or do we need to go beyond and develop. It needs to be realised that allowing children below fourteen years of age to work in family enterprises is invariably going to affect their education and development. On the one hand, there is emphasis on education and

¹⁰ Dattatreya, 'Amendments to Act will totally prohibit child labour' *The Hindu* (24 July 2016)

¹¹ 'Child labour by Other Means' *The Hindu* (2 August 2016) ; Shalini Nair, 'Lok Sabha Passes Child Labour Bill Despite Opposition' *The Indian Express* (27 July 2016)

¹² Convention 138 mandates compulsory schooling till the age of 15, but permits countries with inadequate education facilities to reduce it to 14, while Convention 182 prohibits employment of children "in the worst forms of labour"

an attempt to focus on education even after fourteen years and on the other hand, children are being permitted to work in family enterprises.

Poverty and child labour are interrelated and the latter is a result of the former. The socio-economic conditions of India are not going to change overnight and therefore allowing child labour till the time poverty is prevalent is equivalent to saying that child labour would never be abolished. The State instead of allowing exceptions to the prohibition of child labour should make education available till the age of eighteen years and focus on vocational training.

THE QUESTION OF SEXUAL AGENCY OF CHILDREN

Child marriage is a bitter reality in India. It is prohibited and punishable under Hindu Law as well as secular law (i.e) Prohibition of Child Marriage Act 2006 (hereinafter 2006 Act). A child marriage is valid under the former¹³ and voidable under the latter¹⁴. The 2006 Act is a stringent law which not only provides for punishment of any person who performs, conducts, directs or abets any child marriage but also of any person who promotes or permits or participates in the solemnisation of the child marriage.¹⁵ It also provides for punishment of a male who is above the age of eighteen and who contracts a marriage with a minor girl.¹⁶

Thus, the policy of the State is to deter and prevent child marriages. Yet, non consensual sexual intercourse with a wife who is above the age of fifteen and below the age of eighteen is not rape within the meaning of Section 376 of the Indian Penal Code (hereinafter IPC)¹⁷. Child marriage is seen as a social evil and yet rape of a minor girl by her husband is not considered to be rape. The argument that child marriage is a reality in India and the law should reflect prevalent social

¹³ *Pinninti Venkataramana v. State* AIR 1977 AP 43

¹⁴ Under certain circumstances, child marriages are void under that Prohibition of Child Marriage Act, 2006. These circumstances are: when minor is taken or enticed out of the keeping of the lawful guardian or is compelled by force, or by any deceitful means induced to go from any place or is sold for the purpose of marriage and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes or when any child marriage solemnised in contravention of an injunction order. Prohibition of Child Marriage Act 2006, ss. 12 and 14

¹⁵ Prohibition of Child Marriage Act, 2006, ss 10 and 11

¹⁶ Prohibition of Child Marriage Act, 2006, s 9

¹⁷ *Independent Thought v. Union of India* (note 2)

conditions is not convincing. Social realities need to be changed and law has to be used as an instrument for change. If child marriage has been made punishable then why should the rape of a minor wife not be punishable? The matters are further complicated by the enactment of Protection of Children from Sexual Offences Act 2012 (hereinafter POCSO Act 2012) which has fixed the age of consent at eighteen years. Rape of a wife between the age of fifteen and eighteen is not an exception under POCSO Act 2012 and hence the husband would be punishable under POCSO Act 2012 but not under the IPC.

The sexual agency and autonomy of a minor girl above fifteen who is married is not respected (though the marriage can be annulled) and it is considered acceptable if the girl has sexual intercourse. But absolutely no sexual autonomy is given to a girl who has not attained the age of eighteen and is unmarried.¹⁸ Consequently, even if an adolescent girl has consensual intercourse with a male, the male would be punished for rape (under Juvenile Justice Care and Protection Act if he is a minor and according to the normal procedure if he is an adult). This has the effect of placing “*paedophiles and young lovers in the same boat*”¹⁹ and is unfair to the girl as well as the boy. POCSO Act 2012 is gender neutral and an adult female indulging in sexual relations with a seventeen year old boy would also be liable to be punished under the Act. Neither IPC nor POCSO Act 2012 have an age proximity clause²⁰ to remedy such situations. An age proximity clause is a clause that legalises the sexual intercourse with a minor girl between a particular age group by a man who is not more than a given number of years older. The clause is to safeguard against criminalising consensual sexual intercourse between young lovers.

SUGGESTIONS AND CONCLUSION

The steps taken by the Government to ensure child rights particularly with respect to prohibition of child labour and education are commendable. Some of the initiatives that cannot be ignored are: The National Child Labour Policy 1987 The National Authority for the Elimination of Child Labour 1995, INDUS Child Labour Project

¹⁸ The age of consent has been increased from 16 to 18 years by the Criminal Law (Amendment) Act, 2013.

¹⁹ Mrinal Satish, ‘Criminalising Romance’, *Indian Express*, (12 February 2013)

²⁰ These are also referred to as “Romeo and Juliet law” or “close-in-age exemptions”.

constituted by the Ministry of Labour and Employment and the Department of Education, Government of India and the United States Department of Labour (USDOL), Sarva Shiksha Abhiyan 2000-2001, 86th Constitutional Amendment, National Policy of Action for Children 2005, establishment of the National Commission for the Protection of Child Rights in 2005, and National Policy of Action for Children 2016. However, as discussed in the paper, the 2016 Amendment Act is neither a step towards eradication of child labour nor towards encouraging education. Also, too many Acts dealing with child labour lead to ambiguity and confusion (especially when there is no uniform definition of child). The paper has also discussed the dichotomy in laws when it comes to the existence of sexual agency of children.

Having analysed the problems and issues with respect to child rights, the paper would attempt to offer suggestions to overcome these obstacles and contradictions.

Firstly, there must be a uniform definition of the word “*child*”. Presently, different Acts give different definitions of “child”.²¹ This leads to confusion and also discrimination. It is high time that all Acts define child to mean a person who has not completed the age of eighteen.²²

Secondly, several Acts dealing with child labour are in existence which leads to discrepancies, contradictions, ambiguities and confusion. Thus, a single comprehensive Act should be enacted that prohibits child labour in its entirety. Hefty fines should be imposed on the violators and the amount received should be utilised to provide free and quality education to children.

Thirdly, education should be made free and compulsory till the age of eighteen. Mere elementary education does not ensure that the child utilises the

²¹ For example, The Child Labour (Prohibition and Regulation) Act, 1986 defines ‘child’ as a person who has not completed his fourteenth year; Mines Act, 1952 penalises the owner, agent or manager of the mine for employment of a person below eighteenth year of age; The Factories Act, 1948 defines ‘child’ as a person who has not completed his fifteenth year of age; The Plantations Labour Act, 1951 defines ‘child’ as a person who has not completed his fourteenth year of age; the Juvenile Justice (Amendment) Act, 2015 allows for a child between the age of 16 to 18 to be tried as an adult if he has committed a heinous offence.

²² K. Latchoumy, ‘Uniform Definition of ‘Child’- The Need of the Hour’ (2008) 1, Labour Law Journal. 37

education received before the age of fourteen. Theoretical and practical aspects of education need to be covered so that the employability of the person increases after attaining the age of eighteen years.

Lastly, marital rape of wife who is under the age of eighteen must be made punishable.²³ This would also remove the existing discrepancy between the IPC and POCSO Act 2012. It is also recommended that an “age-proximity” clause be introduced. An age-proximity clause would statutorily require a lesser sentence or an acquittal if the defendant is slightly older or of the same age as the victim. This would ensure that cases where the young persons have voluntarily engaged in sexual intercourse are not penalised.²⁴

The aim of the paper was to highlight the contradiction in the laws relating to child rights. One set of laws give children the autonomy to work in family enterprises till the age of fourteen and to work in non-hazardous industries till the age of eighteen and another set of laws do not recognise the agency of a child to engage in sexual activities consensually during adolescence. The laws need to align themselves with changing social realities. In a nutshell, this paper suggests that child labour should be banned, education made compulsory till the age of eighteen, marital rape of a wife below the age of eighteen be criminalised and an age proximity clause be introduced to prevent penalising of persons who have attained puberty but are below the age of eighteen and who indulge in sexual activities.

²³ The author is in favour of criminalising marital rape but since this paper is on child rights specifically that aspect is not being discussed. *Independent Thought v. Union of India* (n 2)

²⁴ Mrinal Satish, ‘Discretion, Discrimination and the Rule of Law’ (2016) Cambridge University Press 77

CHILD LABOUR: BETTER CONTROL AND MORE EFFICIENCY

Mr. Saurabh Kumar*

“Child labour and poverty are inevitably bound together, and if you continue to use the labour of children as the treatment for the social disease of poverty, you will have both poverty and child labour to the end of time.”

- Grace Abbott

ABSTRACT

Although children are regarded as God's disciple who come to this world bringing messages of God. Actually, only during this century, "Children have been discovered." Children were not regarded as separate entities with distinct interests and attitudes and were taken for granted. Children were not recognized on their own rights and were looked upon as properties that could be handled in any way. They were taken as merely the members of the family, not of the society as a whole. They had to sustain their lives according to the status and conditions of their parents. A child cannot be equated to labour. The child is about childhood and innocence.

In this paper, the author argues about several mechanisms, commission, and Acts for the eradication of child labour in India. Consequently, the author starts with a discussion on recognition of the child as per their respective age of working, working hours, period of working and the changes brought by the new amendment Act of 2016. Subsequently, the paper makes an argument for the grant of stronger laws and grant of compensation to the children. The author according to several lacunae from the side of Government tries to find out the root causes of child labour and tries to suggest some measures to be taken to prohibit child labour from the India.

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INTRODUCTION

Children are considered as the nation's supremely important national asset and its living malleable potential. The future of any nation is largely determined on how its children grow and develop. The issues relating to rights of children, care and welfare have been constantly engaging the attention of the world. However, the community has developed its sensitivity towards children's issues only during the last two decades which has brought on the national agenda issues like child abuse, child marriage, and child labour.¹

The term "child labour" is defined as work that deprives children of their childhood, their potential, and their dignity, and that is harmful to physical and mental development and refers to work that²:

- a. Is mentally, physically, socially or morally dangerous and harmful to children;
- b. Interferes with their schooling by;
- c. Depriving them of the opportunity to attend school;
- d. Obliging them to leave school prematurely; or
- e. Requiring them to attempt to combine school attendance with excessively long and heavy work.

In the most extreme forms, child labour involves children being enslaved, separated from their families, exposed to serious hazards and illnesses and/or left to fend for themselves on the streets of large cities – often at a very early age.³ Whether or not particular forms of "work" can be called "child labour" depends on the child's age, the type and hours of work performed, the conditions under which it is performed and the objectives pursued by individual countries which vary from country to country, as well as among sectors within countries.⁴

The children are being beaten for breakages, for not being quick enough and being starved, are commonly mentioned penalties imposed by the employers.

¹ Pawan Sharma "Child Labour: A Socio-legal Study" (1994) ILI vol 36 No. 2, 211.

² International Labour Organization <<http://ilo.org/ipec/facts/lang—en/index.htm>> accessed 02 April 2017.

³ *ibid*

⁴ *id*

Such instances are reported by many researchers and activists who have painstakingly interviewed these child workers and also rescued them.⁵ E P Thompson has noted that “*We forget how long abuses can continue ‘unknown’ until they are articulated: how people can look at the misery and not notice it, until misery itself rebels.*”⁶

In India, the scenario was not much different with the country’s Independence nearly 69 years ago, many changes have been brought about from one Five Year Plan to another. The problems of children are multifaceted and multi-layered. They cover a wide range of fields from nutrition and education to development and protection so that they may become better human beings and healthy citizens in later years.⁷ The child has to be prepared for responsible life in a free society in the spirit of understanding, peace, and tolerance.⁸

THE SPECIFIC OBJECTIVE OF CHILD LABOUR WOULD BE

- a. To promote compulsory primary education as the fundamental strategy for elimination and prevention of child labour by enrolling and retaining the students in schools;
- b. To advocate for revision and reinforcement of legislation for prohibiting child labour particularly in hazardous occupation and industries; and
- c. To assist in central and state governments to develop and implement programs and action plans for the release and rehabilitation of children from labour in various industries and occupations.

HISTORY

It was perhaps Eglantyne Jebb of England who first started an international movement for providing the child with a status. It was only in the fifties of the 20th century that the United Nations (hereinafter UN) decided to draft once again a charter of the rights of the child and after certain modifications, it was adopted

⁵ *ibid* 174.

⁶ E. P. Thompson, *The Making of the English Working Class*, (Penguin Books, Harmondsworth) 377.

⁷ Sunil C. Roy, ‘Child Labour: Eradicating the Evil’, (January 1996) *Yojana* 59.

⁸ *ibid*

unanimously at a plenary session of the UN General Assembly on November 20, 1959. According to the UN Declaration, a child has to be given 10 basic rights as follows⁹:

1. The child shall be brought up in a spirit of understanding friendship, peace, and universal brotherhood and shall not be exposed to racial, religious or other forms of discriminations.
2. The child shall be protected against all forms of neglect, cruelty, exploitation and traffic and shall not be permitted to be employed before appropriate age.
3. The child shall, in all circumstances, be among the first to receive protection and relief.
4. The child is entitled to free and compulsory elementary education and such an education in his best interest and for which parents are to be responsible.
5. The child is entitled to grow up in an atmosphere of affection and moral and material security, with public authorities taking care of children without families or other support.
6. The physically, mentally or socially handicapped children shall be entitled to special treatment, education and proper care.
7. The child shall have rights to adequate nutrition, housing, recreation and medical services, including special health care and protection and pre-natal and post-natal care for the mother.
8. The child shall be entitled to a name and nationality.
9. The child shall enjoy special protection to be able to develop in every way in conditions of freedom and dignity.

⁹ Declaration of the Rights of the Child (1959), <<http://www.cirp.org/library/ethics/UN-declaration/>> accessed 06 April 2017.

10. All children irrespective of their race, color, sex or creed of their parents shall be entitled to these rights.

DEFINITION OF A CHILD

The legal conception of a child varies depending upon the purpose. For instance, according to Criminal Law (Section 82, Indian Penal Code (hereinafter IPC)), 1860 “*nothing is an offence which is done by a child under the seven years of age*” and “*Nothing is an offence which is done by child above 7 years of age and under 12 (Section 83).*” As per Juvenile Law (The Juvenile Justice Act, 1986) “Juvenile is a boy who has not attained the age of 16 and a girl who has not attained the age of 18.” According to Family Law (Child Marriage Restraint Act, 1929), “child” means a person who, if male, has not completed 21 and if a female not completed 18 years. Labour Laws and Factory Laws (Apprentices Act, 1951) says that a person shall not be qualified to be engaged as an apprentice unless he is less than 15 years. But the Mines Act, 1952 states that “adult” is a person who has completed his eighteenth year. The handicapped and deprived children are viewed as a burden to the family and also to the society. Under different situations, the child is regarded as a commodity, as an insurance, as a source of the labour force or a social burden.

Despite these Acts, the Constitution of India also provided several Articles for the protection of children from getting involved in child labour like: Article 21(A), 24, 45 and 51(A)(K). In the positive sense, child work leads to a positive contribution to the development of the child. It is, therefore, necessary to delineate the work which resulted into labour and where the defined level of labour crosses the limits. Child labour usually includes all the work performed by children: children who work full-time throughout the year as well as children who work part-time or only during school vacations; children who are attending school as well as children who are not attending school; children who do hazardous work as well as children who do non-hazardous work; children who are wage earners as well as children who are unpaid family workers. In the opinion of a study group, such a child “*is inevitably*

drawn into supplementing family labour” and the consideration for taking such a position is laudable when¹⁰:

“The definition of child labour which equates all children not going to school with child labourers emanates from the rights – based approach towards development which considers being – out of school as a denial of child’s rights to education.”

A useful definition is the one introduced by Stein and Davies and referred occasionally: *“any work by children that interferes with their full physical development, the opportunities for a desirable minimum of education and of their needed recreation”*.¹¹ Myron Weiner¹² who, can be criticized on many counts, has developed the idea that much upper-class Indians wish to demarcate themselves from those who are destined to work. At the core of the Indian social order, he argued, are notions concerning the respective role of upper and lower social strata, the former getting education and good white-collar jobs, and the latter being prepared for a long life of labour, service and servitude¹³:

“A distinction is made between children as ‘hands’ and children as ‘minds’; that is, between the child who must be taught to ‘work’ and the child who must be taught to ‘learn’, the acquisition of manual skills as distinctive from cognitive skills.”

AS PER CENSUS 2011

The 1998 national census of India estimated the total number of child labour, aged between 5-15, to be at 12.6 million out of total child population of 253 million in 5-14 age group. A 2009-2010 nation-wide survey found child labour prevalence had reduced to 4.98 million children (or less than 2% of children in 5-14 age group). The 2011 national census of India found the total number of child labour, aged between 5-14 years, to be at 4.35 million and the total child population to be

¹⁰ National Commission on Labour „Study Group : Report of the Study Group on Women and Child Labour, (2001, New Delhi) 169.

¹¹ Stein, E and J Davis, (eds) : *Labour Problem in America*. (Farrar and Richer, New York, 1940).

¹² Weiner, Myron : *The Child and the State in India*, (Oxford University Press, Delhi, 1991).

¹³ *ibid*, 188.

259.64 million in that age group. The problem of child labour is not unique to India as about 217 million children work worldwide either part time or full time. In 2001, an estimated 1% of all child workers, or about 120,000 children in India were in a hazardous job. The participation rate of female children in the total female workforce is higher at 6.29% as compared to that of the male children within the male workforce, which stands relatively lower at 4.32%. This is seen both in urban as well as rural areas of the various states of India, depicting a gender bias against the girls. It is evident from the Census that higher proportions of girls among the female workforce are working as child labour as compared to the boys. UNICEF estimates that India with its one of the largest population has the highest number of labourers in the world who are less than 14 years of age.

CHANGES BROUGHT BY THE CHILD LABOUR (PROHIBITION AND REGULATION) AMENDMENT ACT, 2016

India has passed a number of laws on child labour since independence. Thirty years on, with the constitutional guarantee of a fundamental right to elementary education (Article 21A) and the Right of Children to Free and Compulsory Education Act 2009 (hereinafter 2009 Act), amendments to the legislations on child labour were overdue; but there is nothing much to discuss about the new Child Labour (Prohibition and Regulation) Amendment Act 2016 (hereinafter 2016 Amendment Act).¹⁴ In fact, law on child labour in India has not made any fundamental paradigmatic shift with respect to its basic aims and objectives of “prohibition” and “regulation” of child labour.¹⁵ Despite certain modifications, this Act seems to be progressive. The salient features of the 2016 Amendment Act, are:

- a) This Act defines “child” as a person who has not completed his fourteenth year of age or such age as may be specified in the 2009 Act, whichever is more.¹⁶

¹⁴ <<http://www.right-to-education.org/keywords/child-labour.htm>> accessed on 09 July 2017.

¹⁵ *ibid.*

¹⁶ The Child Labour (Prohibition and Regulation) Amendment Act, 2016, s 4.

- b) This Act has given recognition to new category of “adolescents” as those who has completed his fourteenth year of age but has not completed his eighteenth year¹⁷ while the term “adolescents” were not covered under the Child Labour (Prohibition and Regulation) Act 1986 (hereinafter 1986 Act).
- c) This Act includes mother, father brother, sister and father’s sister and brother and mother’s sister and brother in the same criteria of “family”¹⁸ while the previous 1986 Act defines “family” as an individual.
- d) This Act has provided an exception to the children working with family and family enterprise, artist in an audio-visual entertainment industry, or any such other entertainment or sports activities provided that it does not affect school education of the children doing so.
- e) This Act has also provided the children to work in circuses before or after school hours by prescribing the working conditions and safety measures while earlier employment of children was prohibited but they are allowed to work with their families.
- f) This Act has provided that no adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the schedule.¹⁹
- g) This Act has provided the provision of penalty for employers, parents and guardians i.e., imprisonment (ranging from 6 months to 2 years), fine of Rs 20,000 to Rs 50,000 and the first offence of the child’s parents has been pardoned²⁰ while earlier, penalty for parents was not specified.
- h) This Act has made the offences committed by the employers as cognizable offence²¹ while earlier it was not specified as cognizable offence.

¹⁷ *ibid.*

¹⁸ The Child Labour (Prohibition and Regulation) Amendment Act, 2016, s 5.

¹⁹ The Child Labour (Prohibition and Regulation) Amendment Act, 2016, s 3A

²⁰ The Child Labour (Prohibition and Regulation) Amendment Act, 2016, s 18

²¹ The Child Labour (Prohibition and Regulation) Amendment Act, 2016, s 19

- i) This Act has provided for the Constitution of Technical Advisory Committee in place of Child Labour Technical Advisory Committee.²²

INITIATIVE AGAINST CHILD LABOUR

The Gurupadswamy Committee was formed in 1979, by the Government of India to find out about child labour and means to tackle it. The 1986 Act was enacted based on the recommendations of the Gurupadswamy Committee in 1986. In 1987, a National Policy on Child Labour was formulated to focus on rehabilitation of children working in hazardous occupations. Since 1988, the Ministry of Labour and Employment had executed around 100 industries specific National Child Labour Projects to rehabilitate the child workers. Several Non-Governmental Organizations like Bachpan Bachao Andolan, Child Fund, CARE India, Child Rights and You (CRY), RIDE India, Talaash Association, Global March against child labour, Child Line etc. have been working to eradicate child labour in India. Founded in 1995, Pratham is India's largest non-governmental organization with the mission of every child in school. It has aimed to reduce child labour and offer schooling to children irrespective of their gender, religion and social background. Child Labour has also been a subject of Public Interest Litigations in the Indian Courts of justice.²³ Despite these efforts and mechanisms, child labour remains a major challenge for India.

COMMISSION FOR PROTECTION OF CHILD RIGHTS ACT 2005

In order to give effect to the policies adopted by the Government for the protection of the rights of the child the commission for the Protection of Child Rights Act, 2005 was enacted on January 20, 2006.

The Commission shall consist of a Chairperson who shall be a person of eminence and has done outstanding work for promoting the welfare of children and six members, out of which at least two shall be women, to be appointed by the Central Government from amongst persons of eminence, ability, integrity, standing and experience in education, child health, care, welfare, or child development, juvenile care or care of neglected or marginalized children or children with disabilities;

²² The Child Labour (Prohibition and Regulation) Amendment Act, 2016, s 21.

²³ Raghav Pandey, *Public Interest Litigation and Child Labour: An Analysis of the MC Mehta Case*, (ILI Law review, Summer Issue 2016).

elimination of child labour or children in distress, child psychology or sociology and laws relating to children. The commission shall perform a number of functions as provided under Section 13 of the Act.

RIGHT TO EDUCATION ACT 2009

The 2009 Act which came into force on 01 April 2010, guarantees education to children between 6 and 14 years.²⁴ This Act results from the 86th Constitutional Amendment Act 2002, which enshrines education as a fundamental right justiciable under the Constitution of India.

Emphasizing the need to provide a choice in occupation, beyond the caste ordained ones, B.R. Ambedkar had observed²⁵:

'Social and individual efficiency requires us to develop the capacity of an individual to the point of competency to choose and to make his own career. This principle is violated in the Caste System in so far as it involves an attempt to appoint tasks to individuals in advance.'

He also argues for the need to choose one's occupation in different times in order to make a livelihood. He says²⁶:

'Industry is never static. It undergoes rapid and abrupt changes. With such changes, an individual must be free to change his occupation. Without such freedom, it would be impossible for him to gain his livelihood.'

It is evident from the above statements of B.R. Ambedkar that children must be provided with the fullest opportunity to choose their own work, rather than occupy themselves with their parents' work during non-school hours and vacations. The amount of work imposed on children under the guise of family labour by employers, particularly in agriculture sector has emerged as the largest category employing child labour after analyzing the census data.

²⁴ Section 3(1) of Right of Children to Free and Compulsory Education Act, 2009, states that 'every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education'.

²⁵ Ambedkar, B R (2011): *Annihilation of Caste*, Pradeep Daikwad, Nagpur: Samata Prakashan, Reprint (Based on the third edition, 1944).

²⁶ *ibid.*

Many dramatic case studies have appeared to illustrate the heinous conditions under which children have to work. The report on Women and Child Labour²⁷ of the study group commissioned by the Labour Commission marshals a number of such cases to illustrate many things:

- a. Children are working unacceptably long hours a day;
- b. Children are working in narrow trenches in mines where adults cannot crawl;
- c. Children in the carpet industry and elsewhere have been bonded;
- d. Children are severely punished and tortured if they attempt to escape;
- e. Also in agriculture, many children work as bonded agricultural labour, and at the age of ten a child is found to replace his father as bonded worker in Sivakasi,²⁸ the case for example, ‘the child in the womb is pledged to the factory’, as one report has indicated;
- f. Home-based industries with child labourers working under abominable conditions are quite typical in a number of industries;
- g. Children working in unhygienic and crowded conditions suffer from many occupation-related diseases; they become old and unproductive citizens at a time when most other people are just beginning to participate in a full life.

It is practically impossible to implement the 2009 Act due to the amendments in the new law. Its clauses put such a burden on poor low-caste families that instead of promoting education, the 2009 Act actually increases the potential for dropouts and parents scared of the huge fines that they have to pay for employing their children, are likely to lie about school attendance and may unwillingly comply with contractors in employing them.²⁹

²⁷ National Commission on Labour, *Study Group : Report of the Study Group on Women and Child Labour*, (New Delhi, 2001)

²⁸ *M.C. Mehta v. State of Tamil Nadu and Others*, AIR 1997 SC 699.

²⁹ Ruchira Gupta, ‘A law that allows child labour’ *The Hindu* (10 August 2016) <www.thehindu.com/opinion/column/A-law-that-allows-child-labour/article14560563.ece> accessed on 10 July 2016

However, on careful reading, the new 2016 Amendment Act, suffers from many problems. One, it has slashed the list of hazardous occupations for children from 83 to include just mining, explosives, and occupations mentioned in the Factory Act and it means that the work in chemical mixing units, cotton farms, battery recycling units, and brick kilns, among others, have been dropped.³⁰ According to Section 4 of the 2016 Amendment Act, hazardous work of the children can be removed by the government authorities at their own discretion and not by the Parliament. Two, Section 3(5) allows child labour in “family or family enterprises” or allows the child to be “an artist in an audio-visual entertainment industry” without stating about the hours of work necessary for the children by simply stating that children may work after school hours or during vacations.³¹

CHILD TRAFFICKING

The worst form of traffic in a human being has been slavery, but the Constitution of India does not specifically mention it since it is no longer a social menace anywhere in India. Although slavery hardly poses a problem, another manifestation of the same evil is still prevalent all over the world, which is traffic in women and children for immoral purposes. Parliament passed the Suppression of Immoral Traffic in Women and Girls Act 1956 for inflicting punishment on those who are engaged in the business of trafficking in women and girls for immoral purposes. Traffic in human beings means disposal by way of sale or hire or otherwise of human beings the same way as a man does with the goods and chattels. It obviously leads to slavery and other forms of traffic in human beings. Section 370 of the IPC 1860, lays down that whoever imports, exports, removes, buys, sells or disposes of any person as a slave or accepts, receives or detains against his will any person as a slave shall be punished with imprisonment.³²

The Supreme Court in *Bonded Labour Case*³³ averred to a broad sweep of Article 21 and observed:

³⁰ *ibid.*

³¹ *ibid.*

³² *Dubar v. Union of India*, AIR 1952 Cal 496.

³³ *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

“Article 21 assures the right to live with human dignity, free from exploitation. This right derives its life-breath from the Directive Principles of State Policy, particularly clauses (e) and (b) of Article 39 and Articles 41 and 42. The State is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to weaker sections of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. Both the Central and State Government are therefore bound to ensure observance of various social welfare and labour laws enacted by Parliament for the purpose of security to the workmen a life of basic human dignity with concrete reality and content in compliance with the Directive Principle of State Policy.”

This case of *Vishal Jeet v. Union of India*,³⁴ brought to the notice of the Supreme Court the miseries of women and children being exploited for sex which is becoming an organized industry. The *devadasi* and *jogin* tradition are utilized to give legitimacy to the sex industry. It has been argued that Article 23 and clauses (e) and (g) of Article 39 mandate on the Indian State to prevent child-abuse and traffic in human beings – use of women and children for immoral purposes is nothing but traffic in human beings. The Supreme Court issued the following directions to all State Governments and Union Territories³⁵:

- a. Law enforcing authorities to take speedy action under the law in eradicating child prostitution;
- b. To set up a separate advisory committee consisting of a secretary, social welfare department, secretary of the law department, sociologists, criminologists, members of women’s organizations, members of the Indian Council of Child Welfare and members of social organizations. This committee would suggest remedies for the eradication of child prostitution and *devadasi* and *jogin* tradition; and

³⁴ (1990) 3 SCC 318.

³⁵ *ibid.*

- c. To take steps in providing adequate rehabilitative homes manned by well-qualified and trained social workers, psychiatrists and doctors. Besides the union government was directed to set up committees to evolve welfare programs to be implemented on the national level for the care, protection, and rehabilitation of young, fallen victims and make suggestions for the amendment of the existing law.

PREVENTING CHILDREN FROM GETTING INVOLVED IN WORK

The Constitution of India in Article 24 and in consonance with clauses (e) and (f) of Article 39 and Article 45 state that it is the duty of the State to provide, free and compulsory education for all children upto the age of 14 years and prohibits children from going to work in factories or mine or in any other hazardous employment. The provisions of this article can be brought into operation by legislation.

In *Asiad Workers case*,³⁶ it was found that children below the age of fourteen were employed in the construction work. On behalf of the Union of India, it was asserted that since the Children Act 1938 was not applicable to construction work, there is no breach of the statute. As Bhagwati J observed that it was unfortunate that the Children Act was not applicable to construction work which is clearly a hazardous occupation, despite the fact that India was a party to Convention 29 of the International Labour Organization which prohibits child labour. The judge added, however, there was a clear breach of Article 24 of the Constitution which lays down that no child below the age of 14 shall be employed in any hazardous work.

Rajiv Gandhi spoke about new education policy in New Delhi on 26 June 1986, “Education is the backbone of progress. It is one of the most significant activities of a nation, base of the increment of productivity, controls explosion of population, is the custodian of the health and hygiene of everybody of the society and a light of liberty.”

³⁶ *People's Union of Democratic Right v. Union of India*, AIR 1982 SC 1473.

He also told that education must be in consonance with the recognized values of the nation such as secularism, democracy, and socialism which may uphold its sovereignty and maintain the integrity of Indian nationality.³⁷

The child being a precious national resource is to be nurtured and attended with tenderness and care and not with cruelty. In *F.C. Mullin v. Administrator, Union Territory of Delhi*,³⁸ the Supreme Court held that every limb or faculty through which life is enjoyed is protected by Article 12 of the Constitution of India. This would include the faculties of thinking and feeling. Freedom of life and liberty guaranteed by Article 21 is not only violated when physical punishment scars the body, but that freedom is also violated when it scars the mind of the child and robs him of his dignity. Any act of violence which traumatizes terrorizes a child, or adversely affects his faculties falls foul of Article 21 of the Constitution.³⁹

In *Birupakshya Das v. Kunj Bihari*,⁴⁰ it was held that the Child Marriage Restraint Act does not affect the validity of the marriage even though it may be in contravention of the provisions of the Act. In spite of the marriage being valid, the legislature disapproves all such marriages punishable under the law. To incur expenses for performing a ceremony which is a criminal act cannot be taken to be a legal necessity for which a *Karta* of the family is empowered under the Hindu Law to affect alienation.

REGULATION OF WORKING HOURS AND PERIOD OF WORK

We have seen that earlier there was no restriction placed on the hour of work of children. The Factories Act 1881, for the first time made provision for the regulation of working hours. Under the Factories Act 1881, the hours of work of children were limited to nine a day with the rest interval of one hour. In 1891, the Act was amended and the working hours of children were further reduced from nine to seven hours a day. Children were prohibited from working in the night. The working

³⁷ Speech of Rajiv Gandhi on the enforcement of New Education Policy, New Delhi on 26th June, 1986.

³⁸ AIR 1981 SC 746, 753, referred in *Parents Forum for Meaningful Education v. Union of India*, AIR 2001 Del 212, 218.

³⁹ *Parents Forum for Meaningful Education v. Union of India*, AIR 2001 Del 212, 217.

⁴⁰ AIR 1961 Orissa 104: 26 Cut LT 431.

hours of children were again reduced in the 1911 Act from seven to six a day in textile mills with a rest interval of half an hour. In the Factory Act 1934, hours of work in factories were reduced to five a day for children.

The Factories Act prescribed four and half hours of work per day for children. the Mines Act also prescribed the same working hours of an adolescent who does not possess a certificate from a certifying surgeon. The Shops and Commercial Establishment Acts of various states also provide for different daily hours of work for young persons. The Plantation Labour Act 1951, does not prescribe any barrier on daily hours of work. Also, the Factories Act 1948, the Mines Act, 1952 and the Railway Servants (Hours of Employment) Rules do not place any limit on weekly hours of work of children. The Plantation Labour Act 1951, however, provides for forty hours a week for adolescent and children.

The Child Labour (Prohibition and Regulation) Act 1986 permit the child to work in occupations and processes not listed in the Schedule to the Act. The Act stipulates hours and period of work. Section 7(1) lays down that no child will be permitted to work in any establishment in excess of such number of hours as may be prescribed. It is further stated that the period of work on each day should be so fixed that no period will exceed, for more than three hours before child has had an interval for rest at least one hour, and the period of work of a child should be so arranged that inclusive of his interval for rest, the total hours of work should not spread over for more than six hours including the time spent in waiting for work on any day.

CHILD LABOUR – COMPENSATION TO BE PAID BY OFFENDING EMPLOYER

India has accepted the Convention on the Rights of the Child, which was concluded by the U.N. General Assembly on 20th November, 1989 and this Convention affirmed that the children's rights require special protection and it aims, not only to provide such protection but also to ensure continuous improvement in the situation of children all over the world, as well as their development and education in conditions of peace and security. Thus, the Convention not only protects the child's civil and political right but also extends the protection to child's economic, social, cultural and humanitarian rights.

The International Labour Organisation has been playing an important role in the process of gradual elimination of child labour and to protect the child from industrial exploitation.

For tackling the problem of child labour, the Supreme Court issued a direction under the 1986 Act and directed the State Government regarding the fulfillment of legislative intent behind the enactment. The Court directed that the offending employer must be asked to pay compensation for every child employed in contravention of the provision of the Act a sum of Rs. 20,000 and the inspectors appointed under the Act must secure the compliance of the Act and to see that for each child appointed in contravention of the provision 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 fund so generated shall form a *corpus* whose income shall be used only for the concerned child.⁴¹

In India, the Employment of Children Act of 1938 was the first statutory enactment dealing with child labour. The Act had prohibited employment of children below 14 years of age in the railways and other means of transport. However, the Schedule appended to the Act did not specify many other industries which are unquestionably hazardous. In connection with the employment of children in match factories of Sivakashi a petition under Article 32 of the Constitution was filed by way of Public Interest Litigation, *M.C. Mehta v. State of Tamil Nadu*,⁴² and the Supreme Court directed that the employment in connection with manufacturing process need not be given to the children but they can be employed in packing process which has to be given to the children but they can be employed in packing process which has to be done away from the place of manufacture. The Supreme Court referred to Article 39(f) of the Constitution and also directed the State Government to provide educational facilities to the children and also to create a welfare fund. The children so employed are to be provided with basic diet during working period. The Supreme Court also directed for payment of at least 60% of

⁴¹ *M.C. Mehta v. State of Tamil Nadu*, AIR 1997 SC 699.

⁴² AIR 1991 SC 417.

the prescribed minimum wage for an adult employee to be paid to the child labour and also suggested for compulsory insurance scheme for the children employed in the match factories.

Also, the Supreme Court in *Labourers working on Salal Hydro-Project v. State of J. & K.*,⁴³ held that the construction work being hazardous, employment of children under the age of 14 years could not be permitted because of the constitutional prohibition contained in Article 24. Considering the socio-economic problem the Constitution under Article 24 has put a partial restriction on child labour.

Similarly, in *People's Union of Democratic Rights v. Union of India*,⁴⁴ the Supreme Court observed that under Article 24 of the Constitution it is mandatory that no one could employ a child below the age of 14 years in a hazardous employment like construction work. The Supreme Court directed the Governments and other agencies associated with the construction of the said project to ensure that the contractor to whom construction work was entrusted to strictly follow the constitutional mandate.

Even after 10 years of the enactment of the 1986 Act, this kind of activities had been carried out by the peoples of the State. This clearly depicts the failure of the State to provide welfare facilities and opportunities to those children who are engaged in these types of factories.

CAUSES OF FAILURE OF LEGISLATIVE MEASURES TO ELIMINATE CHILD LABOUR

The causes of failure of legislative measures to eliminate child labour have been identified to be⁴⁵:

- a. Poverty;
- b. Low wages of the adult;
- c. Unemployment;

⁴³ AIR 1984 SC 177.

⁴⁴ AIR 1984 SC 1099.

⁴⁵ *M.C. Mehta v. State of Tamil Nadu and Others*, AIR 1997 SC 699, 708-709.

- d. Absence of schemes for family allowance;
- e. Migration to urban areas;
- f. Large families;
- g. Children being cheaply available;
- h. Non-existence of provisions for compulsory education;
- i. Illiteracy and ignorance of parents;
- j. Discrimination due to gender bias;
- k. Unsuccessful population control programme;
- l. Inadequate enforcement of labour laws; and
- m. Discrimination due to the caste system.

Section 104 (1) of the Tamil Nadu Factories Act provides that an act of employing persons under age would be an offence under this Act and if such person is, in opinion of the Court, *prima facie* under such age, the burden shall be on the accused to prove that such person is not under such age.

SUGGESTIONS

The suggestions made by the above submission can be presented as follows:

- a. The international agencies and Government of India needs to give proper recognition to the women and children in accordance with the Guiding Principles and frame national policy and bill for the future prospects.
- b. Provide proper access to health care, nutrition and household Food Security, livelihood strategies and ensure participation of women in decision-making and planning programs.
- c. Introduce gender analysis and important component of all the Rehabilitation and Resettlement Bill which will illuminate the various ways in which every person accorded with power and resources through their identities, access, and entitlements.

- d. Hypocrisy towards the children is the biggest sin. We have to be very plain and clear with them. Children mean simplicity. We have to look for the simplest possible analysis of the problems of the problems and simplest possible solutions while knowing the biggest challenges.
- e. Investment in education vis-à-vis elimination of child labour is the best investment we can make to mitigate the global economic crisis. Education helps in mitigating economic crisis and poverty.
- f. Poverty is not only the sole reason of child labour but apart from this there is six more reason such as: (a) Ethical reasons, (b) Economic reasons, (c) Education reasons, (d) Ecological reasons, (e) Ecological reason, and (f) Enforcement.
- g. A distinction should be made between⁴⁶:
 - (a) Child-friendly forms of socialization, including light work,
 - (b) Child labour at specific ages and up to specific degrees of strain but not interfering with school,
 - (c) Non-enrolment in school, even if not laboring,
 - (d) Child labour interfering with school, and
 - (e) The worst and intolerable forms of child exploitation, even amounting to child-bondedness.

CONCLUSION

We are all familiar that children are the actual assets and they are the future of our nation, future of the world. But they are neglected, their needs are not fulfilled: their thoughts and feelings are not appreciated. We impose our ideas on them to the extent that they are ignored, ill-treated and tortured. They are taken as mini-men and women, mini not only in body but also in mind. We do not realize that the child has a separate identity with different needs and conditions. They live in a world different from ours and they will live in a world beyond our imagination. When we say or talk about child labour, then in one stroke we have cancelled the childhood.

⁴⁶ Economic and Political Weekly, *Child Labour in India: Disentangling Essence and Solutions*, dated December 28, 2002.

We have to understand how people perceive us and how we perceive other people. Human beings are goal oriented people. If one finishes his one goal, he tries to finishes the other goal.

According to Hindu Philosopher, a child is considered to be a form of god. Apart from this, present day picture of a poor Indian child is very dark. The poor child is the most neglected, most exploited and most abused. A female child is the most deprived and underprivileged of the whole class of such children. Child labour hampers their normal and natural physical, mental, spiritual, intellectual, emotional, moral and social development.

The child wants books and toys, no more tools in tiny hands. The number of child labour has decreased since the last 10 years. The parents assume that this is part of life and it is nothing new to them. Children have to work because they are poor. It must have to deal with the sense of emergency. Every number has a face, has a name and every child matters. We have seen that wherever the laws are in place properly and enforced, wherever quality free education is delivered; wherever the civil societies, NGOs have been vigilant and active and innovative; the places where the employers or businesses have been able to follow the corporate social accountability and their responsibility; where the consumers have been very strong; where the social protection programmes have been in place; where the rehabilitation programmes for children were working. There has been a tremendous reduction in child labour.

We know education is a key to human development and prosperity of the individual. Rigorous efforts are made to take out children from child labour. Elimination of child labour or eradication of child labour and education for all are two sides of the same coin. We cannot achieve one without another. We have the poverty of will and poverty of moral values towards our children and responsibility towards our children otherwise, we are not poor. Everything will work when we fed morally responsible for our children, the decline in human values, decline in our virtue, and decline in our morality, which is directly affecting the non-implementation of most of these promises to our children. It is very necessary that the parents are secured. The best guarantee of security a child gets from his /her parents or from families. Nobody loves a child more than their parents.

CHILD LABOUR – THE VIOLATION OF A CHILD’S RIGHT

Ms. Dimple Garg*

A poem by Mamie G . Cole:

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,
I have come into your world,
About which I know nothing,
Why I came I know not;
How I came I know not;
I am curious;
I am interested.
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,
Those things that make for happiness.
Train me, I beg you,
That I may be a blessing to the world.¹

A poem by IFMR:

A child’s cry
Papa, papa I want to go to school,
Papa said Shut up your mouth you little fool,
Now go to work with your lunch and tool,
Before the sun melts the dawns cool.²

*(3rd Year), National Law Institute University, Bhopal, M.P.

¹ Mamie G. Cole, ‘Poem : I Am The Child’ <<http://www.turnbacktogo.com/poem-i-am-the-child/#ixzz4cPquDlbV>> accessed 28 March 2017

² IFME, <http://tcst.weebly.com/some-poems-on-child-labour.html> accessed 27 march 2017

ABSTRACT

Children are considered as pious versions of god who are seen as a symbol of innocence, happiness, joy and hope. Apart from this, children are seen as the future of a nation, they are seen as hope to strengthen the economy of a country as well as to provide for human resources in the future. Therefore, it is the moral duty of everyone to ensure that childhood of a child is protected and not marred.

This is a dream or part of an expectation or imagination and not the reality. The reality is that the childhood of a child is marred due to activities like child labour prevailing in our society. In India, the 2011 national census provides the picture of child labour prevailing in India, which is very disturbing. The census estimated the total number of child labourers, aged 5–14, to be at 4.35 million, and the total child population to be 259.64 million in that age group.³ The picture is very disturbing and is far away from dream.

A number of steps have been taken to deal with the situation both at national and international level. At international level, the problem of child has been connected with the human rights and is been seen as a violation of human rights of a child. At national level in India, a number of provisions are provided in the constitution for curbing child labour. A number of special laws have been enacted for the same. Moreover, a number of commissions, projects and policies have been formulated to deal with the matter. Even NGO's have done a commendable job for the same.

The article is an attempt to deal with the human rights perspective of child labour, the child laws or initiatives in the country, the obstacles and the suggestions for the same.

³ http://www.censusindia.gov.in/2011census/population_enumeration.aspx accessed on 25 March 2017

INTRODUCTION

‘Child labour’ is a combination of 2 words ‘child and labour’. The meaning of the word child is ‘a young human being below the age of puberty or below the legal age of majority’ and the meaning of labour is ‘work, especially physical work’. Combining the two, child labour means physical work that is done by a young child below the age of puberty or below the legal age of majority. Now, the meaning of the term ‘child labour’ if read together is ‘the employment of children in an industry or business, especially when illegal or considered exploitative’. There is a difference between the two definitions, the general one and the specific one. The difference is regarding the type of work. The general definition talks about any type of work or physical work whereas the specific definition talks about the work that is illegal or considered as exploitative. Another major point that these definitions include is the age, which age is to be considered- puberty or legal age. This depends or varies from country to country. It may or may not be the same at international and domestic levels.

Child labour is a major issue. Due to this, the overall development of a child is affected. It deprives them of their childhood. Due to this, they are not able to do all the activities that are expected to be done by a child, most important among it is attending regular schools. Due to child labour, they are engaged in labour works, due to which they are unable to attend regular schools which leads to lack of proper physical, social and emotional growth. Children are engaged in labour majorly because of 2 reasons - for increasing the income of the family or for reducing the production cost as child labour is available at lesser or cheaper rates. Also, it is even done in the form of bonded child labour which refers to the ‘phenomenon of children working in conditions of servitude in order to pay off a debt, the debt that binds them to their employer is incurred not by the children themselves, but by their relatives or guardians-usually by a parent’.

In modern times, there has been a shift of approach from the traditional one. The traditional approach was welfare approach, meaning thereby that traditionally, welfare based interventions were made like providing a minimum age for work⁴. This approach has been replaced by the right based approach which

⁴ Aastha Suman, ‘Child Labour in India – A Human Rights Perspective’ (Legal India, 23 Feb. 2012) <http://www.legalindia.com/child-labour-in-india-a-human-rights-perspective/> accessed 25 March 2017

involves putting up of internationally recognized rights of children to the centre and utilizing UDHR, ICCPR and ICESCR as a supportive framework.⁵ The shift basically means that the condition of child labour must be seen a right of a child to be free rather than an option for which regulating standards are to be devised.

In my research article, I will discuss the issue in human rights context as well as in Indian context. First of all, I will discuss it with the help human rights approach and then discuss it in the Indian context. Then, I will discuss about the various the initiatives taken by different organizations and NGO's to deal with the same and finally end my article with the suggestions for the same.

Following are the research questions for the article:

1. Discuss the human rights approach of the issue of child labour?
2. Discuss the same in Indian context with the help of national legislations, approach of the judiciary and its international commitments?
3. What are the various initiatives taken by various NGO's for the betterment of the children or for curbing the issue of child labour in India?
4. What are the lacunas due to which the child labour is not coming under control and the suggestions for the same?

CHILD LABOUR AND HUMAN RIGHTS

Child labour is an issue that is considered as an issue even at international level. It is banned almost in all the countries. Even, it is considered as against the human rights of a child. UDHR (Universal Declaration of Human Rights) is the base of the concept of human rights, which was latter divided into ICCPR (International Covenant On Civil and Political Rights) and ICESCR (International Covenant On Economic, Social And Cultural Rights).

First of all, we will see whether child labour violate the rights given under UDHR? UDHR do not talk about child labour explicitly, only an inference can be drawn from various rights given under it that child labour violates human rights of a child. UDHR do not talk about any age bar, it use the words like 'no one', 'everyone',

⁵ ibid

‘all’ that means it is applicable to all including a child as well. Article 4⁶ of the UDHR talks about 3 types of activities that are against the human rights of an individual and those activities are slavery, servitude and slave trade. The meaning of the word servitude is ‘the state of being a slave or completely subject to someone more powerful’. The term servitude has been interpreted to include child labour as well.⁷ Therefore, child labour should also be considered as an activity that violates an individual’s human rights under Article 4 of the UDHR. Also, Article 23(1)⁸ use the words ‘just and favourable conditions of work’ and the conditions that are provided to these children are not at all just favourable for them, hence violating their human right under this art. as well. Article 26(1)⁹ talks about the right to education to all. A child who is a labourer do not have access to education. He is unable to attend regular schools, hence violating his right to education under Art. 26. These are the 3 rights under UDHR from which an inference can be drawn that child labour violates the human rights of a child.

In 1966 the International Covenant on economic, social and cultural rights (ICESCR) and International Covenant on civil and political rights (ICCPR) took significant preliminary steps towards modifying human rights according to age, by defining childhood as a state requiring special protection, with rights distinct to those of adults.¹⁰ And hence for the first time in ICCPR and ICESCR, the word ‘child’ was used and special rights were accorded to them.

First of all ICCPR, under Article 24(1)¹¹, children have a right to all the measures for their protection because of their status of a child. The Art. carves this

⁶ Universal Declaration of Human Rights, Art. 4 - No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

⁷ Aastha Suman, ‘Child Labour in India – A Human Rights Perspective’ (Legal India, 23 Feb. 2012) <http://www.legalindia.com/child-labour-in-india-a-human-rights-perspective/> accessed 25 March 2017

⁸ Universal Declaration of Human Rights Art.23(1) - Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

⁹ Universal Declaration of Human Rights Art.26(1) - Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

¹⁰ Aastha Suman, ‘Child Labour in India – A Human Rights Perspective’ (Legal India, 23 Feb. 2012) <http://www.legalindia.com/child-labour-in-india-a-human-rights-perspective/> accessed 26 March 2017

¹¹ International Covenant on Civil and Political Rights Art.24(1) - Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the

responsibility of providing for measures on family, society and state. The point they fail in providing so, the children are exposed to activities like child labour that completely destroys their childhood. From this, it can be concluded that even under ICCPR, there is no use of term ‘child labour’ but only a similar inference can be drawn to the same as done under UDHR.

Now, under ICESCR, under Article 10(3)¹², it was for the first time that the term ‘child labour’ was used. It provides certain special protections to the children that are as follows:

1. Special measures should be taken for protection and assistance of children.
2. Children should be protected from social and economic exploitation
3. Their employment should be punishable by law if it is harmful for their health, morals, dangerous to their life or likely to hamper their normal development.
4. State should set age limits below which employment of child labour is prohibited and punishable by law.

ICESCR used term ‘child labour’ for the first time and made it punishable by law as it violates the fundamental rights of a child. But, it left the duty to set age limits on the state only below which the employment of child would be considered as child labour.

UN Convention on Rights of the Child (hereinafter CRC) 1989, is the first UN convention that deals specifically only with the children. CRC is also significant because it enshrines the principles upon which adoption is based, viewed from the child’s perspective.¹³ It is the lengthiest UN convention. It not only deals with the

right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

¹² International Covenant on Economic, Social and Cultural Rights Art10(3) - Special measures of protection and assistance should be taken on behalf of all children and young person without any discrimination for reasons of parentage or other conditions. Children and young person should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

¹³ ‘Children’s Rights – International Law’, (Library of Congress) <https://www.loc.gov/law/help/child-rights/international-law.php> accessed on 26 March 2017

rights of children during peace time but provides special protection to them during war time.

‘CRC is primarily concerned with four aspects of children’s rights (“the four ‘P’s”):

- a. participation by children in decisions affecting them
- b. protection of children against discrimination and all forms of neglect and exploitation
- c. prevention of harm to them
- d. provision of assistance to children for their basic needs’¹⁴

Article 1¹⁵ of CRC, provides for who is a child for the purposes of the convention. It basically provides for the age under which an individual would be considered as a child. It provides that any human being who is below the age of 18 years is a child unless by virtue of the law applicable, majority is attained earlier. Art. 32 talks directly about child labour as violative of human rights of a child, whereas there are other articles as well from which an inference can be drawn for the same.

Following are the articles in the convention that directly or indirectly talks about the rights of children with respect to child labour:

- a. Article 32¹⁶ directly talks about the right of children against child labour and the duty of the state parties to take measures to ensure implementation of this article. Clause 1 talks about the right of children whereas clause 2

¹⁴ ibid

¹⁵ UN Convention on Rights of Child Art.1- For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

¹⁶ UN Convention on Rights of Child Art.32(1) - States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;

enlists the duty of the state. It provides protection to the child from economic exploitation and from any type of work that can be harmful for the child. Harmful in the sense that if it hinders the child's right to education, harmful to child's health or against his physical, mental, spiritual, moral or social development. The article carves a duty on the state parties to take measures for the implementation of this article, but it also provides for 3 mandatory duties of the state that are setting minimum employment age, regulate conditions and hours of work and providing for appropriate penalties to ensure proper implementation of the article.

- b. There are other articles in the convention as well from which an inference can be drawn that child labour violates a child's human rights. Article 22, 24 and 27 talks about the rights of the child whereas Article 6, 11, 19, 20, 35, 36, 39 talks about the duty of the state to take measures for the best interests of the child so that they cannot be exploited in anyway.

Now, we will discuss about the various initiatives taken by ILO (International Labour Organization) for curbing the child labour. But, before that what is ILO? 'ILO is the only tripartite U.N. agency, since 1919 that brings together governments, employers, workers and representatives of 187 member States , to set labour standards, develop policies and devise programmes promoting decent work for all women and men.'¹⁷ It deals with the issues relating to forced labour, minimum age law, HIV/AIDS, migrant workers, domestic workers etc.¹⁸ The organization also deals with the issue of child labour around the globe.

There are many conventions of the ILO that deal with the issue but following are the 2 most relevant conventions that deal with the issue of child labour:

- a. Minimum Age Convention, 1973 (No. 138):

'The convention sets the general minimum age for admission to employment or work at 15 years (13 for light work) and the minimum age for hazardous

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

¹⁷ International Labour Organization, <http://ilo.org/global/about-the-ilo/lang—en/index.htm> accessed 27 March 2017

¹⁸ https://en.wikipedia.org/wiki/International_Labour_Organization#Issues accessed 27 March 2017

work at 18 (16 under certain strict conditions). It provides for the possibility of initially setting the general minimum age at 14 (12 for light work) where the economy and educational facilities are insufficiently developed.’¹⁹

b. Worst forms of Child Labour Convention, 1999 (No. 182):

‘The convention define “child” as a person under 18 years of age. It requires ratifying states to eliminate the worst forms of child labour, including all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; child prostitution and pornography; using children for illicit activities, in particular for the production and trafficking of drugs; and work which is likely to harm the health, safety or morals of children. The convention requires ratifying states to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. It also requires states to ensure access to free basic education and, wherever possible and appropriate, vocational training for children removed from the worst forms of child labour.’²⁰

From the above discussion it can be concluded that child labour is also considered as an issue under human rights or it can also be held to be violative of human rights of a child. It can further also be concluded that there is benefit of seeing child labour as an issue under the eyes of human rights as it gives the victim with the authority to hold violators liable as human rights generate legal grounds for political activity and expression²¹, and if they fail to do so, they can be held liable for the same.

¹⁹ ‘International Labour Organization’ <http://ilo.org/global/standards/subjects-covered-by-international-labour-standards/child-labour/lang—en/index.htm> accessed 26 march 2017

²⁰ *ibid*

²¹ Aastha Suman, ‘Child Labour in India – A Human Rights Perspective’ (Legal India, 23 Feb. 2012) <http://www.legalindia.com/child-labour-in-india-a-human-rights-perspective/> accessed 28 March

CHILD LABOUR IN INDIAN CONTEXT

In India, child labour is a very critical issue. India has the largest number of working children in the world.²² The 2011, national census of India found the total number of child labourers, aged 5–14, to be at 4.35 million, and the total child population to be 259.64 million in that age group.²³ This report shows the exigency of the situation. Apart from this, there is also a term called ‘potential child labourers’ and ‘nowhere children’ that are been explained with the help of 2001 Census. ‘According to the 2001 Census, 79.7 million children were neither at school nor at work and came under the category of “nowhere children”. All children in the age-group of 6-14 years, who should actually be in school but are out of school, are deemed to be actual or potential child labourers.’²⁴

All these reports show the exigency of the position of child labour in India. Indian government have taken a lot of initiatives to control the situation. The various initiatives can be understood under the following heads:

- a. National legislations and judicial pronouncements
- b. International commitments
- c. National child labour policy
- d. Government organizations
- e. Various NGO’s

There are private parties as well that play an important role in curbing the child labour situation in India by the name of NGO’s.

NATIONAL LEGISLATIONS AND JUDICIAL PRONOUNCEMENTS

This head can be further classified under 3 sub heads:

- a. Constitution of India
- b. Other legislations
- c. Judicial pronouncements

²² National Human Rights Commission, *Human Rights and Child Labour* accessed 28 March 2017 <http://nhrc.nic.in/Documents/Publications/KYR%20Child%20Labour%20English.pdf>

²³ http://www.censusindia.gov.in/2011census/population_enumeration.aspx accessed 28 March 2017

²⁴ National Human Rights Commission, *Human Rights and Child Labour* <http://nhrc.nic.in/Documents/Publications/KYR%20Child%20Labour%20English.pdf> accessed 27 March 2017

a. Constitution of India

The framers of the Constitution of India realized that children are the most vulnerable section of society and thus are at the maximum risk of being economically exploited.²⁵ In order to safeguard children against economic exploitation the Constitution makes the provisions in the form of fundamental rights, directive principles of state policy and fundamental duties.

Fundamental rights:

Article²⁶ of the Indian constitution provides for free and compulsory education for the children between the age group of six to fourteen years. It is one of the most important safeguard against child labour. Education has been made free and compulsory for the children so that they can attend regular schools and can grow completely in all respects.

Article 23(1)²⁷ prohibits traffic in children, begging and similar forms of forced labour and also made punishable in accordance with the law.

Article 24²⁸ prohibits the employment of children under the age of 14 years in any factory or mine or in any hazardous activity.

Directive Principles Of State Policy:

Article 39 (e & f)²⁹ The Constitution of India 1950

Article 39 - Certain principles of policy to be followed by the State:
The State shall, in particular, direct its policy towards securing:

²⁵ ibid

²⁶ The Constitution of India 1950 Art.21A - 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.

²⁷ The Constitution of India 1950 Art.23 - Prohibition of traffic in human beings and forced labour
(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law

²⁸ The Constitution of India 1950 Art.24 - Prohibition of employment of children in factories, etc 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

²⁹ The Constitution of India 1950 Art.39 - Certain principles of policy to be followed by the State:
The State shall, in particular, direct its policy towards securing:

(e) that the health and strength of workers, men and women, and 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;

of the constitution puts an obligation on the state to formulate policies to secure certain objects that are mentioned in its clauses. Clause (e) & (f) both provides for policies so that children are not abused and can be protected against exploitation and moral and material exploitation.

Article 45³⁰ of the constitution provide that the state shall endeavour to provide free and compulsory education to the children below the age of 14 years so that the probability of their exposure to child labour can be reduced.

Fundamental Duties:

Article 51A(k)³¹ carves a duty on the parent or guardian to provide opportunities of education to their child between the age of 6 to 14 years.

These are the safeguards provided under the Indian Constitution against the practice of child labour existing in India.

b. Other legislations

Based on the Constitutional provisions, a number of legislations have been enacted from time to time in India.³² Also, the present regime of laws in India relating to child labour is 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.³³ There are a lot of legislations that have been enacted

(f) 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

³⁰ The Constitution of India 1950 Art.45 - Provision for free and compulsory education for children: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

³¹ The Constitution of India 1950 Art.51A - Fundamental duties : It shall be the duty of every citizen of India

(k) 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 six and fourteen years.

³² National Human Rights Commission, *Human Rights and Child Labour* <http://nhrc.nic.in/Documents/Publications/KYR%20Child%20Labour%20English.pdf> accessed 28 March 2017

³³ Aastha Suman, 'Child Labour in India – A Human Rights Perspective' (Legal India, 23 Feb. 2012) <http://www.legalindia.com/child-labour-in-india-a-human-rights-perspective/> accessed 29 March 2017

with the aim of elimination of child labour from hazardous activities and regulation of conditions in non hazardous activities, most prominent and important among all is ‘Child Labour (regulation and prohibition) Act, 1986’. ‘Following is the list of various legislations:

Factories Act, 1948

- a. Plantation Labour Act, 1951
- b. Merchant Shipping Act, 1951
- c. Mines Act, 1952
- d. Motor Transport Workers Act, 1961
- e. Apprenticeship Act, 1961
- f. Beedi and Cigar Workers (Conditions of Employment) Act, 1966

The Bonded Labour System (Abolition) Act, 1976

- g. Child Labour (Prohibition and Regulation) Act, 1986³⁴

Child Labour (regulation and prohibition) Act, 1986:

The title of the act includes both the words ‘regulation and prohibition’, this means that the act does not prohibit child labour absolutely but prohibits to certain extent only and where it do not prohibits, it regulate the conditions there. The act basically has divided the activities into 2 parts- one where the employment of children below the age of 14 years is absolutely banned and the other where such employment is not banned but regulated only.

The Act also provide for enhanced penalties for the violation of the act. Section 14(1)³⁵ of the Act provides for punishment upto 1 year (minimum being three months) or with fine up to Rs. 20,000/- (minimum being ten

³⁴ National Human Rights Commission, *Human Rights and Child Labour* <<http://nhrc.nic.in/Documents/Publications/KYR%20Child%20Labour%20English.pdf>> accessed 28 March 2017

³⁵ Child Labour (regulation and prohibition) Act, 1986 Sec.14 – Penalties — (1) Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with 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.

thousand) or with both, to one who employs or permits any child to work in contravention of provisions in Section 3³⁶. Clause (2) of sec. 14³⁷ provides for punishment for the repeat offenders or offenders who have been convicted under sec. 3, latter on commits a similar offence again and that is imprisonment for a minimum term of 6 months that can extend to a maximum time period of 2 years.

An amendment was brought in this act in the year 2016 that further regulates the child labour practices in India. After the amendment, even the name of the act was changed. It was renamed as Child and Adolescent Labour (prohibition and regulation) Act, 1986. The amendment act basically divided the children in 2 categories:

- Below the age of 14 years
- Between 4 to 18 years and named them as adolescents

The act absolutely prohibits the employment of children below the age of 14 years in any type of labour. They are only allowed to do family work that too during their vacations or after school. The act allowed the employment of adolescents in any type of labour except the hazardous one and named it as adolescent labour.

Another major change was with regard to the number of activities that were declared as hazardous. The number was reduced from 83 to 3 only.

³⁶ Child Labour (regulation and prohibition) Act, 1986 Sec.3 - Prohibition of employment of children in certain occupations and processes.— No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on.

Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government. Also available at National Human Rights Commission, *Human Rights and Child Labour* <http://nhrc.nic.in/Documents/Publications/KYR%20Child%20Labour%20English.pdf> accessed 29 March 2017

³⁷ Child Labour (regulation and prohibition) Act, 1986 Sec. 14(2) Whoever, having been convicted of an offence under section 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

The Act provides for an increased penalty and imprisonment which shall not be less than 6 months and may extend upto 2 years and fine which may vary between Rs.20, 000 to Rs. 50,000.³⁸

3. Judicial pronouncements:

For the first time, in the case of *M.C. Mehta v State of Tamil Nadu*³⁹, the SC of India has laid various directions or basically summarized the various directions laid down in earlier cases for the effective implementation of the laws that bars child labour and had made Ministry of Labour the monitoring authority for the implementation of the directions. ‘Following are the 11 directions issued by the SC:

- a. Survey for identification of working children.
- b. Withdrawal of children working in hazardous industries and ensuring their education in appropriate institutions.
- c. The offending employer must be asked to pay compensation of Rs. 20,000/- for every child employed in contravention of the provisions of the Act. The liability of the employer would not cease even if he would disengage the child employed.
- d. The sum so collected should be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund. The Fund shall form a corpus whose income shall be used only for the education, 18 health, safety and welfare of the concerned child. To generate greater income, the fund can be deposited in a high yielding scheme of any nationalized bank or other public body.
- e. As the aforesaid income would not be enough to dissuade the parent/guardian to seek employment of the child, the State owes a duty to discharge its obligation. It should provide a job to an adult member of the family, whose child was employed in a hazardous industry.

³⁸ Rudra Shrivastava, ‘Child Labour (Prohibition and Regulation) Amendment Act, 2016 of India’ (Singhania and Partners LLP, Solicitors and Advocates, 15 June 2017) <<http://www.mondaq.com/india/x/602434/employee+rights+labour+relations/Child+Labour+Prohibition+And+Regulation+Amendment+Act+2016+Of+India>> accessed on 11 July 2017

³⁹ *MC Mehta v State of Tamil Nadu* AIR 1997 SC 699

- f. In cases where it would not be possible to provide a job, the Government would, as its contribution grant, deposit in the Child Labour Rehabilitation-cum-Welfare Fund a sum of Rs. 5000/- for each child employed in a factory or mine or in any other hazardous employment.
- g. In either of the cases whether a job is provided to an adult member of the child's family in lieu of the child or not, the child shall not be required to work.
- h. In cases where alternative employment could not be made available as aforesaid, the parent/guardian of the concerned child would be paid the income, which would be earned on the corpus of Rs. 25,000/- for each child, every month. The employment given or payment made would cease to be operative if the child would not be sent by the parent/guardian for education.
- i. The National Child Labour Policy announced by the Government of India has already identified some industries for priority action.
- j. A district could be the unit of collection so that the executive head of the district keeps a watchful eye on the work of the Inspectors.
- k. With regard to non-hazardous jobs, the Inspectors shall have to see that the working hours of the children are not more than four to six hours a day and that they receive education at least for two hours each day. It would also be seen that the entire cost of education is borne by the employer.⁴⁰

INTERNATIONAL COMMITMENTS

India has ratified six ILO conventions relating to child labour but have not ratified the core ILO conventions on minimum age for employment (convention 138) and the worst forms of child labour, (convention 182) recognised as the core conventions

⁴⁰ <https://indiankanoon.org/doc/212829/>; National Human Rights Commission, *Human Rights and Child Labour* <http://nhrc.nic.in/Documents/Publications/KYR%20Child%20Labour%20English.pdf> accessed 30 March 2017

at the international labour conference which makes it mandatory for the international community to follow certain standards in their crusade against child labour.⁴¹ Even after being a non signatory, India has taken commendable steps in the form of national laws to curb the situation of child labour in India. Examples of this can be the passing of Right of Children to Free and Compulsory Education, 2009 and the passing of ‘Juvenile Justice (care and protection) Act, 2006. In the presence of such scenario, India not being a signatory to the core conventions does not make much of difference in the fight against child labour.

‘India became a party to the Convention on the Rights of the Child, on 11 December 1992. The Convention gives substance to India’s concern for the protection of the rights of children in all spheres, including protection from economic exploitation. As a signatory, India is under obligation to take the necessary legislative, administrative, social, and educational measures to ensure the implementation of the Convention.’⁴²

India is a party to the UN declaration on the Rights of the Child 1959. India is also a signatory to the World Declaration on the Survival, Protection and Development of Children.⁴³

‘India is also a signatory to The International Programme on the Elimination of Child Labour (IPECL) which was launched under the programme of International Labour Organization (ILO) in 1991. It works toward the elimination of child labour by creating awareness about child labour as a global issue using national platforms. India was among the first nations to sign the MOU with IPECL to help in combating child labour.’⁴⁴

⁴¹ Aastha Suman, ‘Child Labour in India – A Human Rights Perspective’ (Legal India, 23 Feb. 2012) <http://www.legalindia.com/child-labour-in-india-a-human-rights-perspective/> accessed 30 March 2017

⁴² National Human Rights Commission, *Human Rights and Child Labour* <http://nhrc.nic.in/Documents/Publications/KYR%20Child%20Labour%20English.pdf> accessed 30 March 2017

⁴³ Aastha Suman, ‘Child Labour in India – A Human Rights Perspective’ (Legal India, 23 Feb. 2012) <http://www.legalindia.com/child-labour-in-india-a-human-rights-perspective/> accessed 30 March 2017

⁴⁴ ‘Child Labour in India’, (India Celebrating) <http://www.indiacelebrating.com/social-issues/child-labour-in-india/> accessed 30 March 2017

NATIONAL CHILD LABOUR POLICY

The National Child Labour Policy was approved by the Cabinet on 14th August 1987 during the Seventh Five Year Plan Period.⁴⁵ ‘The National Policy on Child Labour, August 1987 contains the action plan for tackling the problem of child labour. It envisages:

- a. A legislative action plan
- b. Focussing and convergence of general development programmes for benefiting children wherever possible, and
- c. Project-based action plan of action for launching of projects for the welfare of working children in areas of high concentration of child labour.’⁴⁶

‘In pursuance of National Child Labour Policy, the NCLP Scheme was started in 1988 to rehabilitate child labour. The Scheme seeks to adopt a sequential approach with focus on rehabilitation of children working in hazardous occupations & processes in the first instance. Under the Scheme, after a survey of child labour engaged in hazardous occupations & processes has been conducted, children are to be withdrawn from these occupations & processes and then put into special schools in order to enable them to be mainstreamed into formal schooling system.’⁴⁷ Some of the important parameters of the scheme are stipend, nutrition, health component, vocational training, training for educational teachers and survey.

GOVERNMENT ORGANIZATIONS

Government has formulated a lot of legislations to curb the child labour situation in India. Despite this, around 4 million of children are still working as labourers. This means that mere enactment of legislations are not enough, government also has to take positive steps at ground level to curb the situation. Therefore, the government has formulated a lot of organizations or projects that do the actual ground work for the welfare of the child. Some of these organizations are in collaboration with the

⁴⁵ Ministry of Labour and Employment, Government of India, <http://www.labour.nic.in/schemes/national-child-labour-project-scheme> accessed 30 March 2017

⁴⁶ The National Policy on Child Labour, August 1987 <http://ncpcr.gov.in/showfile.php?lid=129> accessed 30 March 2017

⁴⁷ *ibid*

NGO’s as well. Imminent number of steps has been taken and few of them are as follows:

a. Indo-USDOL (Indus Project):

The Indus Project is jointly developed by the Ministry of Labour, Government of India and the Department of Labour, United States of America (USDOL) for Prevention & Elimination of Child Labour in identified Hazardous Sectors. The Project is implemented in ten hazardous sectors in 21 districts across five states namely, Maharashtra, Madhya Pradesh, Tamil Nadu and Uttar Pradesh. An estimated 80,000 children will be withdrawn and rehabilitated in this project.⁴⁸

b. National Human Rights Commission of India:

The commission also deals with the elimination of child labour from India. It basically deals with the children in specific industries only that are hazardous for the children. Some of the industries are bangle/silk industry, stone quarries, brick kiln, diamond cutting etc. it has specifically dealt with the problem of child labour in carpet belt area in UP, bangle/glass industry in Ferozabad and silk industry in Karnataka. The Commission has been monitoring the child labour situation in the country through its Special Rapporteurs, visits by Members, sensitization programmes and workshops, launching projects, interaction with the industry associations and other concerned agencies, co-ordination with the State Governments and NGOs to ensure that adequate steps are taken to eradicate child labour.⁴⁹

c. Project based action plan of National Child Labour Policy as have already talked about.

NON GOVERNMENTAL ORGANISATIONS

Non Governmental Organisation (hereinafter NGO) plays a very crucial role in dealing with the problem of child labour in India or for that matter anywhere in the

⁴⁸ National Human Rights Commission, *Human Rights and Child Labour* <http://nhrc.nic.in/Documents/Publications/KYR%20Child%20Labour%20English.pdf> accessed 30 March 2017

⁴⁹ *ibid*

world. Some NGOs work independently whereas some in collaboration with the government (central or state). Similarly, some NGOs work in various fields of welfare whereas some in specific fields only. Our topic concerns with child labour, therefore some of the specific fields in which NGO's work for curbing child labour situation or for the welfare of the children are education, health, social mobilization, rehabilitation etc. For example Action Aid India concentrates on child education of street and working children and CRY (Child Relief and You) targets underprivileged children who don't have basic resources to sustain themselves.⁵⁰

There are a number of NGO's working for the issue in India, following are few of them:

- a. World Vision India, New Delhi
- b. Action Aid India, New Delhi
- c. Concerned for Working Children (CWC), Banglore, Karnataka
- d. Butterflies, New Delhi
- e. Global March against Child Labour, New Delhi
- f. Child Relief and You, Mumbai
- h. CREDA (Centre for Rural Education and Development Action), Mirzapur, UP

OBSTACLES IN IMPLEMENTATION

For tackling a situation like child labour, enactment of laws is not enough until they are strictly implemented. Strict implementation of laws is very important otherwise it would only be black letter law. In the process of implementation of laws, a number of obstacles can be there, some of them are as follows:

a. Lack of awareness:

For proper implementation of laws relating to a social issue like child labour, it is very important for the people to respect it. For respecting, they must also know about it. Child labour is more prevalent in rural India where

⁵⁰ Admin, 'Child Labour NGO's in India' (Indian Law, 22 April 2015) <http://www.indianchild.com/childlabor/child-labor-ngos-in-india.htm> accessed 30 March 2017

people are not aware about the rights of the children and the liability on the defaulters.

b. Poverty:

Poverty is also one of the major reasons of child labour in India. Thousands of people live below the poverty line. A family living below the poverty line is unable to earn is living for them. Therefore, even if they are unwilling, they have to send their child to work so that he can earn money and a help can be provided to the family.

c. Illiteracy:

It is also one of the main reasons of child labour. Illiterate people are not aware of these child labour laws and regulation. They are not even aware of the benefits given to the children due to which they are unable to avail them. For them, the point the child is born, he has to earn his living by doing physical labour and that even has to be done as soon as possible.

d. Will of the local governments:

Central government can only enact the law, it has to be implemented by the local governments only. It is due to the lack of will and ineffective role of local governments that the child labour laws are not implemented properly at grass root level.

e. Administrative inefficiency:

It is not only the duty of government to enforce laws but also of the administrative body. It is the administrative body who has the duty to check whether the laws have been properly implemented or not. It is due to the inefficiency of the administrative bodies that the child labour laws are not properly or strictly implemented.

f. Low wage rate:

In India, the wage rates are very low as the number of job are less than the number of people available for the job, due to which the wage rate of labourers is very less and he is unable to fulfil the basic needs of the family

with that money only. Therefore, he has to send his child for working so that income can be generated and food can be generated for the family out of that money.

g. Family conditions:

In low income group, there is a high probability that the adults of the family are addicts and often don't earn anything and sit at home the whole day or rather would use their whole earning in buying the substances they are addicted to. Therefore, the burden of supporting the family comes on the child and he has to go out and work to earn a living for the family.

h. Lack of educational and health facilities:

No doubt, there are a number of health facilities and educational facilities that are provided by the government but that are not sufficient for a large country like India and for a problem like child labour. These facilities are available mostly in large cities and not in the remote areas where child labour exist the most or is most prevalent.

SUGGESTIONS

Following are some of the suggestions for the proper implementation of child labour laws in India that are been concluded from the obstacles that have been discussed above:

- a. Lack of awareness among the people has been seen as a major obstacle for the implementation of child labour laws. Therefore, awareness programs regarding the child labour laws, the penalties and other liabilities must be initiated by the government and various NGOs throughout the country especially at the root levels and rural areas. Media can be a very effective method of spreading awareness regarding this. People must also be taught about the various benefits that are provided to the children and the way they can avail it.
- b. Local governments and the administrative bodies must be made more responsible so that the child labour laws can be properly implemented and the gaps between the law and implementation can be removed or filled.

- c. The wage rate must be increased or must be raised to a level that a family can be properly maintained out of it and no child has to go out to work to earn a living.
- d. Educational and health facilities must be increased not only in large cities but in rural area which is most affected by child labour.
- e. Education should be not only to the children but also to the parents, especially mothers. Education to them would help a lot in dealing with the situation as it is on the will of the parents that it is decided whether a child would go to school or to work. ‘A research has recently shown that mothers who only went to primary or middle school don’t really generate much impact on their children, whereas those who have completed high school are much more committed to sending their kids to school. Quite understandably, the more you study, the more you gain the skills you need to climb up the social ladder and get better jobs.’⁵¹
- f. Monetary help should be provided to the families who are below the poverty line so that they can earn their living and had not to send their children to work for money. This monetary help can be provided various funds of the government.
- g. There must also be amendments in the child labour laws. Amendments can be made regarding the increase in penalty for default, increase in the minimum age of work from 14 years and increase in the number of occupations that have been declared as hazardous.
- h. This is a suggestion for the society because child labour is a social issue and without active participation of the society, the result cannot be achieved. It is not providing for physical or monetary help but to be conscious about and issue and just not even to employ the children.

⁵¹ ‘Child Labour in India – a poverty of Schools?’ (Poverties, January 24 2013) <https://www.poverties.org/blog/child-labour-in-india> accessed 31 March 2017

CONCLUSION

As we have seen in discussion that India has done a commendable job in enacting suitable legislations, policies or programs for dealing with the problem of child labour. Enactment without implementation is of no value, therefore implementation is very important. Same is the case with the child labour laws, their implementation is also very important otherwise only law has no value. Implementation of child labour is lacking at the grass root level. Therefore, it is important to deal with the grass root level first. Therefore, government should take appropriate steps towards that so that the dream of zero percent of child labour can be achieved.

Child labour is more of a social problem. Therefore in curbing it, society also has to take an initiative. Society includes everyone from the parents to the family to the employers and further to all the people. It is the duty of the society to see that the childhood of a child is not spent in the activities that are hazardous for his social, moral and physical development. Example of this can be that no one should on the first place employ children or if anyone gets to know about such activity he must inform it to the society.

So, it can be concluded that child labour is a social problem, for curbing it each one of us should take steps as only laws, policies, programs, NGO's cannot do anything. If we want to fulfil our dream of zero level child labour, each one of us has to be conscious and must do what one can do at its level.

ACCOUNTABILITY ISSUES IN CHILD SPONSORSHIP PROGRAMS: ETHICS OF GENEROSITY

Mr. Akash Kumar*

ABSTRACT

Child Sponsorship in India and across the world has been one of the most lucrative tools for the NGOs and non-profit organizations to raise funds. However there is little focus on the authenticity and liability of such organizations in their fundraising, spending on administrative costs and actual program. The phenomenon has been given little attention and has escaped the legal and academic scrutiny for long. Focus should be there on legitimacy of Child Sponsorship programs and bringing in accountability and transparency in it for both donors and recipients. This article seeks to draw the attention towards the scheme of Child Sponsorship programs in India, the way it works, issues of accountability and critique of such programs if not monitored properly.

INTRODUCTION

Child Sponsorship (CS) programs allows an individual or an entity to sponsor or fund a child, typically in a third world country for financing education, health and security of a child till he becomes self-sufficient. In some cases the sponsorship is targeted to one of these benefits or a combination of these. It also may work in contributing to the development of child's community or directly helping an individual child. There are different ways in which child sponsorship operates, in some cases there are organizations which house children without parental care are clothed, fed, educated, nurtured and cared, others may simply distribute funds to parents or it can be done by signing up all the children in a target area for a community development project such as a medical care, education, health, nutrition and other forms of aid. Some organizations have a more individual approach in helping children and their families while others build a community more generally assuming that the children will benefit.

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The term ‘sponsor’ seems to have originated in the mid 17th Century (as a noun), while the verb dates from the late 19th century. *Spondere*, a Latin word, means to ‘promise solemnly’ (Oxford Dictionaries 2014).¹ Sponsors thus include corporations that financially support events, individuals who promise to donate to friends who are fundraising, and relatives who undertake financial support for a family member or friend. Academic sources also rarely attempt to define CS, perhaps because the term is so widely used and so pervasive, that it seems obvious. It is noteworthy that the spectrum of child sponsors includes adults, children, families, social groups or organizations.²

After the identification of the child to be sponsored, the charitable organization that is typically involved in managing the sponsorship sends information about the child to willing sponsors. After getting sponsorship money, the organization directs it to the child directly or the child’s community center, and they manage the communications, sometimes translating communications between the child and the sponsor, also seeing that the communications are appropriate. The sponsorship by these organizations can be in different forms like, paying the school fees for children, other educational needs, holding weekly clubs which includes supplementary meals, health topics, counseling among others.

Child sponsor is an individual or entity that pledges ongoing support for disadvantaged children or young adults in geographically or sociologically distant realms. Child Sponsorship (CS) is identified as an act of regular, often long-term giving for the benefit of identifiable children, youth or their communities in an exchange-based relationship. CS NGOs are therefore organisations that facilitate links between donors and distant others, using individual children as the focal point of exchange.³

¹ Brad Watson & Matthew Clarke (Editors) *Child Sponsorship - Exploring Pathways to a Brighter Future*, 1st edition, 2014, Palgrave Macmillan, UK

² *ibid.*

³ Brad Watson, ‘Child Sponsorship NGOs: Origins, Evolution And Motives For Change.’ (PhD, Deakin University 2015) p. 02.

TYPES OF CHILD SPONSORSHIP PROGRAMS

Brehm and Gale⁴ classify Child Sponsorship NGOs into two classes, one that support programs targeted at development activity which benefits all children in a community and the other ones focus on an individual child as the recipient of a sponsor's donation. In a sponsorship model which is institution based, a child receives varying degree of assistance that is often extended via a school, orphanage which may include assistance in paying school fee, books, uniform, medical check-up, food etc. boarding students, orphans and disabled children specifically benefit from such models of CS. Here it may not be wrong to say that the sponsorship funds benefit an individual child rather than the family or the community at large, as the target beneficiary's are specific children which qualify for such assistance. This should not be construed to understand others do not benefit, in many cases, the sponsorship funds are paid directly to the school or institution rather than the family or specific child. It is also worth noting that when sponsorship funds are released in blocks to an institution and school, non sponsored students may also benefit who are not specifically selected. This model was mainly pioneered by Save the Children Fund in the 1920s when support to the family members was extended for short terms. Some NGOs typically select a community and in that community some apparently needy child who is provided not with cash but food, clothing, education and medical care. These are targeted towards specific children and not towards the development of the children community at large.

Individual and Family Child Sponsorship is another type of child sponsorship model in which children are assisted through families in the form of family helper programs. Instead of placing children in the orphanages, boarding schools the funds for sponsorship in such programs are allotted to family members sometimes in the form of direct cash transfers and at times in the form of gifts both for children and family members, especially mothers.

⁴V Brehm, & J. Gale, 'Child Sponsorship: A Funding Tool for Sustainable Development?' Informed, no. 3, November,2000, pp. 2-6

The community development model of child sponsorship is different from the individual child sponsorship programs and is targeted towards community development. The welfare of the child is aligned towards community development ideology; it may be less oriented towards the selection of the poorest children in the community but have a transformative impact on the entire community and their families. Their logic is that to change the life of a disadvantaged child in a sustainable way, the organization should work towards changing the complex dynamics that contribute to the poverty of children and work with the community to bring change. CS funds necessarily use the funds for community development empowering children, families and community.

CRITICISM AND LEGITIMACY OF CHILD SPONSORSHIP

Bornstein (2005) has strongly argued that children are like embodiments of basic goodness' and symbols of world harmony in the humanitarian community and therefore schemes of child sponsorship are not just like ambassadors of hope but also play a crucial role and is symbolic as 'explosive moral terrain'.⁵ The CS programs due to this has been criticized for being drivers of generosity as ethics and morality and many a times reveals the pitfalls of such programs. One of such strong critique of CS programs was made by Peter Stalker in 1982 in his article in the *New Internationalist*.⁶ His opinions characterize the pitfalls that were associated with the Child Sponsorship funded interventions in 1980s and 1990s. Stalker in his criticism referred to the sponsorship of one million children by international foster parents as an astonishing exchange, he parodies Child Sponsorship by International NGOs through a picture of a child saying, please do not sponsor this child.⁷ He made explicit criticism of the sponsorship programs and bluntly said that the donor is better off through a sponsorship scheme, the sponsored child or family is correspondingly worse off.⁸

⁵ E. Bornstein, 'Child sponsorship, evangelism, and belonging in the work of World Vision Zimbabwe', *American Ethnologist*, 28, 3, 2001, 595–622.

⁶ Peter Stalker, *New Internationalist*, Please do not sponsor this child, 1982 available at <https://newint.org/features/1982/05/01/keynote/> accessed 14 September 2016.

⁷ *ibid.*

⁸ *ibid.*

Such negative portrayal of Child Sponsorship by Stalker and other publishers of *New Internationalist* in 1980s was welcomed by critiques in non CS NGOs and its popularity can be guessed by the fact that the publication was co-founded by Oxfam, which worked for the reduction in poverty through community development. Such a critique cuts deeply into the role of NGOs, trusts and other such entities in fund raising for CS programs as not only they are laced with the pitfalls of traditional forms of CS but are also portrayed as unethical, irresponsible and ineffective, and this was noted in a time when there was a wave of public support for such schemes.⁹

Historically, child sponsorship has also been widely criticized for its legitimacy in such programs and also non accountability in fund raising and spending. In addition to that, critiques of child sponsorship have argued that in cases where children are sponsored and privileged, it alienates them from their peers who may not be having access to such programs. At times, it is also responsible for harmful stereotyping that children from these third world countries are helpless.¹⁰ The entire program is expensive to administer and in many of the cases charities have been caught sending forged updates from deceased children to continue getting funds.¹¹

However ironically, the sponsors donate money because they think that the likelihood of money going astray is less through child sponsorship organizations. It must be noted here that the sponsorship agencies have a small army of volunteers or workers who travel and keep tabs of expenses and funds reaching target groups or individuals.¹² For this reason, child sponsorship has come to be one of the major fund raiser programs by voluntary agencies in a sure-fire way, however there is no accountability to spend it.¹³

⁹ F. Rabbitts, 'Child sponsorship, ordinary ethics and the geographies of charity', *Geoforum*, 43(2012), 926–936.

¹⁰ *New Internationalist*, 'Simply... Why You Should Not Sponsor A Child', *New Internationalist*, 1989 <<https://newint.org/features/1989/04/05/simply/>> accessed 14 September 2016.

¹¹ "The Miracle Merchants" - Graeme Zielinski, David Jackson, Lisa Anderson, Mike Dorning - *Chicago Tribune | Undercover Reporting* (Dlib.nyu.edu, 2016) <<http://dlib.nyu.edu/undercover/miracle-merchants-graeme-zielinski-david-jackson-lisa-anderson-mike-dorning-chicago-tribune>> accessed 4 September 2016.

¹² *ibid*

¹³ Peter Stalker, *New Internationalist*, Please do not sponsor this child, 1982 available at <https://newint.org/features/1982/05/01/keynote/> accessed 14 September 2016.

Sponsorship programs which focus on individuals mean that funding agencies arbitrarily select children and family from a larger group for preferential treatment. These chosen few may receive extra food, aid for education, medical treatment and gifts while others in the same peer group may be left out. Their brothers, sisters and parents may feel humiliated as they are unable to raise the child on their own or may get frustrated that only one of them is receiving help.¹⁴

The way in which a child or family is chosen for sponsorship may reflect the political orientation of the aid agency involved rather than the needs of the child. In order for a child to qualify his parents may have to cease certain forms of political or religious activity - or the child may be pressured to take up activities like reading the religious books and following religious practices. This conditional giving violates the rights of the child to choose its own beliefs. Another problem that sponsorship programs have that the child getting aid is constantly reminded that they are the poor relation and that they must be showing gratitude to the rich cousins which make these donations on which they depend. A sponsorship programs additionally always run the risk of fostering dependencies on such aids.

Another point of criticism is that the cultural exchanges between the child and the donor at times can be really insensitive. CS programs may also cause cultural confusion as the child being sponsored may have unrealistic aspirations than what is expected of the donor. Imagine a case when a child may know nothing about Christmas and is encouraged to send Charismas cards or a wealthy Arab merchant sending presents and gifts on Eid along with pictures of their lifestyle and a copy of holy Quran to read. Sponsorship schemes may claim to encourage cultural exchanges between donor and child, but in most cases, the letters from the donor or the child are professionally drafted and such exchanges are minimal, often letters from the donor and child are censored and requests for money complaints for not receiving funds, and of politics are removed. The correspondence is often handled by professional letter writers and translators or letters may be dictated to children according to a sample which may be provided with the manual. Therefore the donor and the child in reality find little about each other's culture through

¹⁴ *ibid.*

correspondence. For these reasons sponsoring a child may not be the best way to extend help and though not all the sponsorship agencies have these shortcomings, but all such programs have at least some of these defects.¹⁵

A BRIEF NOTE ON LAWS APPLICABLE TO NGOS AND ORGANIZATIONS RAISING FUNDS FOR SPONSORSHIP

Pushpa Sundar, Author of 'Foreign Aid for NGOs: Problem Or Solution?' (February 2010), advocates that the parliament can make laws with respect to charities and charitable institutions under entry 28 of the concurrent list in the seventh schedule of the constitution. The states could, enact the same law using the central law as a model, for their jurisdictions.¹⁶ Till now as it has been observed that there is a lack of regulation of child sponsorship and accountability of organizations, organizations seeking donations for CS are registered in one of the three ways i.e. a trust (Section 3 of the Trusts Act 1882), society (Section 20, Societies Registration Act 1860) or a company (section 8 of the Indian Companies Act 2013). But none of these ways seek to ensure transparency and accountability of these institutions. The child sponsorship as mentioned can be a way to promote a political ideology, affiliated to a religion, race in the absence of any laws regulating transparency and operations in these child sponsorship programmes. An important report on 'A Review of the Charities Administration of India, 2004'¹⁷, pointed out the need for effective investigation and checking misuse and encourage public confidence in charity among its many objectives. Charity is a concurrent subject under the 7th schedule, List III, Item 28, of the Constitution of India, this means that both the Central and the State governments are competent to legislate on the matter. However there are legislations both State and central governing the non-profit sector, there is no law laying down rules of charity, and transparency in child sponsorship programmes.

¹⁵ New Internationalist, 'Simply... Why You Should Not Sponsor A Child' (New Internationalist, 2016) <<https://newint.org/features/1989/04/05/simply/>> accessed 4 September 2016.

¹⁶ Pushpa Sundar, Why India's Non-Profit Sector Needs Comprehensive Legal Reform, The wire, may 10, 2017, available at <https://thewire.in/133780/ngo-fcra-legal-reform/>

¹⁷ A Review of the Charities Administration of India, Sampradaan Indian Centre for Philanthropy, Sponsored by The Planning Commission, Govt. of India, September 2004

LACK OF ACCOUNTABILITY IN CS PROGRAMS IN INDIA

The lack of accountability in such sponsorship programs either through individuals, trusts or NGOs is not the problem in India only. An assessment in 2008 of world's top 30 leading global organizations revealed that transparency is one such dimension of accountability which is least developed.¹⁸

The problem becomes many fold when it is an Indian case, as in India Child Sponsorship happens to be one of the most unorganized sector which involves NGOs, trusts, individuals and other voluntary organizations. Often such organizations are required to register under multiple laws which lack uniformity in accounting policy and reporting framework. The problem in India is driven both at the donors and at the organizational level. Due to this lack of uniformity in accounting policy and reporting, often people are moved by the emotional provocations and donate indiscriminately without knowing whether their donations are reaching target groups, individuals, families or not.¹⁹

One of the main complaints in India in CS programs is that there is too much spending on overheads. Every such program has legitimate administrative costs, and it is hard to distinguish between administrative costs and program costs as the entire setup is for delivering schemes and programs of CS. Instead of focusing on the impact of the program only, there should be accountability at the level of money allocation also.

But there are equally important other questions that need to be answered and call for the credibility of many of such Indian organizations into question. One of the main allegations is money laundering by such CS organizations. The federal investigations agencies in India need to dig in deeper to unearth the frauds in fund raising programs, money laundering charges and funds misappropriation charges to bring in more transparency and faith in CS programs.

¹⁸ Nilanjana Bhowmick, *Accountability of India's Nonprofits Under Scrutiny*, TIME.Com' (TIME.com, 2010) <<http://content.time.com/time/world/article/0,8599,2036307,00.html>> accessed 3 September 2016.

¹⁹ F. Rabbitts, (2012) 'Child sponsorship, ordinary ethics and the geographies of charity', *Geoforum*, 43

As regards the credibility of NGOs in accepting foreign aid and fund raising for Child Sponsorship is concerned, there are a select few which have been members of international accreditation organizations or certification companies. There have been groups like Credibility Alliance, iCongo and GiveIndia which have been working for increasing accountability of NGOs in such schemes, by annual reviews and accreditation, they still have a long way to go in getting more members. Despite being around for many years they still have very few members of the worlds approximately 10 million NGOs.²⁰ Credibility Alliance, for example, has only 600 members. The Société Générale de Surveillance, which happens to be the world's leading company for inspection,, testing, verification, and certification has so far certified only 68 NGOs around the world.²¹ USAID-funded ForeignAID Ratings has certified three.²² Over the past years, foreign aid to Indian NGOs has come under scrutiny and critics have argued that with huge foreign aid coming into India through these channels, India should be able to fund its own development.²³ Hence what is flagged as an ethical and generous act for sponsoring a child may end up with some other activity, religion or politics funded in the cloak of sponsorship.

Recently in response to these complaints, the government of India has tightened its grip and from 2014 to 2016 banned more than 14000 NGOs from receiving foreign funds due to violation of different norms of Foreign Contribution Regulation Act, a 2010 law that oversees NGOs that receive foreign funding.²⁴ Under the different provisions of this act, organizations receiving foreign funds have to give details of funds received and their utilization.²⁵ NGOs with CS programs are in credibility market and therefore they cannot afford to be above accountability. Chapter IV of the Foreign Contribution (Regulation) Act 2010 allows the Central

²⁰ *ibid.* at 14

²¹ *ibid.*

²² *ibid.*

²³ *ibid.*

²⁴ 'Over 14,000 NGOs Barred From Receiving Foreign Funds: Govt' (The Indian Express, 2016) <<http://indianexpress.com/article/india/india-news-india/over-14000-ngos-barred-from-receiving-foreign-funds-govt-2924258/>> accessed 14 September 2016.

²⁵ Section 8 Restriction to utilise foreign contribution for administrative purpose. and Section 9 Power of Central. Government to prohibit receipt of foreign contribution, etc., in certain cases .of Foreign Contribution (Regulation) Act 2010

government to require the registered organizations who have been certified to receive foreign funds to report to the central government, amount of foreign contribution received, the source from which, and the manner in which, such foreign contribution was received and the purposes for which and the manner in which such foreign contribution was utilized by the organization.

Child Sponsorship has been a remarkably successful tool as a fundraising technique. In fact it has come to be known as the most lucrative tool for fundraising in the form of private donations and development assistance.²⁶ It has been used extensively by both faith-based and secular NGOs, the largest of which have annual revenues in millions of dollars. One such example in international networks is Plan International and the ChildFund Alliance which in the year 2011 reported annual revenue of around US \$600 million.²⁷ Another example is World Vision, which reported worldwide revenue of about US \$2.8 billion in 2011²⁸, it is known for being the worlds largest relief fund and development network offering child sponsorship. Though a part of this revenue comes from government grants and corporate donations, child sponsorship is often the central strategy for attracting donations from worldwide.

The wrongdoings alleged are not the only examples of unscrupulousness in India's sprawling nonprofit sector. The nonprofit sector in India raises between \$8 billion and \$16 billion in funding every year.²⁹ Almost half of the money raised is misused towards administrative costs, Laws in India enforce accountability to the fund raisers, and also if such funding is by a trust, there is no accountability to the central government. NGOs which raise donations are accountable to the public in India, but not to the foreign donors who are just sent a letter professionally drafted

²⁶ Ian. Smillie., *The Alms Bazaar: Altruism under Fire – Non-Profit Organizations and International Development*. London, UK, 1995: IT Publications

²⁷ ChildFund Alliance.. *ChildFund Alliance 2011 Financial Statements*. 2012. Available at <http://www.childfundalliance.org/wp-content/uploads/2012/05/CFA-2011-Financial-Statements.pdf>. See also Plan International. 2012. "Plan worldwide annual review and accounts 2011." 2012. Available at (<http://plan-international.org/about-plan/resources/publications/about-plans-work/plan-worldwide-annual-review-and-accounts-2011>)

²⁸ World Vision International. 2012. "Annual Review 2012, available at <http://www.wvi.org/wvi/WVIAR2011.nsf/section/C135E933DD82D825882576DB008066E3?opendocument>

²⁹ Id. at 14.

to show that their money is being utilized for helping a poor child. There are many NGOs who have not shown their accounts to the government. On top of all is the management of these funds, most of which as mentioned above goes towards administrative costs. There should be ways to bring in accountability to unearth frauds in their spending which cannot be detected as they make voluntary declarations. Sharing this concern with cost efficiency, the United Nations Human Development report way back in 1993 had signaled out warning to the international NGOs involved in CS programs that they should spend time and resources in collection large amounts of personal information about the sponsored child and should employ large workforces to for this.³⁰ This warning at that time did not reflect of the diversity in CS programs and the funds it is capable to raise and therefore misappropriations involved, but it does flag the need to link the legitimacy and accountability to the measures of cost effectiveness in fund allocations towards CS programs.

Accountability in terms of financial as well as legal perspective attempts to trace out the response of the NGOs to donors or to the governments in their operating nations.³¹ The money spent by the NGOs should be accounted under contracted agents of donors which should be working according to the laws and parameters of national regulatory structures (despite of the disconcerting situations, the NGOs participate frequently in the committees to draw such regulatory frameworks).

If the development interventions go wrong or not working out according to their expectations, there might be events occurred beyond the control of individual or organization and considered as natural calamity with the most unfortunate consequences (for example, when cholera strokes over refugee camp).

There are certain systems existing for perceiving the “rights” of the beneficiaries and the responsibilities of agencies. There are certain legal frameworks equipped for considering NGOs answerable or setting out when, where and how

³⁰United Nations Human Development Report 1993, p 89.

³¹P. Ove, ‘Change a Life. Change Your Own’: Child Sponsorship, the Discourse of Development, and the Production of Ethical Subjects, Doctoral thesis, Faculty of Graduate Studies, 2013, University of British Columbia

groups exactly have the capacity to consider an organization responsible for an intervention that has turned out badly. The possibility of establishing the real accountability with such principles and standards is not seen unless the NGOs and humanitarian agencies are legally challenged and considered responsible.³²

It is argued that this situation makes a compensation culture in which any inability to accomplish the objectives (that is not quite the same as disappointment that causes harm) leads to litigation. Certainly, as an outcome it has suggestions for development interventions. Hence the efforts to alleviate poverty, suffering and vulnerability in some of the most economically, socially, and politically challenging parts of the world are risky. However, is it risky or unsafe for the associations who may confront money related challenges or lost renown? Or hazardous for the groups in which the intervention has taken place?

Transparency becomes an essential feature in the absence of legal protection. As part of this, NGOs must be obliged to make accessible of projects and programmes with all the details for independent scrutiny. Reputational concern is an important aspect of the development structure but not at the cost of the lives and wellbeing of the affected communities. Admitting the existing problems does not obscure the positive actions; but the absence of transparent and open discussion implies a dialogue of the deaf. Some of the best NGOs do think about the accountability towards their communities and individuals; but the issue is too essential to possibly be left to self-regulation.³³ Change is constant in development interventions and this change can bring about significantly negative results for some or many. These negative consequences may be unintended, but those affected should be managed towards a superior means to consider development actors.

CONCLUSION – ETHICS OF GENEROSITY AND SPONSORSHIPS

Ethics of generosity, empathy and social justice should be the cornerstone of the child sponsorship programs and should be devoid of any religious affiliations. The

³² New York Times ‘Donations from the heart, greetings from the grave’, New York Times, 5 April, 1998, p.4.

³³ H. Kharas., *The New Reality of Aid*, 2008, (Washington, DC: Wolfensohn Centre for Development, Brookings Institute).

author here points the lack in the accountability laws in India for such child sponsorship programs, there is lack in reporting mechanism of the success of these programs and a mechanism needs to be in place for accountability in case of failure or frauds in Child Sponsorship programs. The government should focus more towards regulating such programs as these are highly driven by the sense of morality and self satisfaction of helping someone.

In arguing that Child Sponsorship has grown rapidly despite the widespread critique of it and the vulnerabilities in fund raising and spending, it is suggested that the laws for accountability of CS programs and organizations should be revisited and there should be a fresh approach towards informed discussion in this aid sector which has so far received little legal and academic scrutiny. To put this, author points to the CS programs as an aid industry and identifies the lack of literature that exists on the subject and activities of Child Sponsorship organizers.

BOOK REVIEW

“LET’S CALL HIM *VASU* : WITH THE MAOISTS IN CHHATTISGARH”

WRITTEN BY SHUBHRANSHU CHOUDHARY.¹

Mr. Saji Mathew*

The naxal problem in all its variants and incarnations has remained a stark reality engaging the union and state governments for almost half a century. In independent India, one of the enduring banes is the rise of maoist ideology which has taken various hues over the years to culminate into, primarily for the governments of the day, a law and order problem. This book raises serious questions in the government’s strategy to tackle the menace if at all the issue can be termed so. Shubhranshu Choudhary (hereinafter Choudhary), a seasoned journalist with experience of more than two decades in media organizations like the ‘B.B.C’ and The Guardian of London has brought-out this volume after extensive research and painstaking efforts spread over quarter of a century to dwell on the human tragedy and poignancy of the adverse fall out in the state of Chattisgarh. It is noteworthy that the viewpoints are those of a close observer and sympathizer per se rolled into one.

Choudhary delve deep into the socio-economic and political- circumstances to understand the history of the movement in Andhra Pradesh (now including Telengana) and Odisha. He traces it further to his focus area in the state of Chattisgarh, Mahendirgarh is the place in Koriya district of the state where he grew up in. Characteristically frank in analysis of the prevalent social ethos, he recalls the reluctance of the middle class students to interact with tribal children in the school who, as per him, looked more like “stunted adults than playful children”. He identifies himself as part of the new Indian middle class with a voracious appetite for self-advancement and sums up the plight of the tribals in independent India with a stark observation for the tribals all that had changed was the ‘colour of the sahib’.

Chhattisgarh was carved into a new state in 2004, ostensibly because of its tribal demography which ironically turned into the ‘gravest threat to India’s

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1. Subhranshu Choudhary, ‘Lets Call Him Vasu: With the Maoists in Chattisgarh’, Penguin (2012)

internal security'. The author meets 'Vasu', an underground worker at Nehru Place in New Delhi in 1990 who maintained since then a workable professional relationship with him. The cordiality developed with Vasu in turn prompted Choudhary to write a book about the movement. In 2005, he started travelling around Chhatisgarh, the epicenter of the Maoist movement in the country. To decipher the "why" of the Naxal problem, he travelled with the leaders and the cadres, listened to them tried to understand their motivation and aspirations. It took many months of trudging through some of the most brutal terrains in India. He waded through translations from the Gondi language spoken by the guerrilla fighters and tried to piece together the story of the naxal movement in the central tribal region through the 1980s up to the present. In effect he decided to move behind the 'enemy lines', place the camera on the shoulder of naxals and look at the world through Vasu's eyes. The initial years kept their activities shrouded in guesses at the most but gradually the trickle turned into free flow of information, courtesy the internet, termed as 'CG Net'

Dandakarnya forest, (spread over one lakh sq km in five states), a sprawl of trees, hills and treacherous paths, is the headquarter of naxal movement. K. Sitharamaiyya (hereinafter K S) who became the leading light after the demise of Charu Mazumdar in 1972, chose it on account of the guerilla zone perspective of 'rear areas' where cadres could retreat to during emergencies. Initially Dandakaranya served its intended purpose as a hideout for fleeing Maoists and by then had become a dangerous place. The movement started with the party known as CPI (ML). K S gave a new name 'peoples' war' P W G (people's war Group) in the media creation as 'group' was never part of the name. Over the years, the party got split into 32 factions some even with single digit members. After 1980s the party was run mostly by comrades from A.P. In the face of ruthless anti-insurgency operations, the 1990s give a glimpse of the changing scenario of the maoist activities in Chhatisgarh. With coming together of two streams of party from Bihar and A.P, the movement matured in 2004.

The author ventures into inaccessible terrains, stealthily guided by 'contacts' involving arduous trekking for days together. His interactions with unit leaders, cadres, followers and sympathizers extending over weeks and months, many a time yielded little actionable information. Kudos to his dedications and fixity of purpose, the author persisted with the ordeal even risking his life on many

occasions, including two bouts of malaria which almost proved fatal. Exchange of ideas on a wider network of associates, friends and numerous maoist cadres helped him grasp the big picture as well.

The account by the author spread over in ten sections is unmistakably oriented towards the tribal's (Adivasis) who are at the receiving end from all players on one hand and naxal movement on the other. In the process he rips open the goings on in the interiors of the state. An area rich in mineral wealth is exploited to the hilt by the government, MMTC and cooperates like Tata and Essar by large scale mining. But the plight of the tribals remains abysmally dismal. Ration shops are far away, schools are with no teachers, maoist not allowing to hold more land, the tribal women subjected to rape and sexual assaults by forest guards, security forces, Salwa Judum cadres and at times though rarely by the maoist, to mention a few. The tribal ways of life, their superstition culture, the cropping pattern, the Gondi language and connected issues find copious mention throughout. Menace of malaria in perpetual and endemic to the area but deaths are never acknowledged by the Government. He draws the reader's attention to a typical tribal home, one for pigs, one room for chickens, one is for cows and one for humans. Clearly the concert of home and family includes man and his beasts. In Maoists territory, as discerned by the author, much theoretical communist fiction would be bandied about, specially by the gullible tribals who swell the party cadres. To quote a women comrade named Fagni, a school dropout : 'I left school because with bourgeois education, one can never understand the problems of the poor'.

The author terms his meeting with Commander Kosa, the state Secretary, a big deal. Kosa who was in Dandakaranya forests to begin with gives a detailed glimpse into the goings on in the maoist terrain, albeit with reluctance and a guarded approach. Choudhary mulls over his frustration of being an embedded journalist. When one has to depend on a single points of view on a pointed question "What was the party fighting for," Kosa gave out a long speech for fifteen minutes, impossible for a layman to decode. Kosa did use the expression 'Nar Janwadi Kranti' to sum up the aim of the movement. For Choudhary, Kosa looked more like a retired head master than a revolutionary. A quote by Kosa: 'the poor can only afford radio whereas what we do is the opium of hundreds of TV stations is an apt metaphor, Marx would have been proud of. Another inane statement by

Kosa is people do not die of disease, they die because of the politics that does not send doctors to rural areas. Still the author admits that Kosa was better suited than anyone else to reminisce about three decades of maoists movements in the journals.

Vasu meets his journalist acquaintance after a gap of 15 years in the forests. A lanky boy in New Delhi, now known as Comrade Raju, Vasu was ‘in green fatigues with copious beard, had gained weight and the face lined’. The author saw hardship there with a peaceful bearing in contrast to the AK 47 he was carrying. Vasu apprises him of more details on the lives of the cadres and the strategy. When new to a place, the maoists draw sustenance from the upper class. But once they find their feet the upper class becomes the enemy and the fight becomes a ‘class war’. They go to areas where people are being displaced by development projects, offer help with their livelihood and target the less educated youth. The village temples stand untouched. One needs to have a prolonged and close association with the residents of a place before their faith can be questioned, and the maoists know this well.

Choudhary has his heart and sympathies in place for the maoists for their long and arduous struggle to bring about an egalitarian society. He is skeptical too of a revolution which may occur in the next generation. Referring to the plight of the cadres, he rues that a life of this nature needs grit and passion. They are not just mouthing philosophy, they believe in it, because of the way their lives are. The dream of equality in what drives them.

The role played by the government and its varied agencies had been well delineated in the face of a well oiled official propaganda machinery in place. The maoists who profess and pursue revolution through the barrel of the gun purportedly after having lost hope of ever bringing about change through peaceful protests do not bode well for any democracy. No duly elected disruptive pursuits is in negation of the rule of law. Credit is due to the union for having effectively contained the deleterious impact of the naxal activities to a larger extent. But the modus employed had always not been above board. To gag the right to speech and freedom of expression Special Public Security Act 2005 was imposed in the state which made ‘glamorization of Maoists’ punishable. As part of the propaganda, the mainstream newspapers reported of a ‘spontaneous uprising’ by people against the maoist in

2003. The author informs the readers that a leader by name of Chaituram Atami under the patronage of the state government formed Danteswari Samanvay Samiti which is the precursor of 'Salwa Judum' literally meaning peace march. The leader of this 'peaceful movement' is always surrounded by 'gun-toting' guards in roadside camps which is definitely not a picture of spontaneity. The atrocities by salwa judum and its cadres inflicted in the people in the name of countering the insurgents have been highlighted in graphic and gore details by the author. The metamorphoses of Mahendra Karma, original named Kalma Masa (a CPI MLA) who later became henchman of the establishment and its business community forms an interesting interlude. The reign of terror unleashed by Karma and his ironies followed by his leadership of Salwa Judum gave rise to a high-pitched class-war where the maoist had the last laugh when Mahendra karma was fatally ambushed. Conversely, Choudhary dwells on the series of brutalities suffered by the tribals of Chhattisgarh and admits- 'the enormity of the pain people here bore overwhelmed me'. He also reveals that in the eyes of Chhattisgarhies from the plains, maoists are no better than thugs or murderers to suggest that there is no popular support to the ideology.

This well researched labour of love is an authentic account of the naxal movement in India. The readers tend to ask, along with the author whether the movement. Of the innumerable leaders he had interacted with, Ganapathy the new general secretary is the biggest internal terrorist wanted by the government. About Ganapathy, he writes only when I looked at his eyes could I make out that he was past his prime—distant, dreamy, darting here and there as if in search of something. As a senior functionary he was asked "Is there a successful model you follow?", outcome the interrogative for an answer. Was there anything to follow in 1917 before the Russian revolution? Choudhary wonders whether Ganapathy was in fact living in a world of his own a world cut off from reality and whether his dreams fructify. He remained as removed from reality as he appeared to be. The multitudes of tribals who follow the party leaders blindly, the author empathetically observes as to what drives them, the dream of equality of an existence where everyone eats the same food, participated together in decision making and of having semblance of control over their own lives. In the present scenario, the dream remains a chimera!

CENTRE FOR CHILD RIGHTS

CCR was established in the year 2015 by the National Law University Odisha, Cuttack to pioneer teaching, research, training and advocacy in the field of child rights. The centre envisions providing integrated support to different layers of institutional governance in local, state and national level for the protection of child rights. The centre aims to do so by creating framework of research support and logistical back-up to the statutory processes concerning protection of children and by providing complementary support to different stakeholders involved in the child rights paradigm. In its present engagement and with the generous support of UNICEF, the Centre strives to support and strengthen child protection structures by leveraging knowledge change and policy reforms to make juvenile justice system more accountable, efficient and effective for protecting and promoting child rights.

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