

# A Critical Appraisal of the Law Relating to child Labour in Organised Sector in India

Ms. Parveen D/o Sh. Jai Singh

Advocate, Distt. Bar Asso., Bhiwani

## 1. Introduction

A great majority of the children are working in agriculture, animal husbandry and household industries in the rural areas. Child labour in rural areas is not considered as exploitative since it is carried out under the protection and guidance of their parents. They believe that the child labour develops the confidence, self-respect and personality of young workers and prepare them to take over the responsibility. Merely child is the future of nation. When he comes in the world that time he is hygienic, innocent and transparent. He has sacred soul just like a "KoraKagaj".

### Milton said:

"The child shows the man as morning shows the day".<sup>1</sup>

The constitution has provide some right to the child and child labour for their economically, morally and socially exploitation. But in organised sector there has a union. Legislation is ineffective in the matter of child labour even that in organized sector if it is not backed up with awareness of society. The problem of child labour is regulated because social morals do not change simply by enacting legislation.

## 2. Nature and Causes

There are around 20 million children in our country who should be able attending schools but are not doing so. They are working in factories to increase the income of their parents. By working in factories, their education and their development come to an end abruptly and permanently. We cannot escape these realities. This is unfortunate and undesirable on our part with serious repercussions for our coming generation. We have, therefore, emphatically said that the young children working in vocations such as quilt making, carpet weaving which are very risky, and tell adversely on their health should be removed from there and compulsorily enrolled in schools. They have to be taught and have to be trained in various handicrafts and such other vocations so that they may earn their livelihood. There are about 20 lakh children engaged in such industries and we need to put them in school<sup>2</sup> in order to extend requisite protection to them.

In the context of child labour social implications are adverse and the in human practice of child labour employment will result in dark future for the country. There are certain factors, which are pushing children out of school and pulling them into labour. So day by day the problem of child labour is growing up even best efforts have been made to eliminate the child labour. Some of the social implications that appear around the child labour are given below:

- (i) Poverty
- (ii) Uncontrolled population

- (iii) Lack of school education
- (iv) Tradition of child labour
- (v) Gender bias

There are several Acts, which are meant for the child labor. There are disparities regarding minimum age of employment under various concerned legislations which are discussed below:

## 3. Laws and Their Flaws:

### 1948: The Factories Act, 1948

Employment of children (Amendments) Act, 1949 the minimum age of employment has been raised to 14 years for employment in establishments governed by that Act.

### Employment of Children (Amendments) Act 1957

(As a result of the Indian Labour organisations (ILOs) convention relating to right work by young persons. The minimum age of employment has been prohibited 15 to 17 years at right in railways and ports and also provided for requirement of maintaining register for children less than 17 years.

### 1951: The Plantation Labour Act, 1951

The minimum age of employment has been prohibited less than 12 years in plantations.

### 1952: The Mines Act, 1952

The minimum age of employment has been laid down as 15 years in mines for the children.<sup>3</sup>

The Act stipulates two conditions for underground work:

- (i) Requirement to have completed 16 years of age; and
- (ii) Requirement to obtain a certificate of physical fitness from a surgeon.

### 1954: The Factories (Amendments) Act, 1954

Included prohibition of employment of persons under 17 years at right which are defined as a period of 12 consecutive hours and which included hours between 10 P.M. TO 7 P.M.

### 1958: The Merchant Shipping Act, 1958

Prohibits children under 15 to be engaged to work in any capacity in any ship, except in certain specified cases.

### 1961: The Motor Transport Workers Act, 1961

Prohibits the employment of children less than 15 years in any motor transport undertaking.

1961: The Apprenticeship/training of a person under 14 years.

1966: The Bidi and Cigar Workers (Conditions of Employment) Act, 1966 prohibits:

<sup>1</sup>. Journal of the Indian Law Institute, Vol. 37:4 (1995) at 531.  
<sup>2</sup>. Social Welfare, November 2000 at 24.

<sup>3</sup>. *Ibid.*

(i) The employment of children less than 14 years in any industrial premises manufacturing Bidis or Cigars.

(ii) Persons between 14 and 18 years to work at night between 7 P.M. TO 6 A.M.

#### 1978: Employment of Children (Amendment) Act, 1978

Prohibits employment of a child below 15 years in occupations in railways premises such as cinder – picking or clearing of ash pit or building operations, in certain establishment and in any other work which is carried on in close proximity to or between the railway lines.

#### 1986: The Child Labour (Prohibition and Regulation) Act, 1986

The Act prohibits the employment, in seven occupations and eighteen processes which have been listed out in part A and B of the schedule of the Act – of any person who has not completed fourteen years of age.

#### 4. Position in Organised Sector

In all the above Acts there are common features that they speak of regulating child labour with one or more conditions but none of them talk of total elimination in unorganised sector of child labour in unorganised as well as there cannot be any justification for the fact that work itself is hazardous in terms of depriving a child from education, recreation and the basic rights of childhood. This also belies the basic spirit of our constitution, which aimed of providing education for all children in this country within ten years.<sup>4</sup>

The child labour who are engaged with organised sector are facing many problems, which are follows:

- (i) Uncertain working hours;
- (ii) Polluted working environment;
- (iii) No work break;
- (iv) Lower payment;
- (v) No job security;
- (vi) Mal treatment by the employer or owner no medical support during their sickness and
- (vii) No leave facility.

The low labour absorption capacity of child labour in organised sector of the rural areas as well as urban areas has built up a large pool of poverty ridden, stigmatized and marginalised labour in India, which in turn, has produced a future generation of prospective citizen caught in the vicious circle of poverty, deprived of their childhood. These children are found working in the most adverse circumstances: the agriculture sector and in the small manufacturing units, in household.

#### 5. Suggestions

Only on focusing the attention on the plight of child labour exclusively in urban areas by the government and non-governmental organisations (NGOs) could not unfortunately focus attention upon the sweat of child labour in rural areas engaged with unorganised sector. They are being engaged basically for their food requirement. Parents of children in poor families although consider the child labour to be curse upon

mankind but they are compelled due to poverty to send their child to do work. Some parents are so old that they are not fit for work and they have no alternate source of earning than child labour. To make their basic necessities i.e. food, cloth, medical aid they compel their child to earn; so that they get money. The emerging condition of child labour reveals clearly that the man forgotten the passion and honesty rather feels bounteous for their self-motive. The employer wants to earn more by paying nominal amount to the child labour in the form of minimum wage. He engaged the child labour at work and refuses to employ the adult person as labour. The employers have fully neglected the child labour in context of health. He wants work at low wages. Many times the condition of the children is so much critical that they think that the bad luck is better than the poverty. But now days the employers have become too much selfish and he never on the others about the condition of child labour. Every prudent person can think about the condition of child labour in as well as throughout he does not want to provide the solution of this problem. Child is the king of nation and he is sweated; so it is not wrong to say that the future of world in darkness. Every person frequently faces the problems in his personal life and has to seek their solution for peace and gratification. If every mankind thinks morally that it is the problem of all then it may be solved with some protection being extended to the child labour immediately. Constitution has several provisions under articles 27, 28 and 32 to protect and to eliminate ultimately the child labour. So, it must convince them morally and not infringed. The requisite provisions of the Act concerning child labour have been victimized due to the child who ignorance of parents. They should be given priority in the context of basic needs. They should be accommodated properly and give the importance to eliminate child labour. Government has to launch several programmes to ensure the upliftment of the child at an early stage that are being deprived of the right for their proper growth and development.

Rehabilitation of child labourers and putting them back in schools has been the main goal of National Plan of Action (1992). For this purpose, the government must create a welfare fund to provide welfare amenities like education, medical benefits, reading rooms, recreational facilities, vocational training for young boys and girls, literacy classes to create general awareness about health, cleanliness and environment. On these lines, the latest Supreme Court Judgment on December 10<sup>th</sup> 1996<sup>5</sup> has held that the offending employers by engaging child labour in contravention of the Child Labour (P&R) Act 1986 would be required to deposit a sum of Rs. 20,000/- for each such child in a Child Labour Rehabilitation-cum-welfare fund. The income accruing from the corpus would be used to ensure that child's education "in a suitable institution".<sup>6</sup>

The National Human Right Commission (NHRC) has declared those issues like child labour; bonded labour will become part of their charter.

The commission took up the issue of child labour in the match industry at Sivakasi. In Sivakasi, the chairman recommended that Rs. 10,000 are given to each family who opted to send its children schools instead of match units and

<sup>4</sup>. *Ibid* at 25.

<sup>5</sup>. *The Hindu* 12<sup>th</sup> December 1996 at 12.  
<sup>6</sup>. *Ibid*.

other factories. He further called upon the central government to render some kind of financial assistance to the state's schemes to rehabilitate child labourers.<sup>7</sup>

There are three factors responsible for the growth of service for children in need of care and protection:

1. **Traditional Response:** These children are suffering from bad luck, which the family and close kin have failed to provide them care and protection. The traditional response deprived them from their welfare, patronage and basic necessities. They felt pity comparison over the condition of child labour and arrange for them food, shelter and clothing. They do philanthropic and voluntary effort to establish religious and educational institutions to provide care to children from certain communities who can bear the financial burden to meet with the cost of such programme.
2. **National Movement:** A need of the time National Movement is also needed a large-scale bars in order to provide care and protection for child labour. Firstly in the wake of the national movement, philanthropic and voluntary efforts became more systematic and strengthened. Secondly the national movement created new ethos and enthusiasm, liberal, rationalistic and humanistic thought among the society for the protection of children in India.
3. **Legislative Efforts to be incorporated:** The legislative efforts provide a statutory framework for the welfare of children in order to extend care and protection. Legislative efforts give the protection to orphan and poor children and they are to be brought up and made to learn trades and crafts in order to earn a better living.
4. **Proposed Programme of Action:** Besides attending school at least at night to be implemented. The government and non-government organisations (NGOs) must take necessary steps to launch a many liberal and welfare policies to eliminate the child labour. Such as:
  - (i) Integrated child development services;
  - (ii) To open non-efficient children learns;
  - (iii) Indira AvasYojna;
  - (iv) Balwadi;
  - (v) Anathalaya;
  - (vi) ShishuVidayalaya;
  - (vii) ShramikVidyapitha;
  - (viii) HarizanSmajKalyan Kendra;

Child labour problem is the major part of post independent India. It may be necessary to eliminate child labour and for that purpose as a long-term policy requisite steps for the care and protection of children and legislative measures has to be takes which should not infringed. The problem of the children may be considered a priority basis and protection and care be extended properly at National Level for the following categories of children. A.B. Bose, a known social worker has rightly observed about the categories of child labour, which are as follows:

- (i) Children who cannot get even minimal care in terms of food, shelter, clothing, education, medical aid, etc., because of extreme poverty conditions in their families;

- (ii) Children who are, in a sense, 'exploited' or neglected in the family – they do not attend schools but are assigned a variety of house hold jobs and also earn as child workers for economic and other reasons;
- (iii) Children suffering from protracted illness or physical or mental handicaps who need special services for their care, education, training and rehabilitation;
- (iv) Children who are orphaned, abandoned, destitute or without any means of subsistence of shelter or in a virtual state of destitution;
- (v) Children who run away and can not be restored to their parents as they untraceable or get lost from their homes;
- (vi) Children who suffer from ill-treatment, neglect or unsatisfactory home environment and are subject to uncalled for mental and physical suffering even thought their parents may be living as they are unfit to exercise proper care of child;
- (vii) Children whose parents do not or are unable to provide proper home life to the child on account of the presence of alcoholism, prostitution, crime, drug addiction, gambling, illicit distillation, smuggling or other types of deviant behaviour in the family and who are thus constantly exposed to these unwholesome influences;
- (viii) Children who are found begging using both direct and indirect means with or without the connivance of parents;
- (ix) Children who are vagrant, delinquent or uncontrollable;
- (x) Children who need care and protection to the long illness of a parent, highly contagious disease, mental illness, imprisonment of a parent, desertion or any circumstances;
- (xi) Children with or without parents, who become destitute because of floods, fire, drought or other natural calamities.

In unorganised sector, we should take a step to protect and eliminate child labour from such type of employment as per following recommendation.

- Hiring the younger children should be stopped in such a difficult work as earliest possible.
- The growing trend to run away of children from village to city should be discouraged and same opportunity should be granted also in countryside.
- The education opportunity and facility should be available in practice as well as in theory
- The concerned institution should be well organised to take a proper benefit.
- The social organisation and social workers should be encouraged to do work in this field for proper predication.
- Those children who have been working in Hotels, Dhabas and Restaurants should be encouraged to join the school. Similarly, it is utmost necessary to open a child workers centre where they can spend at least few hours for their education, knowledge and recreation.
- A publicity company should be launched up to raise the awareness of public against the child workers expectation.

<sup>7</sup>. *The Hindu* December 16, 1994.

- Child exploitation is equal to the social crime. So that any form of exploitation of child workers should treat as social crime by the law.
- The National Government and State Government should oblige and protect the poor family so that they could send their child in to school for good education and take a benefit of upliftment through their children.
- Child labour is a social disastrous, economically unsound and socially an evil. Government should take a necessary step to protect and save them at any cost to build the nation future.

## 6. Conclusion

We may say a finish to our analysis by recalling that Gabriela Mistral – the Noble Prize-winning poet from child.<sup>8</sup>

*"We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the fountain of life. Many of things we need could wait. The child cannot wait. A right now is the time his bones are being formed, his blood is being made and his senses are being developed."*

Hence, it is the need of the hour is to solve the problem of exploitation of the children at the place of their employment so that their normal growth and development is not hampered. If the time will pass it will become impossible to neglect and eradicate the child labour and consequently this problem will assume aggravated form and resultantly will become permanent and incurable.

## References

### Books:

1. A B Bose. (Ed.), 1989, The Urban Child in India, New Delhi.
2. A.B.Bose, A.B. 1980, "Welfare of Children in need of care and protection" in profile of the child in India, New Delhi: Ministry of Social Welfare, Government of India.
3. A.P. Verma and Mahavir Jain (Ed.), 1995, National Resource Centre on Child Labour National Institute Noida, Ghaziabad.
4. D Jain and M. Chand (Ed.), 1979, Rural Children at Work, New Delhi Indian Association for Study of Population.
5. Dr. G. Varandani (Ed.), 1994, Child Labour and Women Workers: Ashish Publishing House, New Delhi.
6. Mahaveer Jain (Ed.), 1994, Child Labour in India, A Select Bibliography: Child Labour Cell, National Labour Institute, Noida, Ghaziabad.
7. N A .Debai. (Ed.), 1990, Family and Child Labour Welfare: Planning, Teaching and Relationship, Delhi: Ashish Publications.
8. Nikhil Raj (Ed.), 2000, Media Response to Child Labour, A review of Press Clippings: V.V. Giri National Labour Institute, Noida, Ghaziabad.
9. UNICEF 1994 Street Children of Kanpur: Child Labour Cell, National Labour Institute, Noida: UNICEF, New Delhi.
10. UNICEF 2010: The Progress 2010 of Nations, New York, UNICEF.

11. UNICEF 2012: The State of the World's Children, 2012, New York, UNICEF.

### Articles:

1. Child Workers in Nepal concerned Centre, 1987, Hotel Kanchana in Kathmandu: A survey report of CWON voice of child workers: Oct. 11-17.
2. Correspondence 1990, UN Child's rights document adopted. Child workers in Asia 6(1) : 24-25.
3. **Costa Rosaline**, No future for the poor, Child Workers in Asia 5(3): 19.
4. **Deepshikha Sharma**, Child Labour A lost Future, Competition Wizard, September, (12-16).
5. **Iftikhar Ahmed**, Getting Rid of Child Labour, Economic and Political Weekly, July, 3 91815-1822).
6. **JayantiLal Bhandari**, Child Labour – Challenges Ahead Yojana, September, (40-41).
7. **K. Suman& N.M. Basha**, Social Dimensions of Child Labour Social Welfare, November 2000, (3-6).
8. **Shriniwas Gupta**, Rights of Child and Child Labour: A Critical Study Journal of the Indian Law Institute, Vol. 37:4 (531-542).

<sup>8</sup>. Mahaveer Jain: Street Children of Kanpur at 265.