



## CHILD LABOUR VIS A VIS RIGHT TO EDUCATION

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### Introduction

Children of a nation are the hopes of tomorrow. They provide the foundation of the future edifice of the nation. They are blooming flowers of the garden of society. It is therefore, a duty on the part of the members of society to protect these flowers from the damaging effects of excessive exposure to heat, cold and rains and also not to pluck them to satisfy their monetary whims. Children's program should find prominent part in our National Plans for the development of human resources so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by the society. However, today, the incidence of child labor has posed to become serious threat to the world in general and the nation in particular. It has become a major perennial social evil envisaged by our country and no suitable remedy has been traced out so far to curb the menace. No doubt, children labour is legally prohibited but in reality we hardly find an occupation where children are not employed.

The volume of child labour in a country is the index of the extent of poverty on the one hand and an index of apathy and defective legislation to deal with the problem of child labour on the other hand. Socially it is a disgrace for the society to exploit its children in utter disregard of moral and social values that any civilized society may be expected to maintain from economic point of view. It is abotaging of a productive resource and a criminal misuse of the potentialities that could serve the future much more productively than what they might be contributing at present.

Child labour in India has received considerable attention in the recent years from social scientists, activists in the field, government and voluntary organizations. A reflection of this can be found in the seminars, work-shops, research studies undertaken and coverage given to it in the media. The problem is more acute particularly in under developed and developing countries. Universally, it is a realized and accepted fact that protection of children against exploitation is essential for their mental and physical development and is the ultimate analysis to the development of nation as a whole. The present work is a humble attempt to bring forward some of the aspects of this multidimensional problem and to give some suggestions for mitigating the acuteness and gravity of this evil.

### Causation

Child labour is not a recent phenomenon. It is a socio-economic problem. It is mainly necessitated by economic compulsions of the parents and in some cases that of the children, which in turn is prompted by poverty. Lack of education, ignorance of the parents about the importance of education as well as about the impact of labour on the health of their children, large families with low income, wide spread unemployment and under employment among the adult poor strata of population in India, are the varied causes for this. Diverting the child from work means loss of income to the poor parents and an additional expenditure on education however small, so the workers do not find it useful to send their children to school. Further there are some factors due to which child labour is also favoured by the employers. Children are more amenable to discipline and control and their labour is relatively cheaper than that of the adult workers. On the other hand, employees can extract more work from children. Besides, there is no problem of unions among children unlike adults. It is very easy to control children and their appointment and termination is also riskless.

### Problems of Child Labour

The problem of child labour manifests itself in two different forms; in one of the forms child labour is used without any remuneration and in the other it is paid more subsistence wage. The children who work without wages are mainly those engaged in family farms and other family enterprises besides those who have been handed over to the unscrupulous exploiters in discharge of an obligation and those who had been separated from their parents owing to acute poverty and destitution. Besides low wages, child labour is also characterized by uncertainty of employment, shifting employers and jobs, lack of trade unionism and casualism.

As the child workers are paid extremely low wages it results in malnutrition on the one hand and hard physical labour on the other hand which subsequently leads to deterioration in terms of health and medical care and shortens the child's life span in the long run. It is a social evil on par with stealing, snatching and pick pocketing, among children.



The working hours of a child worker are unbelievably too long. The Child is made to work for 12 to 16 hours a day. Further, is not even permitted a breathing space. The Child has no time to relax and replenish his energies or have some recreation. It does not know the world beyond its routine. It is under a constant threat and depression of losing its job. There is no law to protect him. There is no insurance no provident fund and no pension for him. He is at the mercy to whims of his superior.

The more serious problem in fact is that child labour results in a considerable waste of national talent given the proper rear and care, education and training, who knows the child working in a workshop may turnout to be a great scientist, a physician or a philosopher. Larger the extent of child labour greater is the waste of national talents. Last but not the least is with regard to the fixation of the minimum age of the child as there is no uniformity of age.

The constitution embodies certain social values to protect the children from exploitation and to nourish them to occupy a place of pride in the national life. These social precepts are outlined in the chapters on Fundamental Rights and Directive Principles. Article 15 (3) of the constitution empowers the state to make special provisions for the advancement of women and children. The framers of the constitution were fully aware that women and children need special care and treatment because of their peculiar position in the Indian society. Article 15 (3) was hitherto viewed as an exception to Article 15 (1) of the constitution, became another facet of the equality principle through creative judicial interpretation. Therefore the state under a constitution mandates to make laws for the advancement of women and children. Article 24 is another piece of the constitution designed to protect children of tender age against the state and other private individuals. Article 24 prohibits the employment of children below 14 years of age to work in any factory or be engaged in other hazardous employment.

This is a constitutional prohibition which even if not followed up by the appropriate legislation must operate *proprio vigore*. Further article 24 is plainly and in dubitably enforceable against every one and by reason of its compulsive mandate no one can employ a child below the age of 14 years in a hazardous employment. This provision raises a question as to what are the hazardous employments may be called hazardous employment.

Two Articles of the Directive Principles of the consequences article 39 f and Article 45 are also relevant. The former urges the tender age of children is no to be abused and argues for not allowing citizens to do work which is unsuitable because of their age or strength on account of economic necessity the latter is a mandate to the state to strive and provide for Free and compulsory education to all children until they reach 14 years of age. So the official perspective was that the constitution did not completely ban child labour but prohibited it in factories, mines and hazardous jobs. In support it was argued that had the constitution intended otherwise child labour would have been completely banned in no uncertain terms in contrast the other reading of constitutional provisions wanted article 24 to be interpreted in the context of the directive principles to provide free and compulsory education prohibiting citizens to work at jobs unsuited to their age or strength on account of their economic circumstances.

A plethora of legislations were passed to give effect to the constitutional mandates and international covenants and recommendations, the latest being child labour (Prohibition and Regulation) Act 1986. But their implementation is slow and their existence is unknown. Further there is no uniformity in the definition of the word 'child' in these laws. With a firm objective to prohibit work of children in certain other employments the child labours (prohibition and regulation) ACT 1986 was passed by the government. Instead the government through this act not only legitimizes the system of child labour but shuts act eyes to the harsh reality of vested interests that perpetuate the system.

There are several lacunae in the Act. It covers only the children in the organized sector leaving out almost 90 percent of the working children in the unorganized, urban and rural sectors and family units. Besides the Act does not include many occupations which are really hazardous like glass, bangle and slate industries etc. According to the Act the government proposes to abolish child labour within 10 years. Even though armed with a number of laws, during the last 40 years the government had failed to make any dent into the practice. One therefore quite justifiably shares the scepticism that 'does the government now feel that they can do away with this problem in 10 years time'.

### **Child Labour Vis a Vis State Intervention**

State intervention to remove children form labour force and compel them to attend schools is politically contentious Many regarded it as improper and unrealistic to force the parents of the poor to send their children to schools. On the left were those who argued that child labour was inherent in the system of capitalist exploitation and the patents needed the income of their children. On the right were those who argued that industry needed low wage child labour and that child labour relieved the state of caring for the poor. English conservation argued that schooling is inappropriate for the working class whose children could acquire better skills as apprentices.



Therefore compulsory education would make the poor unsuited for doing manual work that the society requires because child labour is necessary for the well being of the poor when the state is unable to provide for relief. In a country with large number of poor people the state ought to promote the employment of the children of the poor people. Rather than remove them from the labour force. However reformers argue that compulsory education is necessary if child labour laws were to be enforced. Reformers also noted that enforcing school laws though by no means simple is easier than enforcing child labour laws and factory acts. The enforcement of compulsory education laws is facilitated by a system of compulsory birth registration. But unfortunately the so called laws in India permit but do not require local authorities that education be made compulsory. In spite of the constitutional directive for compulsory education for children up to 14 years of age and the fact that most Indian states have statutes for compulsory education no Indian state has made education compulsory so far.

### **Child Labour Judicial Mandates**

The constitution is a document of social revolution which imposes an obligation on every instrumentality including the judiciary, to transform the status quo ante into a new human order in which there will be equality of status and opportunity for all. The judiciary has therefore a socio economic destination and creative functions. In *Asiad workers case* it was contended that the *Employment of Children Act 1938* was not applicable in the case of children employed in the construction work of *Asiad projects in Delhi*, since construction industry was not a process specified in the schedule to the Act. Expressing concern about the sad and deplorable omission *Bagawathi J* advised the state government to take immediate steps for inclusion of construction work in the schedule to the Act and it violated in any part of the country, the court has emphasized that article 24 embodies a fundamental everyone by reason of its compulsive mandate no one can employ a child below the age of 14 years in a hazardous employment like construction work. The contractors are thus under a constitutional mandate not to employ a child below the age of 14 years on construction work. It is also the duty of the union government *Delhi administration* to ensure that the contractors to whom they have entrusted the construction work also obey this obligation; the decision of the court in the instant case paved the way to prohibit employment of children below 14 years even in the construction industry.

A high water mark in the application of Article 24 of the Constitution has been reached in the decision of the court on *labours working on Salal Hydro Project vs Jammu & Kashmir*, wherein the court reiterated the above ruling. The court maintained that child labour is an economic problem. Poor parents seek to augment their meager income through employment of their children. So a total prohibition of child labour in any form may not be socially feasible in the prevailing socio-economic environment. Article 24 therefore puts only a partial restriction on child labour. The court further observed the so long as there is poverty and destitution in this country it will be difficult to eradicate child labour.

The observation of the courts in the above two cases were aimed to give true effect and spirit to the neglected constitutional dictate relating to the development of children. It is hoped that both the Union and State governments will do everything up to the expectations of the Supreme Court to improve the all round progress of the child and also to end the exploitation of docile and innocent children.

The abolition of child labour is preceded by introduction of compulsory education and child labour laws are inter linked. Article 24 of the Constitution bars employment of children below the age of 14 years, Article 45 is the supplementary to Article 24 for if the child is not to be employed below the age of 14 years it must be kept occupied in some educational institutions.

The court in a series of cases unequivocally declared that right to education is an integral part of right to personal liberty embodied in Article 21 of the Constitution. These judicial mandates clearly demonstrate that right to education is necessary for the proper flowering of man, his mind and personality. Hence the right to education is one of the facets of right to personal liberty in and *Verdhan Chandel vs University of Delhi*, the Delhi High Court in its unanimous decision held that education is a fundamental right under our Constitution. The court observed that the law is therefore now settled and that the expression of life and personal liberty in Article 21 of the Constitution includes a variety of rights though they are not enumerated in part iii of the Constitution provided that they are necessary for the full development of the personality of the individual and can be included in the various aspects of liberty of the individual. The right to education is therefore included in Article 21 of the Constitution this right can be denied only means of a procedure established by the law as contemplated in Article 21 of the constitution, the procedure be fair, just and reasonable must pass a test under Articles 14, 19 and 21 of the Constitution.

The *Andhra Pradesh High Court* in this momentous decision in *Murali Krishna Public School case* pronounced that right to education to dalits is a fundamental right and it is the mandatory duty of the state to provide adequate opportunities to



advance educational interests by establishing schools. The decision of the Andhra Pradesh High Court in the instant case has paved the way for better educational opportunities for daliths. The dalits, hitherto neglected specimens of humanity, who are dragging their earth existence under and a grinding poverty, have the fundamental right to education and they can compel the state to take positive action to provide educational facilities to their children. Any failure on the part of the state to provide better and adequate educational facilities belonging to lower strata of the society is violative of not only Article 45 but also Article 21 of the Constitution. Thus the judicial response to right to education is positive and progressive to secure in particular, to the children of the weaker sections of the society, the proclaimed, socio economic justice.

From the above, it can be concluded that child labour is the by-product of our socio-economic conditions. In the context of the present socio economic conditions this evil cannot be eliminated but can only be regulated. A move to eradicate child labour would cause great hardship to the families of the working children. It can improve socio-economic conditions of the parents in that concept we can eliminate the child labour. Thus child labour is a necessary evil and indispensable in a society like ours; abolition of it is not practicable.

### **References**

1. Resolution; National Policy for Children, Department of social welfare-August, 1974.
2. General manager ; southern railway vs. Rangachari AIR 1962 sc 36.
3. Kerala vs .N.M.Thomas ATR 1976 SC 490.
4. Peoples union for democratic rights v. Unions of Indian AIR 1982 Sc1473.
5. AIR 1982 SC 177 and see also Lakshmi kanth vs.India l upon the great importance of child welfare in the country.
6. Myron Weiner state intervention 350, 15 seminars (1988).
7. Ibid Karl Marx believed that child labour was the result of capitalism and technologies if created, he wrote that child labour is source of profit to employs and is thus inherent in a capitalist system of wage labour . See Karl Marx .selected works .vol .2 79-80.