
A Legal Study on Child Labour

Divya Shukla

774-A, Near Hanuman Mandir Bichhiya Colony, Gorakhpur, Pin 273014

Research Scholar- Faculty of Law, University of Allahabad

Child labour is a global problem by which every country of the world is facing today. It has been observed that poverty is the root cause of child labour but apart from it, there are so many factors that are significantly contributing towards its growth i.e. illiteracy, unemployment, unequal growth, unequal distribution of wealth and resources and poor political and legislative efforts. These supplementary factors are also equally responsible in the growth and development of problem of child labour in any society.

It is a global need and the heads of the countries and nation have given vent to it. Love, affection, care and basic requirements are the chief factors that contribute in the physical, mental, psychological and intellectual development of child. Children are indispensable factor for want of which the society suffers. In every walk of life children are the pioneers. Sense of sincerity, welfare, brotherhood, Justice, liberty and fraternity ought to be inculcated in them from childhood days. In is they who can usher in a better tomorrow on the horizons of time.

In pursuance of these ideals the society has to denote full attention to ensure that children are brought up and fathered in healthy atmosphere so that they may have an apposite place in the society. In is aptly relevant to quote **Justice Subba Rao**, former Chief Justice of India, so social Justice to children, who remarked “social Justice must begin with children, unless tender plant is properly nourished, it has little chance of growing into strong and useful tree. So the first priority in the scale of social justice should be given to the welfare of children.¹

Abuses of child labour²:-

The abuses of child labour system are as under:

Physical abuse:-

It has been observed that children fallen prey to agents, middle man contractors or unreasonable employer are beaten and beaten and tortured in many ways they are caused to starve and work in the most in hygienic and filthy conditions for longer hours unabatedly. Girl child labour are harassed and made victims of sexual harassment. Apart from this the chemicals, dust, fumes and gas cause great abnormality in their growth and development. They often become victim of contagious disease.

¹ K.Subba Rao, social Justice and Law, Delhi: National Publications House,1974,p.5.

² M P Srivastava: Child labour laws in India ed.2016 P. 29

Social abuse:-

In the present time when mankind has reached the zenith of success and achievement it is a sad plight that tender aged children are forced for drug trafficking, sex tourism trade, smuggling and sale of narcotic; children are even use for begging, pick-pocketing and many other criminal activities. They lead a life of isolation and deprivation. Being away from the parents their development is thwarted.

Economic abuse:-

This is in addition to the aforesaid abuse. Exploitation is more or less, economic and even physical the child labour is subjected to less payment or non-payment and even poor diets in lieu of wage, many kinds of deductions and over charging of interest and many other vicious means of abuse.

Rights of Children under International laws

The universal declaration of U.N. 1948 stipulates that childhood should be provided a special care and existence. This principle inter-alia the other principle of the universal declaration were incorporated in declaration of rights of the children 1959. Art 23 and 24 of the international convent on civil and political rights and Art, 10 of the International convent on economic social and cultural rights provided for the care of the children. The universal standards and guidelines have been issued by the International Labour Organisation. The organisation has the aim to regulate the labour practices around the world. However, the following international instruments are related to the issue of child labour.

United Nations Convention on the Rights of the Child, 1989:-³

It is the most competent and fully rectified international human rights treaty. It aims to provide for the civil and political, economic, social health and cultural rights of the children. According to this convention, A child is a human being under the age of 18 and the age of majority should not have been attained. In our country there is provision that the children under the age of 18 should not been employed in work in any capacity. However, child labour is a matter of common observation in every part of India. The convention has 54 articles dealing with all the aspects of life of children and recognises all the social, political, economic and cultural rights that a child ought to be given. These rights are not subject to any discrimination of gender, religion language etc.

This convention is the most ratified human rights treaty. It has been accepted and adopted by most of the UN member states and U K.

The following are the general principles that inter prate and are instrumental in realising the rights of the children.

1. Non- discrimination Article 2

³ <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>

2. The interest of the child Article 3
3. Right to survival and development Article 6
4. Right to be heard article 12

Convention on the worsted forms of child labour 1999:-

It was adopted in June, 1999. It aims to provide international norms and standards with a view to protect children from the worst forms of the exploitation. It becomes mandatory for the country to take preventive and immediate measures to eliminate the worst forms of child labour on ratification of the convention. However, India is not yet ratified it.

The Worst Forms of Child Labour:-

- Child slavery (including the sale and trafficking of children, debt bondage, and forced recruitment for armed conflict)
- Child prostitution and pornography
- The use of children for illicit activities (such as drug trafficking)
- Any hazardous work which is likely to harm the health, safety or morals of children

The International Programme on the elimination of Child Labour:-

In order to combat child labour and redress all the problems and grievances related to it, this IPEC was constituted. It has the sanction of 88 countries and is the only global programme to cater to the needs and the problem of child labour. Since its inception there has been considerable expansion in its number and range. At present it consists of employer's and workers' organizations, other international and government agencies, private businesses, community-based organizations, NGOs, the media, parliamentarians, the judiciary, universities, religious groups and of course, children and their families.

It is a matter of great commendation that international labour organisation has in its agenda as an indispensable aspect of eliminating child labour. As a matter of fact child labour is a scourge to humanity. It has an adverse effect on the economy of the country for it promotes poverty moreover; it is a stigma on the society in as much as the children are deprived of opportunity to acquire skill and education.

The goal of IPEC is prevention and elimination of all forms of child labour, the priority is for immediate action against worst forms of child labour, as follows:

- All forms of slavery or practices similar to slavery;
- The sale and trafficking of children ;
- Debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- Procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

- Procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- Work which is likely to harm the health, safety or morals of children.

Rights of the Children under National Law:-

The architects of Independent India have the dreams of a blue-print for the nation with the possibilities creating and nurturing better and healthy surroundings for promotion of child welfare. To this effect the constitution provides for facilities and factors that are congenial for healthy development of the children. It also provides for their protection against exploitation and abuse, and free and compulsory education for all children under the age of 14 year. Lately, in **Mohani Jain v. State of Karnataka**⁴, it has been afforded as a fundamental right in our constitution. The constitution provides for prohibition of child labour and protection of children through the following provision.

The Indian Constitution-Fundamental Right:-

- Nothing in this article shall prevent the state from making any special provision for women and children.⁵
- Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to the procedure established by law.⁶
- Human trafficking and forced labour is prohibited and are punishable in accordance with law.⁷
- Children below the age of 14 years are not to be employed to work in any factory, mine or other employment which is of hazardous nature.⁸
- Every child between 6-14 years of age is entitled for free and compulsory education.⁹

Constitution of India, Article 21:-

This article is very significant and it is instrumental to safe guard the interest of all citizens. Right to live means to live with human dignity and embraces all the factors that are conducive to the full growth and development of mankind. It connotes that all the basic necessities of life such as adequate nutrition, clothing, shelter, opportunities and facilities for reading, writing and expressing, moving about freely and mixing and mingling with other human being. The Apex court has observed in **Bandhua Moucti Morcha v. Union of India**¹⁰ and **Bandhua Mukti Morcha case**¹¹ that the abuse of tender aged child is sheer bad

⁴ (1992) 3 SCC 666.

⁵ Article 15(3) of the Constitution of India

⁶ Article 21 of the Constitution of India

⁷ Article 23 of the Constitution of India

⁸ Article 24 of the Constitution of India

⁹ Article 21 A of the Constitution of India

¹⁰ 1984 (3) SCC 161

¹¹ AIR 1992 SC 1858

and illegal. It has also laid down that right to live with human dignity enshrine in Article 21 has its origin and sustenance from the directive principals of state policy. It includes protection of health of workers of tender age children against abuse, provides opportunities and facilities for children to develop in a healthy manner. The right to livelihood was provided shelter under Article 14 and 21 of the constitution. The basic facilities imply the minimum requirements that must be provided for a person to live with human dignity and these essentials cannot be deprived.

In **Chameli Singh v. State of Uttar Pradesh**¹² The Apex court observed that the components of right to live include right to medical care and food, water, decent environment, education medical care and shelter. Article 21 deals with education. In **Consumer Education and Research Centre v. Union of India**¹³ The apex court held that the expression “life” does not connote mere animal existence or continued labour throughout life. In has an exhaustive meaning and includes right to livelihood, better stand are of life, hygienic conditions at work place and leisure.

Constitution of India, Article 23:-

- (1) Article 23 provides that traffic in human being and beggary and the like forms of forced labour are prohibited. A contravention of this provision shall been an offence punishable an accordance with law.
- (2) Nothing in this article shall prevent the state from imposing compulsory public services and that state shall not make any discrimination on ground of religion, race caste or class or any of them.

The provisions of this article are meant to provide protection of individual not only against the State but also against private citizens.

In the Celebrated case **People’s Union for Democratic Right v. Union of India**¹⁴ The Apex Court observed that labour or service for remuneration use than the minimum wage is violation of Article 23. Likewise In **Badhuwa Mukti Morcha v. Union of India**¹⁵ it was held that when a labourer is made to do force labour, it is bounded labour. In this way it is obvious that if proper wage is paid to the labour there can be no hardship in looking after and maintaining his children.

Constitution of India, Article 24:-

The provisions of this Article expressly prohibit the employment of children below 14 years in any factory, mine and hazardous employment. The observation of the Apex court in **Salal project v. State of Jammu and Kashmir**¹⁶ was in pursuance of this provision.

¹² 1996 (2) SCC 549

¹³ AIR 1995 SC 922

¹⁴ 1982 (45) FLR 140

¹⁵ AIR 1984 SC 802

¹⁶ 1983(46) FLR 453

The Indian Constitution, Directive Principles of State Policy (DPSP):-

1. It adumbrates the principles and policies related to security of all children. In order to ensure the children protection form exploitation and against moral and material abandonment.¹⁷
2. The State has to make provisions for securing Right to Education.¹⁸
3. The State should work out ways to provide early childhood care and education until they complete the age of 6 years.¹⁹

Constitution of India, Article 39 (f):-

Provides for opportunities and facilities for development in conditions of freedom and dignity .It also provides protection against exploitation. In **Bandhua Mukti Morch v. Union of India**²⁰ the Apex court observed that children should be provided proper and healthy diet during working period. The work place or quarries should be located away from habitation. It also dwelt upon the issue of sanitary and congenial conditions for workman, education of children as a responsibility of the employer.

Constitution of India, Article 45:-

This article provides for free and compulsory education for children below the age of 14 years in a way this article dwells upon he significance of the dignity and personality of the child. It directs the state to do all that is needful for providing free and compulsory education to all the children of the age of 14 years. The same view has been articulated in the celebrated Case **Miss Mohini Jain v. State of Karnataka**²¹ and Others. It further provides “equality of status and of opportunity. It also given assurance to the dignity of the individual . The same view was taken in the historic Judgement M.C. Mehta case²² that Article 45 casts a duty on the state to provide free and compulsory education to the children. It is only after the decision in **Unni Krishann v. State of Andhra Pradesh**²³ that Article 45 has been endowed the status of fundamental right.

Constitution of India, Article47:-**Duties of State to raise the level of nutrition and the standard of living and to improve public health:-**

It is the primary duty of a State to accomplish this end. The State shall do its best to materialise prohibition of consumption of intoxicating drinks and drugs that are injurious to

¹⁷ Article 39 (f) of the Constitution of India

¹⁸ Article 41 of the Constitution of India

¹⁹ Article 45 of the Constitution of India

²⁰ 1991 (4) SCC 177

²¹ AIR 1993 SC 1858

²² 1996 (6) SCC 750

²³ 1993 (1) SCC 645

health save for medical purposes. Article does not have direct bearing on child labour system but as an impact it ensures the development of the children.

A part from these legislation following are also significant:-

Guardian's and word's Act, 1890:-

It is incumbent on the part of the court to consider and weight the interest and welfare of minor in appointing guardian. Even in cases of problems of child labour the negligence and irresponsibility of parents compel the children for forced labour. Child labour is an age old problem and it has been observed that people even sell their wife and children and this is also promotion on of child labour bounded labour and slavery.

The Children Act 1937:-

This Act dealt with pleading of labour the act prohibits children under the age of 14 to be pledged. The Act also provides for punishing the employer, parents and guardians who enter into a agreement to bad effect.

Bonded labour Abolition system (abolition) Act, 1976:-

As a matter of fact, this Act is not directly related to child labour but it aims at protecting the interest of the poor, ill-fated persons deprived of basic human needs.

Indian mines Act:-

Section 40 of the Act prohibits the employment of a person below the age of 14 years.

Motor transport workers Act, 1961:-

Section 21 of the act prohibits the employment of a child in any capacity. The provision of section 14 of the Act read with section 15 of child labour Act, 1986, the violation of section 21 of Motor Transport Workers Act, 1961 is punishable under section 14 of child labour (prohibition and regulation) Act, 1986.

Merchant Shipping Act, 1958:-

There are greater chances of exploitation of children Section 109 of the Act prohibit the employment of child labour for those children who have not completed the fourteenth year of age.

Bidi and Cigar Workers (Conditions of Employment) Act, 1966:-

This is a special Act of its kind that entails through section 24 that no child, who has not completed the thirteenth year of the age, can be employed in any industrial provinces.

New legislation (specialised):-

A new child labour (prohibition and Regulation) amendment Act 2016 has been passed as an amendment of the child labour (Prohibition and Regulation) Act, 1986. This new Act provides for prohibition of children below 14 years in all occupation or process save where the child helps his family.

Key aspects of the new Child labour (Prohibition and Regulation amendment) Act, 2016:-

1. Addition of a new category of persons called “adolescent”. They are person between 14 and 18 years age.
2. Prohibition of employment of adolescents in hazardous occupations as specified (mines, hazardous processes and inflammable substance).
3. Empowers Union government to add or omit any hazardous occupation from the list included in the Bill.
4. Empowers the Government to make periodic inspection of places at which employment of children and adolescents are prohibited.
5. Government may confer powers on a District Magistrate (DM) to ensure that the provisions of the law are properly carried out and implemented.

Conclusion:-

There is no doubt that there are so many legislations which prohibit child labour but after that child labour problem is still there. Because, there is not any authority and procedure are laid down by which it would be decided that which employments. Occupations or processes he employment of Children is banned. There is also no regulation to regulate working conditions to check the exploitation of the children. It is pertinent and visible that the root cause of child labour is poverty illiteracy and lack of awareness. Due to these cause abuses of Child labour is arisen. For the abolition of child labour it is must clear that education is a solution for solving this problem. And all above it is also necessary that presents should be provide proper care and attention to maintaining the growth and nutrition of the children because the growth of the nation is depend on the future youth generation.