International Journal for Social Studies
Available at https://edupediapublications.org/journals
ISSN: 2455-3220
Volume 02 Issue 07
July- 2016

Prohibition of Child Labour in India

K.Karuppiah,

Ph.D.Research Scholar in History, Department of History, Presidency College (Autonomous), Chennai - 600 005.

I. Introduction

Background

In the pre-industrial agricultural society of India, children used to work as helpers and learners in the hereditarily determined family occupation under the benign supervision of elders. The workplace was extension of family atmosphere and the nature of work was simple due to simple technology. The advent of industrialisation and urbanisation resulted in exodus of rural population to urban centers. The child had to work as individual person and under an employer or without the supervision of his guardian. Exposed to hazards of chemicals, poisons and dangerous works; subjected to repetitive, monotonous and unpromising drudgery; and to widely stretched working hours without adequate leisure and adequate pay, the children were imperiled of their physical health and mental growth.[1] The industrial revolution started in the West deprived the sources of traditional employment and generated vast demands for manpower due to which child labour became outrageously manifest. Child labour is a social evil because of the hazards of the work, denial of opportunity for natural development, exploitation arising from low wages, loss of bargaining power on the part of adult workers due to availability of cheap child workers and loss of valuable opportunity for schooling towards better equipment with competence.[2] As the Committee on Child Labour (1979, headed by Sri M.S. Gurupadaswamy) has concluded, "child labour is economically unsound, psychologically disastrous and physically as well as morally dangerous and harmful."[3]

The Charter of Rights of Children or the Geneva Declaration made by the ILO in 1924 in order to protect them against hazardous employments was the

ISSN: 2455-3220
Volume 02 Issue 07
July- 2016

first humanist effort to help their amelioration. The UN Declaration of Rights of Children, 1959 which indicated that "the child by reason of his physical and natural immaturity, needs special safeguards and care, including appropriate protection, before as well as after birth" got concretiszed into the UN Convention on Rights of the Child, 1989.[4]

Children are a human resource, invaluable but vulnerable, yet developing with a potentiality to bloom with joy in an atmosphere of a caring Society.[5] They are great promises of tomorrow, the dawn of humanity and buds of social development.[6]

II. Causes of Child Labour in India

The causes of child labour are many and inter-related. Generally it may be said that children are compelled to work because of their poor socio-economic conditions. Though poverty is said to be the major cause of child labour yet it is not the only cause. The structure of the economy and the level and the pace of development also influence extent and nature of child labour. As the reasons of child labour are clubbed with many factors, it is not possible to identify the classification, however, an attempt is made to categorize under the following heads:-

Poverty : The most important cause of child labour is widespread poverty. India, being a developing country, poverty force the parents to send their children to seek employment. Children work not because their parents are wicked or employers are wicked, but because their income is essential for the survival of the family. The problem of child labour is interrelated to the problem of living wage of adult-worker. The parents force their children to take up employment because their own earning power is low. The employer also takes the benefit of this weakness by providing work to their children on low wages in spite of the various protective laws.

Unemployment : This is also one of the important causes as the children seek work because their adult wage earners are either unemployed or had some part-time jobs.

ISSN: 2455-3220
Volume 02 Issue 07
July- 2016

Absence of Scheme of Family Allowances: In our country, there is no such scheme for family allowance so that people may have adequate standard and may not be forced to send their children to the labour market. Today, such type of allowance is given in a number of countries like Australia, New Zealand, the United Kingdom, France, etc.

Large family: Large families with comparatively less income cannot give sheltered childhood to their children. In order to compensate the daily income, children are sent to work instead of schools and are made to work for their livelihood. They think that three or four children are better than one. For them, extra children mean extra income. But they forget that one qualified and intelligent son is better than hundred illiterate foolish are.

Child Labour is a Cheap Commodity: Children can be engaged for more hours of work in return to less wages. They do not possess the bargaining power, nor do they have the right to form trade unions to fight for their right. Hence the employers exploit the child labour by making them work from dawn to dusk, without any fear of retaliation. Thus child labour is very cheap labour in comparison to that of adults. In fact it ensures more margin of profit over less investments.

Absence of Provision of Compulsory Education: The provision of compulsory education up to a prescribed age "could" compel the children to attend the school so that there may arise no question of entering of children into employment. Absence of any such provision of compulsory education is another important cause. However the Parliament recently incorporated Article 21A to meet the situation which provides free and compulsory education to all children of the age of six to fourteen years.

Illiteracy and Ignorance of Parents: The major portion of the population are usually illiterate especially the lower socio-economic groups. Their conditions never permit them to think of future, as their present life itself is miserable. As such, the illiterates are satisfied with what they gain by the earnings of children. It is ignored by them that their

ISSN: 2455-3220
Volume 02 Issue 07
July- 2016

children may participate even in educational opportunities, but child labour deprives the children of all such opportunities and minimizes their chances for vocational training. It also affects their health and they are converted into labours of low wages for all their lives.

Children themselves: Children may get motivation to work from different sources.

They may themselves decide to work when they see that even basic needs of their own as also of their family members are not properly met despite the best possible efforts made by their parents. They may be motivated by their parents to take out work out of sheer compulsion of family circumstances. Other members of their family and even those outside their family may suggest children to share the burden of their parents who are unable to afford the family expenses. Children may take up jobs themselves because they may not like to be dependent on others for their being.[7]

III. Indian Constitution and Child Labour

Now obviously children need special protection because of their tender age and physique mental immaturity and incapacity to look after themselves. That is why there is a growing realisation in every part of the globe that children must be brought up in an atmosphere of love and affection and under the tender care and attention of parents 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 with full appreciation and realisation 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. Clause (3) of Article 15 enables the State to make special provisions *inter alia* for children and Article 24 provides that 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. Clauses (e) and

ISSN: 2455-3220
Volume 02 Issue 07
July- 2016

(f) of Article 39 provide that the State shall direct its policy towards securing *inter alia* that the tender age of children is not abused, that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength and that children are given facility 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. These constitutional provisions reflect the great anxiety of the constitution makers to protect and safeguard the interest and welfare of children in the country. The Government of India has also in pursuance of these constitutional provisions evolved a National Policy for the Welfare of Children. This Policy starts with a goal-oriented perambulatory introductions:

The nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a 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 society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.[8]

It was observed by the Supreme Court in the matter of *Lakshmikant Pandey vs. Union of India,*[8] as follows:-

It is obvious that in a civilized society the importance of child welfare cannot be over-emphasized, because the welfare of the entire community, its growth and development, depend on the health and well-being 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.

IV. Labour Legislations in India and Child Labour

Besides Constitution of India, there are certain other legislations which deal with children. They are the Children

ISSN: 2455-3220
Volume 02 Issue 07
July- 2016

(Pledging of Labour) Act, 1931; The Factories Act, 1948; The Plantation of Labour Act, 1951; The Mines Act, 1952; The Merchant Shipping Act, 1958; The Motor Transport Workers Act, 1961; The Beedi & Cigar Workers (Condition of Employment) Act, 1961 and the Child Labour (Prohibition and Regulation) Act, 1986. The Child Labour (Prohibition & Regulation) Act, 1986 came into force when it was realized that the aforesaid legislations were inadequate to combat the magnitude of child labour in India. This Act came into force in the place of the Employment of Children Act, 1938 and thereby the Employment of Children Act, 1938 is repealed.[9]

Nevertheless, in order to provide a uniform definition of the child, Section 2 of the Minimum Wages Act, 1948, the Plantation Labour Act, 1951, the Motor Transport Workers Act, 1961 and Section 109 of the Merchant Shipping Act, 1958 are amended.[10]

The Child Labour (Prohibition & Regulation) Act, 1986 : The Act is divided into IV parts and contains 26 Sections with one Schedule. The long title prescribes the reasons for passing this legislation. The reasons may be of two types i.e. (i) prohibit the engagement of children in certain employment and, (ii) regulate the conditions of works of children in certain other establishment.

V. Judicial Approach

The Supreme Court in *Rosy Jacob vs. Jacob A.Chakramakkal*[11] observed: Children are not mere chattels, nor are they playthings for their parents. Absolute rights of parents over the destinies and the lives of their children has in the modern times 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.

As viewed by the Supreme Court in *Bandhua Mukti Morcha vs. Union of India*[12], a 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. Every nation, developed or developing, links its future with the

ISSN: 2455-3220
Volume 02 Issue 07
July- 2016

status of the child. Childhood holds the potential and also sets the limit to the future development of the society. Children are the greatest gift to the humanity.

In *Gaurav Jain vs. Union of India*[6], the Supreme Court observed: "Children of the world are innocent, vulnerable and dependent. They are all curious, active and full of hope. Their life should be full of joy and peace, playing, learning and growing. Their future should be shaped in harmony and cooperation. Their childhood should mature, as they broaden their perspectives and gain new experience. Abandoning the children, excluding good foundation of life for them, is a crime against humanity."

There are some landmark judgments rendered by the Supreme Court both in recognising and remedying the pathetic situation of child workers. In *Rajangam vs. State of Tamil Nadu*,[13] employment of children in beedi manufacture was considered as violating the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 and the Child Labour (Prohibition & Regulation) Act, 1986. The Court observed, "Tobacco manufacturing has indeed health hazards. Child labour in this trade should therefore be prohibited as far as possible and employment of child labour should be stopped either immediately or in a phased manner."

In a landmark judgment, *M.C.Mehta vs. State of Tamil Nadu,*[14] the Supreme Court by an order of 31 October 1990 noted that in Sivakasi, as on 31 December 1985, there were 221 registered match factories employing 27,338 workmen of whom 2941 were children; and that the manufacturing process of matches and fireworks is hazardous, giving rise to accidents including fatal cases. Keeping in view the provisions contained in Articles 39(f) and 45 of the Constitution, it gave certain directions as to how the quality of life of children employed in the factories could be improved. The Court also felt the need of constituting a committee to oversee the directions given.

The Court realised that child labour is an all-India evil and that

ISSN: 2455-3220
Volume 02 Issue 07
July- 2016

without a concerted effort, both of the Central Government and various State Governments, this ignominy would not get wiped out. It thought it fit to travel beyond the confines of Sivakasi to deal with the issue in wider spectrum and broader perspective taking it as a national problem and not appertaining to any one region of the country.

After discussing the constitutional and international obligations towards eradication of child labour, the Court issued directions for survey of child labour within six months; for identifying the most hazardous employments keeping in mind the National Child Labour Policy announced by the Government of India;[15] and for giving alternative employment to adult member of the family of child worker nearest to the place of residence of the family. In those cases, where alternative employment would not be made available as aforesaid, the parent or guardian of the concerned child would be paid the income, which would be earned on the corpus, which would be a sum 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 or guardian for education. 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.

Another pronouncement of the Court having far-reaching importance is *Bandhua Mukti Morcha vs. Union of India.*[16] The facts disclosed prevalence of child labour in carpet weaving industry in Varanasi, Mirzapur, Jaunpur and Allahabad areas and enormity of the problem of exploitation to which the children are subjected.

The High Court of Karnataka in *A.Srirama Babu*[17] looked to the issue of eradication of child labour in sericulture industry, especially weaving of silk sarees, where children in the age group of five to eight were engaged in huge members. While the Schedule to Child Labour (Prohibition & Regulation) Act, 1986 is silent about this industry, the Court enunciated the criterion of hazardous work. To be hazardous, the work should be either inherently

injurious to the children or the conditions of work are harmful to their health. The Court held that all employments which cripple the health of a child and which disable him from being a healthy member of the society should be treated as a hazardous industry. It directed the Commissioner of Labour to issue notices to the deviant establishments for appropriate action.

VI. Conclusion

From the foregoing study, the following conclusion emerges:

On the whole, prohibition and regulation of child labour is a task participated by private and public bodies in recent times in a concerted manner. That it has not remained as solitary venture of the State is a tremendous positive factor in the context of law-society interaction, where legal and moral responsibility is placed upon private actors like parents, family, welfare institutions, employers and State.[18] Collectivist enthusiasm developed in this context will not allow sapping the elan vitale of children due to work. Since bane of poverty is the root cause of child labour, the larger task of economic amelioration of the vulnerable section of the society should be aimed at as lasting solution. As the capitalistic and feudalistic society is the breeding ground for child labour, remedy for the same is to be found in controlling the economic power of such economic structure and in uprooting poverty and illiteracy. Poverty can no longer be an excuse for child labour as the State stands as the ultimate guardian of children against child labour practice. Education as a policy instrument for removal of children from labour and a means of empowerment should be largely relied upon for a desirable result.[19]

***

ISSN: 2455-3220
Volume 02 Issue 07
July- 2016

References

1. Report of the Committee on Child Labour (Gurupadaswamy Committee, 1979) at p. 8(2.3).
2. As viewed by the Gurupadaswamy Committee, "Labour becomes an absolute evil in the case of child when he is required to work beyond his physical capacity, when hours of employment interfere with his education, recreation and rest, when the wages are not commensurate with the quantum of work done and when the occupation he is engaged endangers his health and safety" at p. 9 (2.7).
3. Ibid, at p.10 (2.10).
4. P.Ishwara Bhat, Law and Social Transformation in India, Eastern Book Company, Lucknow, First Edition, 2009, p.608.
5. Rabindranath Tagore, cited in Swapan Kumar Sinha, Child Labour in Calcutta: A Sociological Study (Naya Prokash, Calcutta 1991) at p.40.
6. Gaurav Jain vs. Union of India, (1997) 8 SCC 114: AIR 1997 SC 3021.
7. P.K.Padhi, "Child Labour: Yesterday, Today and Tomorrow" 2004 Lab.I.C. (J.S.) 176.
8. Lakshmikant Pandey vs. Union of India, (1984) 2 SCC 244.
9. Section 22 of the Child Labour (Prohibition and Regulation) Act, 1986, reads: The Employment of Children Act, 1938, is hereby repealed.
10. See Sections 23, 24, 25 and 26 of the Child Labour (Prohibition and Regulation) Act, 1986.
11. (1973) 1 SCC 840: AIR 1973 SC 2090.
12. (1984) 3 SCC 161: AIR 1984 SC 802.
13. (1992) 1 SCC 221: 1992 SCC (L&S) 105.
14. (1996) 6 SCC 756: 1997 SCC (L&S) 49: AIR 1997 SC 699.
15. Following industries are identified as hazardous: the match industry in Sivakasi, Tamil Nadu; the diamond polishing industry in Surat, Gujarat; the precious stone polishing industry in Jaipur, Rajasthan; the glass industry in Firozabad, Uttar Pradesh; the brass-ware industry in Moradabad, Uttar Pradesh; the hand-made carpet industry in Mirzapur-Bhadohi, Uttar Pradesh; the lock-making industry in Aligarh, Uttar Pradesh; the slate industry in Markapur, Andhra Pradesh; the slate industry in Mandsaur, Madhya Pradesh.
16. (1997) 10 SCC 549.
17. A.Srirama Babu vs. Chief Secy., Govt. of Karnataka, ILR (1997) Kar. 2269.
18. N.R.Madhava Menon, "The Rights of the Child: Law, Policy and Enforcement", (1996) SBRRM Journal of Law 24.
19. P.Ishwara Bhat, Law and Social Transformation in India, Eastern Book Company, Lucknow, First Edition, 2009, p.626.