



Child Labour in India and a Gross Violation of the Right to Education ACT.

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Abstract

Every year June 12 is observed as World Day Against Child Labour. It is common knowledge that child labour is closely associated with poverty. Many poor families are unable to afford school fees or other school costs. The Government of India has introduced a Bill to amend the existing Child Labour (Prohibition and Regulation) Act, 1986 by banning employment of children below 14 years in all occupations, except for some family businesses. It also introduces a new category 'adolescent', aged between 14 and 18 years, and prohibits their employment in hazardous processes. This, definitely, is a move in the right direction. The lenient provision of allowing the children in family business needs a serious thought. The right to quality education occupies a central place in human rights and is essential for the exercise of other human rights and development. It provides a means through which economically and socially excluded children and youth can lift themselves out of poverty. When children who have had the benefits of education grow up, they are more likely to choose to send their own children to school. Let every 12th June remind us that we have a bounden duty to end child labour.

Key Words: Child Labour, Global challenge, Quality education, Socially excluded children, Poverty

Introduction: Equality is an essential prerequisite for the survival of mankind and discrimination against any class or category leads to disappointment and resentment among them. At the same time, there has been notional instinct in each strong person to dominate and exploit the weak person and in case there is no reaction from the later, the former increases the nature and degree of the exploitation without any inhibition and limitation in this regard. This has been the conspicuous feature of the nature since time immemorial; as in case of the strong animal who dominates the weak and kills the small animal who fails to offer any resistance and becomes the

delicious food of the strong. The nature permits this phenomenon in order to regulate population of animals but at the same time maintains proper balance in order to ensure survival of each class of animals. On the same pattern, the human beings also lived like animals in the beginning and the strong persons used to kill weak persons and survived upon them. With the advent of time, there was social interaction between them and gradually they formed family groups which developed intimacy with each other. Subsequently, certain basic norms were evolved and in order to maintain law and order in the society, the leader became the ruler who was assisted by a



group of persons to frame rules to be observed in the society and gradually the concept of State was in vogue which had the sanction of implementing those rules. The first and the foremost duty of the State was to protect the weak persons and regulate the activities of strong persons. In order to prevent the exploitation of the weak by the strong, this process of community regulation was basically intended to promote justice among the humanity irrespective of caste, creed, sex or any other similar criteria. It is a well established fact that the children and women constitute comparatively weaker segment as compared to men in the society. The man occupies dominating position in the society and he exploits women and children, whenever he finds scope and feasibility either in order to earn profit or merely for the purpose of driving pleasure which sometimes is solely sadistic one.

Child Labour—A Complex Problem:

Efforts have been made since long, not only at national level but also at international level consistently for improving the lot of child labour by formulating various policies and schemes from time to time. In this, International Labour Organisation since its inception in the year 1919 has paid special attention to child labour and correspondingly the member countries have also adopted and enforced its recommendations by enacting and enforcing statutory enactments on the subject of child labour. However, unfortunately results achieved so far have proved to be quiet unsatisfactory due to varied reasons, *viz.*, defective drafting of statutory enactments and the lacunae involved therein, lack of effective

implementation process due to improper planning and callous attitude of the concerned employees, absence of trade unionism among child labour and the resultant cruelty due to profit motive by the employers, indifferent attitude of the general public, etc. It could be safely stated that their position has improved a lot with the advent of time in industrially advanced countries of Europe and other Western Countries, but the plight of child labour continues to be as usual in a traditional manner in developing countries particularly of the African and Asian region. It has been ultimately realized that it is an uphill task having multifarious dimensions and the problem involves many complexities and intricacies. Due to these reasons, it has become imperative to tackle this problem in a planned and systematic manner. At this juncture, it becomes necessary to put forth that some international organisations and funding agencies, namely, ILO, UNESCO, UNICEF, UNDP, etc., have taken the problem of child labour as an open challenge and have initiated process of evolving various strategies and formulating useful and effective policies in order to combat the problem of child labour. Some of the advanced countries, namely, Germany, United States of America, Japan, Switzerland, etc., have provided financial assistance to these bodies in order to enable them to accomplish the long-cherished goal of abolishing the child labour. It is being increasingly realized that the exploitation of child labour has crossed the limits of reasonableness due to which they have been compelled to lead the life of slaves in gross violation of the human rights, more particularly, in developing countries. It has become disgrace to the whole society and this



stigma has discredited the whole progress and advancement made so far in terms of industrialization, economic growth and social progress throughout the world. Keeping in view the serious implications of the problem and the adversities involved in terms of exploitation of child labour, it has become imperative to undertake this problem on war footing as it poses a serious threat to the whole world.

Role of I.L.O. for Combating Child Labour:

A cursory glance in the context of role of International Labour Organisation for combating the child labour goes to establish in a convincing manner that the concerned recommendations have not been ratified and enforced in an effective manner by the member countries, particularly, the developing one. The scope of national provisions often fall short of providing complete coverage or in other words omit persons working otherwise than under a contract of employment and thereby exclude categories of work from the coverage of the legislation by excluding branches of certain economic activities from his purview. At the same time, it has been observed that the manner in which countries fix the age limit below which children may not work also varies considerably from country to country due to the fact that some countries only specify minimum age of employment for certain sectors while other countries link admission to employment or work in some way or another to the completion of compulsory schooling. In spite of the fact which approach has been chosen, it has been an essential factor that measures adopted in this regard might be expected to cover wherever possible all forms of work of employment.

¹ The aforesaid approach necessitates the adoption of flexible policy with regard to child labour so that requisite variations in approach might be adopted in consonance with the peculiar local conditions prevailing in each area of the country as the case may be.

It is a well-known established fact that the International Labour Organisation has played a laudable role since its inception in the year 1919 for the abolition of the child labour. In this regard, it might be brought out that Convention No. 5 of the I.L.O. explicitly provides for the prohibition in respect of employment of the children whose age might be less than fourteen years in industrial undertakings.

Subsequently, in the International Labour Conference held in the year 1973, an important convention, namely, Minimum Age Convention No. 138 and a Recommendation No. 146 were adopted regarding the child labour. In the preamble to the aforesaid Convention, it was explicitly provided that the time had come to establish a general instrument on the subject, which would gradually replace the existing policies in this regard applicable to limited areas of employment, with an ultimate object to achieve the total abolition of the child labour. Under this Convention, member states of the I.L.O. were expected to pursue a national policy designed to ensure the effective abolition of the child labour, if possible, otherwise to prescribe a minimum age for the employment of children so as to ensure that the physical and mental development of working children was not retarded in any manner and this age, as far as possible, should be correlated with the age of completion of compulsory schooling and in no case, it



should be less than fifteen years. This Convention also provided that the scope of concerned national policy would extend to children employed by the employer on wage basis as well as to the children having self-employment as a member of the family doing their own business. Keeping in view basic requisites necessitating flexibility in the national policy suited to the prevailing local conditions, it was also explicitly provided that age of employment for the children could be reduced to thirteen years in case they might be required to do light work and minimum prescribed age was reduced even to twelve years for the light work in case of developing countries whose economic conditions compelled the poor parents to get their children employed in order to overcome conditions of starvation.

Recommendations No. 146 dealing with the child labour also provided for the protection of working children. Protection extended to the child labour under this recommendation has been mainly concerned with the conditions of work, viz., remunerations, hours of work, rest and leave, social security and occupational safety and health.

International Programme for Elimination of Child Labour: The problem of child labour has become the focus of attention throughout the world and has shown serious repercussions particularly in developing countries including India. An urgent need is being felt to combat with this problem by devising suitable means in each country in consonance with the existing local conditions. It is being increasingly realized that the child labour continues to be a problem of multifarious dimensions

and it has been highlighted by the ILO in their recent International Programme on the Elimination of Child Labour that the number of the children working, and the sale of their suffering increases year by year and millions of children are working, many in servitude and under hazardous conditions. This crisis existed in past, is being felt today and seems to continue tomorrow. In fact, it is a glaring example of abuse of human rights although unanimously condemned but at the same time universally practiced, as child labour. By any objective measure, this issue should rank high on the global agenda but in practice it is surrounded by a wall of silence and perpetuated by ignorance.² As per ILO estimates, more than eighteen per cent of children in the age group of ten to fourteen years are working in developing countries and at least seven per cent of the children are employed in Latin America, eighteen per cent in Asia and as high as twenty five percent in Africa.³ It has been explicitly established in unambiguous terms that this problem poses a serious threat to the basic cause of humanity and necessitates remedial measures on war footing. Two serious fronts of this problem of grave concern are, namely, exposure of children to new and greater risks and an explosion of the number of child workers in the informal and unregulated sectors of economy, as a result of increasing migration, urbanization and industrialization.⁴

Implementation Process for IPEC (International Programme for Elimination of Child Labour): International Labour Organisation has selected child labour as a theme for focus in the year 1992-1993 and a broader and more concentrated programme has been



launched by it which is funded by the substantial grant provided by the German Government. At the first instance, six ILO member States have been selected on the basis of the request made by them for availing ILO's assistance as priority countries for action programme for child labour and these countries are, namely, Brazil, India, Indonesia, Kenya, Thailand and Turkey. In the next phase, six additional countries chosen for the action plan are Bangladesh, Cameroon, Egypt, Pakistan, the Phillipines and the United Republic of Tanzania. These countries could be claimed to be the model countries in the sense that excessive poverty among the common masses has resulted in increased exploitation of child labour by their respective employers and these action programmes are likely to improve their working and living conditions substantially by enabling them to get better wages as well as prohibiting their employment in hazardous employment.

It has been increasingly realized that the problem pertaining to child labour is quiet complicated and it is not possible to solve it immediately by adopting a magic formulae. The gravity of the problem pertaining to child labour has variable dimensions in each country in terms of nature and degree of exploitation thereby providing varying scope for the action programme and consequently flexibility for selective operation in each country or region depending upon the prevailing local conditions would constitute the prerequisites for each action programme intended to be launched in each region or the country. International Labour Organisation has formulated certain basic procedural rules and policies on the

basis of which Memorandum of Understanding is executed between ILO and participating countries. In order to ensure effective implementation of action programme, a Programme Steering Committee comprising of one representative each of ILO, donor country, together with one representative of Brazil, India, Kenya are to be nominated by the Director General of ILO while the representative of the other participating countries are to be invited as observers.

Target Groups for the Intended International Programmes for Elimination of Child Labour:

The International Labour Organisation, keeping in view, the complexities and intricacies of the problem pertaining to the child labour as well as financial implications involved therein, has decided to launch this International Programme for Elimination of the Child Labour in various phases and it is intended to give priority to such areas of employment of the child labour in each country which are the worst affected one in terms of gravity of exploitation of the child labour by their employers. Accordingly, the priority would be given to children working under hazardous conditions in factories, cottage industries and agriculture. Top priority has been intended to be given such areas of employment where children have been working under forced labour conditions either in agriculture or in informal sectors of employment. Target groups are expected to cover children that are specially, vulnerable to excessive exploitation by the employers thereby creating adverse impact on the health of children of tender age below twelve years or girl child labour. The children working



as well as living on the street without family support are also priority target groups of child labour.⁵

United Nations Convention and the Right of the Child: Article. 27 of the Convention makes it obligatory for the State to recognize the right of every child to have a standard of living which may ensure requisite physical mental, spiritual, moral and social development of each child. Article. 28 of the Convention imposes liability on the State to recognize the right of the child to education and for that purpose it is expected on the part of each State to make primary education compulsory and it should be available to all children free of cost. The State is also expected to take measure to encourage regular attendance at school and the reduction of dropout rates. The basic commitment incorporated in a Convention, namely, Minimum Wage Convention of 1973, provided that each member State would pursue a national policy for abolishing the child labour and raise the minimum age for the employment of children to a level which should be consistent with the fullest physical and mental development of young persons and in no case the minimum specified age should be less than the age of compulsory schooling which in any case could not be less than fifteen years. But at the same time exemption has been provided to such countries whose economic and educational facilities are not properly developed and such countries could specify a minimum age of employment of fourteen years. But it has to be ensured that the circumstances under which a child labour might be required to work are likely to adversely affect the health, safety, physical or intellectual

development of young persons, then in such cases in no situation minimum age of employment could be less than eighteen years.⁶ Similarly Recommendation No. 145 of International Labour Conference concerning the minimum age for employment of children explicitly provided that in those employments wherein nature of the work required to be done by the children would be likely to adversely affect the health, safety and moral of the young persons or in other words, nature of the work required to be done by the children is hazardous to their health, then in such cases it might be ensured that children below the age of eighteen years should not be employed therein.

Most of the researchers on the subject of child labour have mainly focused their attention on the nature and gravity of the problem, namely, the total strength of the child labour in different sectors of employment and the percentage of the child labour in rural and urban areas as well as in formal and informal employments engaging the child labour but very few have suggested modes for regulating or eliminating the child labour. Therefore, in order to find a meaningful solution for the problem of child labour, it becomes imperative to study the problem on the basic causes of the child labour and the framing of feasible programmes in the form of statutory and non-statutory measures for accomplishing the desired goals of combating child labour.

Ineffective Implementation of Existing Labour Legislation for Child Labour: An introspect in respect of statutory and non-statutory measures taken so far in order to regulate the



problem of child labour proves beyond any doubt that the legislature has from time to time enacted plethora of legislations for extending requisite protection to the child labour and the recent legislation on the subject, namely, Child Labour (Regulation and Abolition) Act, 1986 is a comprehensive legislation aimed to regulate the working and living conditions of the child labour. But no legislation could be in a position to accomplish the desired goals unless it is implemented in an effective manner in consonance with its object and purpose. In fact, existing pattern is that there is law for every problem with which the State is frequently confronted with and same is the position with regard to the child labour as discussed above but unfortunately very few legislations have been implemented effectively thereby providing requisite solution for the problem in question. In this context, it has been quiet appropriately observed by Professor Upendra Baxi that in India, there has to be a law for every problem and accordingly many laws of India regulating adulteration, factory safety, child labour, minimum wages and bonded labour apparently give India the appearance of being a well-regulated society whose State is devoted to the protection of the disabled, the poor and the powerless but in reality, law has a symbolic value of setting norms but there is little concern with law as a means of individual compliance. Legislation and the arbitrary way in which laws are enforced or not enforced should be understood as a way in which the bureaucrats are engaged in a form to misuse their power and enhance income. Thus, Factory Acts and other Legislations intended to regulate business are not enforced unless a

businessman has incurred the displeasure of officials, in which case the law can be used as an instrument of punishment.⁷

The aforesaid observations in this regard highlight an urgent need to evolve effective implementation process for existing labour legislations pertaining to the child labour, in general, and Child Labour (Prohibition and Regulation) Act, 1986, in particular so as to extend requisite legal protection to the child labour in order to ensure their proper physical and mental growth and development.

Conclusion: It could be assumed that the children who thus become commodities in the economy where their services are extracted beyond their capacities, and invariably belong to social groups that are victims of injustice in other spheres too.⁸ Due to poverty and other similar reasons, children are exposed to excessive exploitation by the employer without inhibitions and limitations and sometimes due to which they are exposed to inhuman treatment, namely, sexual exploitation, doing work even during illness. In fact, child labour may be exposed to working hazards in two forms, in one situation the occupation may not be hazardous in itself but proves to be dangerous both for the physical and emotional growth of the child particularly due to adverse working conditions such as in case of small scale industries, handlooms and powerlooms, tea shops, dhabas and other small commercial establishments where there is darkness, improper ventilation, dampness, etc. and children are made to work continuously for twelve to fifteen hours without any rest-interval beyond their stamina and capacity. All these factors create adverse impact on the



health as well as growth and development of the concerned children in spite of the fact that the working conditions do not involve any sort of hazard or danger. Children seek employment only under unavoidable and compelling reasons. It is very essential that reasonably safe conditions of working may be provided by the employers so that their health may not be adversely affected. But in reality it has been observed that they are made to work under adverse conditions which have injurious affect on their health as well as growth and development. Sometimes child workers are made to deal with poisonous materials or products at the place of work and at times during the continuance of work which may also include manufacturing process, wherein foul gases are emitted which have injurious affect on their eyes or lungs and retard their normal growth and development. It has been established beyond any reasonable doubt that enough attention has not been paid to occupational diseases and most doctors might not be qualified enough to say whether disease was caused by the nature or occupation itself or due to cumulative effect of poverty, malnutrition and unhygienic living conditions.

References

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³. *Ibid.*, at 4.

⁴. *Ibid.*

⁵. *Ibid.*, at 11.

⁶. Article. 1 to Article. 3 of the Convention No. 138 of the International Labour Conference – Minimum Age Convention, 1973.

⁷. Upendra Baxi, "*The Crisis of Indian Legal System*", 5 (New Delhi Vikas Publications, 1982).

⁸. *Supra*, n. 22.