

THE CHILD LABOR REGULATIONS

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INTRODUCTION

The development of any nation is solely contingent to the existing assets of the nation like education, industries, natural resources and human resources. So that it is most important factor on the part of nation to develop their children in proper orientation, rather they receive its reparations. If they engaged in child labor what will be the future of nation. Therefore A rights-based approach starts from the premise that all children are 'rights holders'. However in India since ages children have been exploited from their basic, fundamental, human rights by the racist culture. Massive numbers of child labours are found in India out of schools.

Nevertheless there so many efforts have been made by social reformists. They endeavored to bring the children in main stream by providing them education. Mahatma Phule opened the schools, Shahu Maharaj opened the residential hostels and Dr. Babasaheb Ambedkar made a legal mandates especially in the Indian Constitution in respective labor legislation. This paper tries to focus on the constitutional and statutory provisions exists which protects their respective rights and its implications.

NEED AND SIGNIFICANCE

The child labours are surviving below the minimum accepted standards without adequate shelter and food facilities. The low earning of these child labours and their parent cannot meet with their not only livelihood but even daily needs. They live under unhygienic conditions which results in dangerous diseases. They work more than men in lower wages. Child labour violates various national and international principles in which human rights are embedded. So

it is needful to expose the scenario before the society and state so as to state could take some forward stapes for its eradication.

THE CONSTITUTIONAL VALIDITY

Childhood and youth are to be protected against exploitation and against moral and material abandonment. The Indian constitution accords rights to children as citizens to achieve the social justice. The Fundamental Rights and Directive Principles of State Policy in Indian Constitution, encompasses various rights included in the UN Convention on the Rights of the Child.

Child laborers belong to the unorganized labour force. So are exploited, exposed to perilous work conditions and paid a trifle for their long hours of work. However the Constitution of India embodies certain rights for children and child labour as right against discrimination (Article 15). Moreover the state must make special provisions for children (Article 15 (3)).

LEGISLATIVE REGULATIONS FOR RIGHTS OF CHILDREN

During the decade of independence of India Dr. Babasaheb Ambedkar was the labor minister of India who fought for rights of labor including child labor. He has drafted various labour laws to protect rights of labour including child lavbour.

The policy of the government is to protect children from their exploitation and to ban on employment of children during their childhood in factories, mines and hazardous employment and to regulate the working conditions of children in other employment. Moreover, to make meaningful the principles of the Indian Constitution the respective legislations have been passed, where different postulates have been taken as basis of child rights which are as follows. It has tried to make certain regulatory mandate on their masters and employers.

Age Regulation-

In 1929 the first commission was established to fix the minimum age of child employment, the recommendation had submitted in 1931 and accordingly it had been turned into the first

statutory enactment dealing with child labour. The law was prohibiting employment of children below 14 years of age.¹

In certain industries depending on nature of the work children are not allowed to work below 12 years. In plantation industries like tea, coffee, rubber or cinchona, prohibited the employment of children less than 12 years. In Shop and Commercial Establishment Act a child is a person who has not completed the age of 12 years.² However, the age requirement varies from 12 to 15 years in states.³

The employment of children who are below 14 years of age on sea-going ships,⁴ Child Labour (Prohibition and Regulation) Act prohibits the employment of children less than 14 years of age in occupations process and to regulate the conditions of work of the children in certain employment,⁵ the training of apprentices and supplements the availability of trained technical personnel for the industrial concerns who is not less than 14 years of age and satisfies the prescribed standards of education and physical fitness can undergo apprenticeship training in the designated trade under an employer.⁶ For manufacture of Beedis and cigars, prohibits employment of children in industrial premises, where any process connected with the manufacture of Beedis and cigars takes place. Child for the purpose of this Act, means a person who has not completed 14 years of age.⁷ It is mandatory to complete 15 years of his age to employ in mines. It provides that non-adult workers have to carry tokens.⁸ A new category has been added as 'adolescent' it means children between 14 to 18 years as adolescents and bars their employment in any hazardous occupations.⁹

Elimination of Child Labour-

¹ *The Children (Pledging of Labour) Act, 1933*

² *Ibid, Sec. 24 of the Plantation of Labor Act, 1951*

³ *Shop and Commercial Establishment Act, 1969*

⁴ *The Merchant Shipping Act, 1958*

⁵ *Part-A and Part-B of the schedule in the Child Labour (Prohibition and Regulation) Act, 1986*

⁶ *Apprentice Act, 1961*

⁷ *Shop and Commercial Establishment Act, 1969*

⁸ *Sec.68 of Factories Act, 1948*

⁹ *The Child Labour (Prohibition and Regulation) Act, 2016*

To achieve the goal of universal truth and principles of human rights of children, legislatures finished constitutional, statutory and developmental measures which are required to eliminate child labour in India. However government remains helpless to achieve this objective.

Regulation of work-

The provisions regulate the daily and weekly hours of work, rest intervals, payment of wages; overtime pay, holidays with pay, annual leave, employment of children and young persons, etc. An Act prohibits the employment of children less than 14 years of age in occupations process and to regulate the conditions of work of the children in certain employment.¹⁰ It has certain exceptions where process is carried on by family or to any school receiving assistance or recognition from Government. However in shops and establishments child cannot be employed even as the family member of the employer. The establishment for the purpose of this Act includes a shop, commercial establishment, workshop, farm, and residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment and the processes like abattoirs /slaughter houses, printing, cashew nut discaling and processing and soldering.¹¹

The child worker can be allowed to work if employed only between 6 am and 7pm. Children are not allowed to work during night time between 7pm to 6 am this regulation is since 1881.¹² It not only prohibits the employment of children in mines but also prohibits the presence of children in any part of any mining operation is being carried on.¹³

The child is not allowed to work near cotton openers. The work allowed should not be more than 4.5 hours. This Act provides a provision for a weekly day of rest, every child worker who has worked for a period of 240 days or more in a factory during a calendar year is entitled during the subsequent year for leave with wages at the rate of one day for every 15 days.¹⁴

Hazardous Work-

¹⁰ *Part-A and Part-B of the schedule in the Child Labour (Prohibition and Regulation) Act, 1986*

¹¹ *The Child Labour (Prohibition and Regulation) Act, 1986*

¹² *Factory Act, 1881*

¹³ *The Mines Act 1952 Sec. Sec 45(i)*

¹⁴ *Factories Act, 1948*

Right of children to be protected from any hazardous employment till the age of 14 years (Article 24).¹⁵ It prohibits the employment of hazardous processes and occupations, like occupations are mining, inflammable substances, and hazardous processes in the factories. It empowers Union Government to add or omit any hazardous occupation from the list included in the act. It empowers the government to make periodic inspection of places at which employment of children and adolescents are prohibited. District Magistrate (DM) has powers to ensure that the provisions of the law are properly carried out and implemented.¹⁶ Moreover the work that given to the child worker that hinders his school education is a hazardous one.

Age certificate-

The Act was amended in 1938 which says for requirement of a certification of 15 years age.¹⁷ A token as if certificate of physical fitness given by medical practitioner shall be carried by child labour. A certificate for child labor is valid only for twelve months. That shall be examined by the inspector at the time of visit. According to this Act, 'Child' means a person below the age of 15 years.¹⁸

Working Hours-

The maximum working hours in a week for a child and an adolescent prescribed under the Act are 40 hours.¹⁹ An adolescent is allowed to be employed in any mine except between 6 am and 6 pm.²⁰ The period of work shall not exceed three hours and no child shall work for more than three hours before he has had an interval for rest for at least one hour. The total working hours including interval for rest and the time spent in waiting shall not be spread over more than 6 hours.²¹ Night shifts were prohibited at in railways, ports and insist to maintain register for children less than 17 years.²²

Wage Regulation-

¹⁵ *The Constitution of India*

¹⁶ *The Child Labour (Prohibition and Regulation) Act, 2016*

¹⁷ *Employment of Children Act, 1938*

¹⁸ *The Pleading of Child Labor Act*

¹⁹ *Ibid 17*

²⁰ *The Mines Act, 1952*

²¹ *The Child Labor (Prohibition and Regulation) Act, 1986*

²² *The International Labour Conference , 1948 adopted a Convention (No.90)*

The Act is aimed to provide the economic justice to working people including child labour. The objectives of this Act are to fix, revise and enforce the minimum rates of wages to the labour including child labour. The Supreme Court of India in its Judgment in the case of *Reftakes Brett and Co. v. others*,²³ held that the children's education; medical requirement; minimum recreation; should be added to the norms and already recommended by Indian Labour Conference for fixing, revising the rates of minimum wages.

Right to education-

Indian Constitution consciously incorporated relevant provisions in the Constitution to secure compulsory universal elementary education as well as labor protection for children. According to Article 45 the state shall endeavor to provide within a period of 10 year from the commencement of the Indian Constitution free and compulsory education for all children until they have completed the age of 14 years. Right to free and compulsory elementary education for all children in the 6-14 year age group is provided in the Indian Constitution.²⁴ It calls complete ban on child labour so they can get compulsory primary education under Right to Education.

Exploitation of child employee-

Then another exclusive enactment was passed to prevent exploitation of child labour at workshops and other specified occupations and to regulate the employment of children in certain industrial employments.²⁵

Modest penalty-

The contravention of the provisions of this Act was punishable cognizable offence under criminal law. If a person below 18 years of age is employed in a mine, the owner, agent or manager of such mine shall be punishable with fine up to Rs. 500 which is too less and inadequate.²⁶

²³ *Civil Appeal No. 4336 of 1991*

²⁴ *Article 21-A*

²⁵ *Employment of Children Act, 1938*

²⁶ *Section 40 of The Mines Act, 1952*

The Act provides for penalties for breach, which may be imprisonment up to three months or a fine up to Rs. 500/- or both.²⁷

The child labor laws formulates child labour a cognizable offence and will attract a jail term between 6 months to 2 years or a penalty between 20 to 50 thousand rupees or both for the first time and for repetition makes double than earlier. Relaxation may be given in penalties if the offender is parent of child labour and the act proposes a fine of Rs.10, 000 for repeat offence committed by parent.²⁸

Normally one cannot approach the Supreme Court directly without first going through the lower courts. However, one can do so in the case of violation of one's fundamental rights of child labor (Article 32).

Rehabilitation-

Actually the is government trying to make various provisions, policies, establishing different executive bodies to undertake the survey for the purpose of rehabilitation of child labour. The act has a provision of creating Rehabilitation Fund for this purpose. Nevertheless the result of this is very poor.

Contracting Out-

The object and reasons of this Act was to eradicate the evils arising from the pledging of labour of young children by their parents to employers in lieu of loans for advances.²⁹ The Act declares that an agreement, oral or written, express or implied to pledge the labour of child below 15 years of age by the child's parents, guardians as void and makes the contracting parties, liable for penalties. Right to being protected from being trafficked and forced into bonded labour (Article 23), Article 46 envisages right of weaker sections of the people (children too) to be protected from social injustice and all forms of exploitation.

CRITICISMS

²⁷ *Bidi and Cigar Workers(Conditions of Employment) Act,1966*

²⁸ *The Child Labour (Prohibition and Regulation) Act, 2016*

²⁹ *Gazette of India, 1932, Part V, p.195*

No uniformity in the age of child labor. There is variation in the age of child labor from 12 to 15.

Children working in their family enterprises would lead to more children working in unregulated conditions.

The law prohibits children to work but without working difficult to meet their livelihood so the poor children belonging to low caste to traditional caste-based occupations continued for generations.

It may be difficult to determine whether an enterprise is owned by a family or some person has employed the whole family to run the enterprise.

It has reduced the number of hazardous occupation from 83 to just 3 (mining, explosives and occupations mentioned in the Factory Act). This paves way for children to be employed in hazardous chemical mixing units, battery recycling units, among others.

CONCLUSION

In India there is plethora of legislations to protect the interests of child labor. Any innocent man hopes from these legislations as it shows the enormous positive norms in the fever of child labor. However the history reveals that no child labor provision were implemented to that extent by which child could get benefited. No doubt the respective provisions of child labour are based on the international labor organizations as well as Indian Constitution. These principles are the universal truths which very consonance with the child labor problems. Nevertheless the problem is attached with political will and the implementation of the same. So there is a requirement of check and bounce of international organization like ILO, UNICEF and UNODC etc. As the Indian politics is worst corrupted it is never expected better situation from them.