
Child Labour: Provisions on Child Labour Under Indian Constitution

Kusum Yadav

Research Scholar, MDU Rohtak

INTRODUCTION

Child labour is not a new phenomenon confined to our age. But its perception as a social problem the world over is a new-phenomenon of our times. Child labour has been in prevalence in almost all periods of human history, though varied in its nature, from and dimeCon, depending on the existing socio-economic structure of society. In the olden days, child labour was a part of social organization in which all members pooled their labour to produce for collective subsistence and survival. This was so in rural farming where the work of child formed part of the labour necessary for the reproduction system. As in other third world countries, in India, before the rise of capitalism, children were primarily assigned the status of helpers and learners in family occupations under the supervision of the adult members of the family. In this system, their work place was an extension of the home and work relationship was informal. The tasks and technology that work involved were simple and non hazardous which they could learn smoothly, almost unconsciously, over the years through association and imitation.

This practice underwent a drastic change with the rise of capitalism in the context of industrialization during the 18th century. The growth of market economy or capitalism (capitalist relations of production) was the result of several interrelated phenomenon like an increase in industrial production, the shift to cash crop farming and commercialization of agriculture, which led to growth of landless population, migration and urbanization and wide spread unemployment in different forms. The new economic forces unleashed by capitalism destroyed the family based economy forces supported by family occupational culture and as a consequence, a large number of agriculture labourers were rendered jobless due to mechanization of agriculture. Farmers were alienated from their home- based workplace. Lack of alternative employment for adults forced children to enter the labour market.

In this situation, industrialization developed in an uneven fashion and gave a new turn to the history of mankind and brought a change in the overall socioeconomic order, particularly in the structure of labour demand

and labour utilization. It led to the growth of labour market segmentation by which the labour force is separated into sub-market with different employment conditions and wages. This helped in increasing exploitation, breaking the class unity and weakening the bargaining power, allowing strong groups to increase their standards creating labour aristocracy due to labour supply.

VARIOUS PROVISIONS UNDER INDIAN CONSTITUTION

In India, since Independence, every commission appointed by the government, the ruling party, all opposition parties and all state govts. have advocated for establishing compulsory, universal, primary education for all children upto the age 14years. This commitment dates back to the term of the 20th century when Gopala Krishna Gokhale , the then president of the Indian national congress , unsuccessfully urged the British to establish schools for free and compulsory elementary education . In the 1930s, the provincial governments under the control of the Indian National Congress passed, legislation authorizing local bodies to introduce compulsory education:

The Indian constitution of 1950s declares that the state shall endeavor to provide,

within a period of ten years from the commencement of this constitution for free and compulsory education for all the children until they complete the age of 14 years (Article45). Legislation restricting the employment of children in mines and factories was introduced by the British early in the century. More extensive legislation was passed following the recommendations of the royal commission on Labour in 1932. The Indian constitution contains a number of provisions intended to protect children including a categorical ban that declares that (Article 24) no child below the age of 14 years shall be employed to work in any factory or mines or engaged in any hazardous employment. Further, Article39 (e) and (f) stated that the children of tender age are not abused and they are not forced by economic necessity to enter a vocation unsuited to their age or strength and that children are given opportunities and facilities to develop in a healthy climate and are protected against exploitation and against moral and material abandonment.

Apart from these constitutional provisions, the state have passed a number of acts such as 1) the Minimum Wages Act, 1946, (2) the Factories Act, 1943, (3) the Plantation Labour Act, 1951, (4) the Apprentice Act, 1961,

(5)the Beedi and Cigar (conditions of employment) Act, 1966, (6) the Shop and Establishment Act, and (7) Child Labour (Prohibition and Regulation) Act, 1986, to meet the requirements of child labour from time to time.

The child labour (Prohibition and Regulation) Act of 1986, was passed making employment of children prohibiting certain specific hazardous occupations including among others , rail and road transport, Beedi (cigarette) making , manufacturing of matches, cement, explosives and fireworks , building and construction work , which are considered hazardous for the health, safety and development of children. The Act contains provisions to regulate working conditions that no child will be allowed to work between 7pm and 8am , i.e., during night , no overtime will be permitted.

The penalty for violating the Act will range from three months to one year of imprisonment with a fine of Rs. 10,000/- to Rs. 20,000/-. Several articles of Indian constitution provide protection and provisions for child labour.

Article 15(3)

The state is empowered to make the special provisions relating to child, which will not be Violative of right to equality.

Article 21

No person shall be deprived of his life or personal liberty, except according to procedure established by law. The Supreme Court held that life includes free from exploitation and to live a dignified life.

Article 21A (Right to education)

The state shall provide free and compulsory education to all children of the age of six to fourteen years, in such manner as the state may, by law, determine. Where children are allowed to work, in such establishments, it is the duty of employer to make provisions for the education of child labourer.

Article 23

Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence punishable in accordance with law.

Article 24 (Prohibition of employment of children in factories, etc.)¹

No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. The Supreme Court held that “ Hazardous employment” includes construction work , match boxes and fireworks therefore; no child below the age of 14 years can be employed . Positive steps should be taken for the welfare of such children as well as for improving the quality of their life².

Article 39(e)

The state shall, in particular, direct its policy towards securing the health and strength of the tender age of children are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 39(f)

The state shall , in particular, direct its policy towards securing that children are given opportunities and facilities 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.

Article 45

The state shall endeavor to provide early childhood care and education for all the children until they complete the age of six years.

Article 51 A (e)

It shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child or Ward as the case may be, between the age of six and fourteen years.

The child labour (Prohibition & Regulation) Act , 1986 was enacted to prohibit the engagement of children below the age of fourteen years in factories, mines and hazardous employments and to regulate their conditions of work in certain other employments . according to the Act , no child shall be employed or permitted to work in any of the occupations set forth in part A of the schedule or in any workshop wherein any of the processes set forth in part B of the schedule is carried on , provided that nothing in this Act shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or

¹ Pandey J.N “*Indian constitution*”

² Child Labour in India By Gopal Bhargava page no. 64-67

recognition from the government. Also, the central government may, by notification in the official gazette, constitute 'the child labour technical advisory committee' to advise the central government for the purpose of additions of occupations and processes to the schedule of the Act.

The central Industrial Relation Machinery (CIRM) in the ministry of labour is responsible for enforcing this Act. CIRM is an attached office of the ministry and is also known as the chief labour commissioner (central) [CLC(C)] organization. The CIRM is headed by the chief labour commissioner (central). In addition, a central advisory board on child labour has also been constituted under the ministry to review the implementation of the existing legislations and suggest measures for welfare of working children³. The main provisions of the Act are:-

- No child shall be required or permitted to work in any establishment in excess of hours, as may be prescribed for such establishment or class of establishments. The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for

more than three hours before he has had an interval for rest for at least one hour.

- No child shall be required or permitted to work overtime. No child shall be required or permitted to work in, any establishment on any day on which he has already been working in another establishment.
- Every child employed in an establishment shall be allowed in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months⁴.
- Every occupier shall maintain, in respect of children employed or permitted to work in any establishment, a register to be available for inspection by an inspector at all times during working hours or when work is being carried on in any such establishment showing :- (i) the name and date of birth of every child so employed or permitted to work ; (ii) hours and periods of work of any such child and the intervals of rest

³ "the exploited child" edited by Barnard Schlemmer published in 2000, page no. 146-159.

⁴ Ibid.

to which he is entitled; (iii) the nature of work of any such child; and (iv) such other particulars as may be prescribed . The appropriate government may, by notification in the official gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments. Whoever employs any child or permits any child to work in contravention of the provisions of this Act shall be punishable with imprisonment or with fine or with both.

- Any person, police officer or inspector may file a complaint of the commission of an offence under this Act in any court of competent jurisdiction. No Court inferior to that of a Metropolitan Magistrate or a Magistrate of the First class shall try any offence under this Act⁵.

The main object of the Child Labour (Prohibition & Regulation) Act, 1986⁶ is to address the social concern and prohibit the engagement of children who have not completed 14th year of age in certain employments and to regulate the

conditions of work of children has been prohibited in occupations relating to (i) transport of passengers, goods or mails by railways (ii) bidi making (iii) carpet weaving (iv) manufacturing of matches , explosives and fire (v) soap manufacture (vi) wool cleaning (vii) building and construction industry. The govt. has also prohibited employment of children in the following occupations or processes; (i) Abattoirs/ slaughterhouses (ii) hazardous processes and dangerous operations as notified (iii) printing, as defined, (iv) cashew and Cashewnut descaling and processing (v) soldering processes in electronic industry . The Act prohibits employment of child in about 17 occupations and about 66 processes.

CONCLUSION

Child labour is an international evil therefore cumulative effort is required to wipe it out. The government of India on this front has also taken a few steps. But the major determinant of child labour is socio-economic conditions prevailing in the country like poverty. Another determinant is access to education. In some areas, education is not affordable, or is found to be inadequate. With no other alternatives, children spend their time working. Therefore, there is need to

⁵ Ibid.

⁶Ibid.



implemented the laws relating to child effectively in India. However, from the analysis of the relevant statutory provisions of the Indian laws relating to child labour, it has become abundantly clear that the statutes vary as to the age limit of a child employed or permitted to work in various occupations. There is no law fixing minimum age for employment of children in agriculture. The Factories Act, 1948, fixes minimum age of 14 whereas the International Labour Organisation (ILO) Convention prescribes minimum age for any employment to be 15. In the case of plantations, the age of employment has been fixed at 12 years but in the case of non- industrial employment the minimum age varies from 12 to 14 years. Thus, Indian Laws relating to child labour are deficient from the international standards as laid down by the ILO. However, 179 countries have ratified the International Labour Organisation (ILO) convention to combat the worst forms of child labour. Unfortunately, India has not yet ratified this convention. Besides this, India has also not ratified convention on minimum age of admission to employment and work. In spite of plethora of legislative enactments and the proactive role played by various agencies, child labour continues to be a major problem. A large number of children are exploited and deprived of what is due to them. It can be said that the

carelessness on the part of the enforcement machinery relevant under specific laws is the major issue to be address and cured. However, fortunately, the Indian Judiciary played a very significant role in promoting child welfare. It has taken the lead to save the child from exploitation and improve their conditions. Judicial mandate clearly demonstrates that right to education is necessary for the proper flowering of the children and their personality. The judiciary has even directed the states that it is their duty to create an environment where the child workers can have opportunities to grow and develop in a healthy manner with full dignity in consensus of the mandate of our Constitution. It is the need of the hour to expand the machinery for enforcing the various laws on child labour and set free the young ones from the evil of child labour. These children freed from child labour should be entitled for rehabilitation benefits under government schemes. There are plenty of child labour preventive laws but nothing can eradicate child labour unless there is awareness among parents and children, which will go a long way in saving the future of millions of working children in India. Thus, it is possible only if the government and the society would own it that this our responsibility to put an end to child labour in all its forms