

Various Indian Laws Prohibiting and Regulating the System of Child Labour

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Abstract – It is undisputed that taking work and extracting labour from a child, takes away their normal imagination power and talent destroy their creativity and energy. Such state of affairs deprives them from getting education, hindering their mental as well as physical growth on whom destiny of the nation depends at large. Study of International Labour Organizations and other agencies clearly indicates that large numbers of children are at risk due to job hazards in the tender age and childhood, which become curse on a civilized society. In the words of Mr. M.P. Joseph, the then National Programme Co-ordinator IPEC “the employment of child labour is an intolerable disrespect for human dignity and enormous waste of human resources. There is need for concerted multi-frontal action to combat this unbearable social evil.” International Organizations and the Constitution of India together played a vital role in combating the problems of children and child labour. But there are various general enactments touching the miseries and solutions of children and child labour at workplace or otherwise. It is expedient to have a look on such provisions relating to children and child labour which are directly or indirectly in operation to eradicate the issues and challenges in the way to protect children from exploitation.

Key Words – International Labour Organization, Constitution of India, Child Labour, Exploitation, Protection, Prohibition and Regulation, Employment

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INTRODUCTION

We as a human being can understand better that practically it is not possible to evolve or to introduce a full proof system in the enactments, especially in the present fast changing society. It is also not possible to assess the future events and incidents in the society, as such the flaws in the laws are natural phenomena and people try to avail the benefit of such flaws in their favour and sometimes through morbid interpretation people try to avail the benefit which is also an important cause of employment of child labour. Clever employers try to interpret the provisions in their favour in flouting the laws on the subject. So for the abuses of child labour system are concerned; it is palpable to all sensitive citizens of the country which may broadly be classified in three categories i.e. Physical Abuses, Social Abuses and Economic Abuses.

Physical Abuses of Children

Children in the clutches of agents, middlemen, contractor as well as unreasonable employers of unorganized sectors are beaten and physically assaulted and tortured by various ways. They are made to starve, hampering the physical and mental

growth and also made to work in most unhygienic conditions for longer hours without rest and leisure. Girl child workers are not being provided privacy and become victim so sexual harassment. They are made to suffer malnutrition and various contagious and other diseases. In hazardous processes and occupations, very often the children are exposed to dangerous chemical, dust, fumes and gases etc., causing various abnormalities in usual human development.

Social Abuses of Children

In present scenario of globalization, liberalization and fierce competitiveness, the tender aged children are being used as forced labour for drug trafficking, sex tourism trade for illicit arms and ammunitions, smuggling of goods and for the sale of narcotics and for organ trade. Apart from these activities children are also being used for pick pocketing, begging and for various other criminal activities. Due to isolation and long separation from parents and other family members, such children suffer from mental agony, tension and anxiety creating a barrier for their future well-being and ultimately multi-dimensional exploitation. Due to continuous contact with narcotics and drugs, the

children themselves become addict and habitual for using liquor, opium, ganja, charas and similar types of other drugs which makes them socially criminal.

Economic Abuses of Children

In view of the causes of this social evil, the economic exploitation and abuses to child labour and their families are obvious in terms of non-payment or less payment of wages, delayed payment, rough quality and underweight ration in lieu of wage, unauthorized and illegal deduction from the wage, charging interest on advance, poor and inhuman working conditions and service conditions and charging the commission on wage if employed or engaged through contractor or agents.

The overall condition of children is not good and above that the condition of child labour is much worse so in order to protect them the several initiatives were taken by the government and still more the government is trying hard on its part to grab this evil and eradicate it from the root but it is realized that efforts made till date are not sufficient for this problem. The Indian laws which are in operation to control child labour problems and their exploitation are as given as below:

Indian Penal Code, 1860.- The Code provides certain provisions to protect the interest of child considering their tender age.

Section 82-Act of a child under seven years of age.- Nothing is an offence which is done by a child under seven years of age.

Section 83-Act of a child above seven years and under twelve of immature understanding.- Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Section 363-A-Kidnapping or maiming a minor for purposes of begin.-

- (1) Who ever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.
- (2) Whoever maims any minor in order that such minor may be employed or used for the purpose of begging shall be punished with imprisonment for life, and shall also be liable to fine.

- (3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging.

- (4) In this section:-

- (a) "begging" means-

- (i) Soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune telling, performing tricks or selling articles or otherwise;
- (ii) Entering on any private premises for the purposes of soliciting or receiving alms;
- (iii) Exposing or exhibiting with the object of obtaining or extorting alms; any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;
- (iv) Using a minor as an exhibit for the purpose of soliciting or receiving alms.

- (b) "minor" means-

- (i) In the case of a male, a person under sixteen years of age, and
- (ii) In the case of female, a person under eighteen years of age.

Section 366-A-Procurement of minor girl.-Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is like that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

Section 366-B-Importation of girl from foreign country.- Whoever imports into India from any country outside India or from the State of Jammu and Kashmir any girl under the age of twenty one years with intent that she may be or knowing it to be likely that she will be forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

Section 369-Kidnapping or abducting child under ten years with intent to steal from its persons.-Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly and movable property from the person of such child, shall be punished with imprisonment

of either description for a term which may extend to seven years and shall also be liable to fine.

Section 372-Selling minor for purposes of prostitution etc.-Whoever sells, lets to hire or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purposes of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punishable with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Explanation I-When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II-For the purposes of this section "illicit intercourse" means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognized by the personal law or custom of the community to which they belong, or where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

Section 373-Buying minor for purpose of prostitution etc.-Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I-Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years, shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation II- "Illicit intercourse" has the same meaning as in section 372.

Section 374-Unlawful compulsory labour-Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Chapter XVI of Indian Penal Code deals with the offences affecting human body as a whole, but above noted provisions are by and large directly concerned with the children. However, in wider sense, some other provisions of this Chapter are more or less concerned with children, adolescents as well as with adults.

Code of Criminal Procedure, 1973- On the basis of reasonable restrictions and in view of special protection, certain provisions are provided in this Code for protection and separate treatment to the children who are as under:

Section 125-Order for maintenance of wives, children and parents-In short this provision is made for maintenance of minor child (legitimate or illegitimate) whether married or not unable to maintain itself and even after attaining majority (except in case of a married daughter) where such child is by reason of any physical or mental abnormality or injury unable to maintain itself.

Section 160-Police Officer's power to require attendance of witness-This section provides a proviso clause that no male person under the age of fifteen years or women shall be required by any police officer making investigation to attend as witness at any place other than the place in which such male person or women resides.

Section 437- When bail may be taken in case of non-bailable offence-The proviso clause provides that in case of a person under the age of sixteen years or a women or sick or infirm, provision has been made for releasing him/her on bail, even where there are grounds to believe that he/she has been guilty of an offence punishable with death or life imprisonment and even if he/she is a previous convict of an offence punishable with death or life imprisonment or imprisonment for seven years or more, or when he/she has been previously convicted twice or more for a non-bailable and cognizable offence.

Guardians and Wards Act, 1890- The Act casts a legal duty on the Court to consider the welfare of minor while appointing guardian. Section 17 of the Act lays down that "matter to be considered by the Court in appointing guardian" relating to welfare of the minor. The provision is directly related with the problem of child labour, because sometimes the problem arises on account of irresponsible act of parents and guardians saddling their evils on their children. If analyzed critically, the problem of child and bonded child labour system is connected with the inception of human race, when women and children were considered as property and commodity of man. In ancient days and in early jurisprudence, the duty was cast on each individual male to look after and to maintain his wife and children even by committing theft. The concept of treating wife and children as property compels the

debtor to serve the creditors for realization of debt. Sometimes even the father or guardian started pledging the labour of their child and wife to the creditor. In extreme situation there were cases, even to sell the wife and children, resulting bonded and child labour system in the society. Basically slavery is the outcome of this system. As published in some print-media that in "Kalahandi" sometime the mothers sell their child to fulfil their hunger as well as to fulfill their own hunger also.

Children (Pledging of Labour) Act, 1933- This is an important Act to prohibit the pledging the labour of children Apart from employer, the Act provides provision to punish even the parents and guardians making agreement to pledge the labour of a child. The Act is more relevant in the present scenario, especially for the parents and guardians who are irresponsible and saddling their evils to their children and instead of taking benefit of various component plans, they are sitting idle, but enjoying their life on the earning of their tender aged children. Now the time has come that such parents and guardians should be dealt seriously under this Act. But unfortunately the Act do not provide machinery to implement and no rules are framed till date for proper implementation. The Government should not think over on this issue for effective implementation of the Act.

Bonded Labour System (Abolition) Act, 1976- Though the Act is not directly concerned with the child labour, yet the entire object is to protect the interest of poor, unorganized and illiterate workforce. The basic object of the Act is to check the miseries of ill-fated persons deprived of basic human needs and are compelled for "Begar" and forced labour. The Act has been enacted basically to prevent the economic and physical exploitation of the weaker sections of the society. Moreover, the Act is related with the Constitutional provisions of Article 23 and Article 24 of the Constitution of India. Traffic in human being, beggar, forced labour and other similar forms of labour practice by any one is within the sweep of Article 23 of the Constitution. In view of the observation of Apex Court in *People's Union for Democratic Rights and others v. Union of India*[1] and *Bandhua Mukti Morcha v. Union of India*[2] an Explanation clause has been inserted under section 2 of this Act vide Act No. 73 of 1985 being reproduced below:

"[Explanation-For the removal of doubts, it is hereby declared that any system of force or partly forced labour under which any workman being contract labour as defined in clause (b) of sub-section (1) of section 2 of the Contract Labour (Regulation and Abolition) Act, 1970 (73 of 197) or an inter-State migrant workman as defined in clause (e) of sub-section (1) of section 2 of the Inter-State Migrant Workman (Regulation of Employment and Conditions of Service) Act, 1979 (30 of 1979), is required to render labour or service in circumstances of the nature mentioned in sub-section (1) of this Act or is

subjected to all or any of the disabilities referred to in sub-sections (2) to (4), is "bonded labour system" within the meaning of this Act.]

By inserting the above noted explanation clause, the exploitation of the families and children of the contract labour and inter-State migrant labour are checked to some extent. Health care of families and education of children along-with rehabilitation has become easier as compared prior to amendment. The children coming from such poor and migrated workforce are more susceptible of exploitation and bondage, thus, in combating the problem of child labour and bonded child labour, combined effort under the provisions of various Acts would be more helpful.

Indian Contract Act, 1872- It is an Act for private contract between the parties to regulate certain conditions, but it must be legal and enforceable. Any contract cannot be forced on individual, which needs free consent. Hence, the person, entering in the contract must be competent to contract. Section 11 of the Contract Act says that the person contracting must be major, meaning thereby that person below the age of eighteen years, being minor is not competent to contract. Therefore, the guardian being competent to look after the welfare of minor child is competent to contract for the labour of his child. A clear inference can be drawn that it is the parent or, guardian who compels the child to work for gain either to bring up the child as he has no means to maintain or for his own. Thus, the parents or guardians are held responsible to pledge the labour of their children and are liable to be dealt accordingly.

Indian Mines Act, 1952- Mining operation is mostly concerned below the surface, which is not suitable for non-adult persons. Section 40 of the Act prohibits the employment of a person below the age of eighteen years; as such there is scope to employ child labour in mining operation below the surface. Moreover, children are not employed in mining operation.

Factories Act, 1948- Effective provisions are available under the Act regarding prohibition of employment of labour below the age of fourteen years. Section 67 of the Act prohibits the employment of a child who has not completed his fourteen years of age. The penal provision for the breach of section 67 has been linked with sections 14 and 15 of Child Labour (Prohibition and Regulation) Act, 1986, meaning thereby that in case of breach of section 67 of Factories Act, penalty shall be imposed in accordance with the provisions of section 14 of the Act, 1986, not under section 92 of Factories Act, 1948.

Motor Transport Workers Act, 1961- Motor transport undertaking is defined under section 2 (g) of the Act which means a motor transport

undertaking engaged in carrying passengers or goods or both by road for hire of reward and includes a private carrier. The Act applies to every motor transport undertaking employing two motor transport workers. Motor Transport worker is defined under section 2 (h) of the Act. Child is defined under section 2 (c) of the Act, means a person who has not completed his fourteenth years. Section 21 of the Act prohibits the employment of a child in any capacity. According to the provisions of section 14 read with section 15 of "Child Labour (Prohibition And Regulation) Act, 1986" the breach of section 21 of Motor Transport Workers Act, 1961 is punishable under section 14 of Child Labour (Prohibition and Regulation) Act, 1986 and not under section 31 and section 33 of Motor Transport Workers Act, 1961.

Merchant Shipping Act, 1958- Merchant shipping is also a field of employment in which, chances of exploitation of child labour are more. Section 109 of the Act prohibits the employment of child labour who have not completed his fourteenth year of age with certain exceptions. The breach of section 109 of the Act is punishable under section 14 read with section 15 of Child Labour (Prohibition and Regulation) Act, 1986.

The strict and stringent penalty under section 14 read with section 15 of Child Labour (Prohibition and Regulation) Act, 1986, has been adopted for the breach of employing child labour under Mines Act, 1952, Factories Act 1948, Motor Transport Workers Act, 1961 and Merchant Shipping Act, 1958 clearly indicated the intention of the Parliament to combat with social evil employing the child labour, depriving them from normal development and basic education.

Apprentices Act, 1961- With a view to meet the increasing requirement of skilled craftsman in the development of the country, the Act 1961 has been enacted. Section 3 of the Act prescribes the qualification for being engaged as an apprentice. The age is specified that he should not be less than fourteen years of age. Section 4 of the Act, further provides that if the apprentice is a minor, the contract would be signed by the guardian, in consonance with the spirit of Indian Contract Act. Section 30 of the Act provides for penalty for engaging a child below the age of fourteen years.

Minimum Wages Act, 1948- "Child" is defined under section 2 (bb) of the Act, that a person who has not completed his fourteenth year of the age is "Child". Section 3(3) of the Act provides that different minimum rates of wages may be fixed for adult, adolescents, children and apprentices. But now, in view of the present scenario and enactment of Child Labour (Prohibition and Regulation) Act, 1986 the provision of section 3(3) of Minimum Wages Act, 1948, should be looked accordingly, as the occupations, processes and other establishments and undertakings in which the employment of child is prohibited, the fixation of minimum wage of child is

meaningless. Moreover, it is now inexpedient to fix separate rate of wages for children and or for adolescent, in the interest of elimination of child labour system. It would be rather better to omit sub-section (3) (a) (iii) of section 3 of M.W. Act, 1948 because there should be no separate minimum rate of wages for child. To protect the interest of child labour in non-prohibited occupations and processes, the provision of Rule 24 of Minimum Wages (Central) Rules, 1950 and similar provisions under Rule 24 of U.P. Minimum Wages Rules, 1952 are relevant which prohibit the employment of child labour for more than four and half hours for any day in the schedule employment for which minimum wages are fixed. Such provisions of the Rules may ensure the dictum of "learning while earning".

Bidi and Cigar Workers (Conditions of Employment) Act 1966- This is Special Act for the welfare of the workers engaged in making Bidi and Cigar, and to regulate the conditions of their service. The provision of section 24 of the Act prohibits the employment of child in any industrial premises, who has not completed fourteen years of age. But in view of the provision of section 3 of Child Labour (Prohibition and Regulation) Act, 1986, the provision of section 24 of Bidi and Cigar Workers (Conditions of Employment) Act, 1966 became in fructuous to the extent of prohibition, because the employment of child labour in Bidi making process itself as shown in Part-B of the Act, 1986 irrespective of industrial or any other premises.

Plantation Labour Act, 1951- The word "Child" is defined under section 2(c) of the Act, which means a person who has not completed the fourteenth year of his age. Section 24 of the Act prohibiting the employment of young children has been omitted by section 24 of Child Labour (Prohibition and Regulation) Act, 1986, and now the prohibition of employment of children is governed by section 26 of the Act, 1951 which has also been amended by section 24 of the Act 1986 being reproduced below:

"Section 26-Non adult workers to carry token.-No child, and no adolescent shall be required or allowed to work in any plantation unless:

- (a) A certificate of fitness granted with the reference to him under section 27 is in the custody of the employer; and
- (b) Such child or adolescent carries with him while he is at work token giving a reference to such certificate."

But there are provisions for education along-with restrictions of working hours.

Atomic Energy Act, 1962- The subject of atomic energy is completely under the control of

Government of India and the chances to employ child labour are very remote. In spite of this the Central Government under section 30 of the Act, has formulated "Radiation Protection Rules, 1971" and Rule 5 prohibits the employment of person below the age of 18 years as "radiation worker" except with the prior permission in writing from the competent authority appointed and duly notified by the Central Government.

Juvenile Justice Act, 1986 (Act No. 53 of 1986) -

This Act was enacted prior to Child Labour (Prohibition and Regulation) Act, 1986. The field of operation of both the Acts is quite different, but the provision of this Act has impact on the problem of child labour in the country. The Act deals with and provides for the care, protection, treatment, development and rehabilitation of neglected or delinquent child and juveniles and for the adjudication of certain matters relating to them. The term "Juvenile" is defined under section 2 (h) of the Act, means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. "Neglected Juvenile" has been defined under section 2(e) of the Act, means a juvenile who-

- (i) Is found begging or;
- (ii) Is found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute;
- (iii) Has a parent or guardian who is unfit or incapacitated to exercise control over the juvenile; or
- (iv) Lives in a brothel or with a prostitute or frequently goes to any place used for the prostitution, or is found to associate with any prostitute or any other person who leads an immoral drunken or depraved life;
- (v) Lives in a brothel or with a prostitute or frequently goes to any place used for the prostitution, or is found to associate with any prostitute or any other person who leads an immoral drunken or depraved life;
- (vi) Who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain.

If this wide definition of neglected juveniles is tested on the touch-stone of the definition of 'child labour', it is obvious some of the juveniles below the age of fourteen years may become child labour, but child labour having their place of abode and residence and consent of their parents and guardians and having their employer cannot be called juvenile delinquent. The Juvenile Justice Act deals only and concerned with those children who are delinquent and wrong doers or neglected by their parents for any reason

and living in the conditions explained and enumerated under section 2 (e) of the Act. However, the Act has provided separate procedure and machinery to deal with such juveniles.

Provincial and State Acts on Prohibition and Regulation on Employment of child Labour-

Most of the Provincial Acts like Ships and Commercial Establishments Act, have also made the provisions to prohibit the employment of child, but its applicability and utility, is the matter of academic as well as legal discussion in view of the provisions of Child Labour (Prohibition and Regulation) Act, 1986.

The Child Labour (Prohibition And Regulation) Act, 1986 (Act No. 61 of 1986)-

This is a comprehensive and special enactment on the prohibition of employment of child labour in certain occupations and processes and regulate the working conditions of the child labour in other establishments in which none of the occupations or processes referred in Part-A or Part-B of section 3 of the Act is carried on. Specific provisions have been made under the Act, regarding amendment of Schedule. Constitution of technical advisory committee, amending the provisions of some other enactments relating to minimum age and penal clause, as well as regulatory provisions for the children working in non-hazardous occupations, processes and establishments. This Act of 1986 has given wide coverage to combat with the elimination of child employment and its related problems, but still there is scope for amendments which are being proposed from various corners.

The child is also a citizen of the country under Article 5 of the Constitution of India, and he has full right to get ample protection against infringement of his fundamental as well as his human rights, guaranteed under the Constitution. Simultaneously Article 15 (3) of the Constitution provides the power to enact special provisions for women and children. Considering the plight of child labour, as well as the flaws in the laws on the subject, the parliamentary Standing Committee on labour and welfare had recommended that the employer may be covered within the framework of some law to contribute some share from their own profit for education, health and welfare of the child labour of the country. National Labour Institute was also asked to conduct social survey regarding social and economic scenario prevailing around the child labour. In this process the then secretary, department of women and child welfare, Government of India, Dr. S. Gopalan, has expressed his feeling that nothing is better than to provide the children their "Childhood" and to see that none of the child is deprived to get their basic human need which are essential for their normal development. These are the aspiration to enact a comprehensive law known as Child Labour (Prohibition and Regulation) Act.

CONCLUSION

The problem of child labour is an intolerable disrespect for human dignity. To combat with this unbearable social evil, the International Labour Organisation and Government of India, along-with social thinkers and reformers have tried to eliminate the child labour system from the globe. To convert this dream into reality various enactments are made, since the inception of I.L.O. various surveys have been conducted time to time, and on the basis of the reports, various Commissions and Committees have been constituted to suggest the measures and to get active participation and Co-operation of the society in combating this social evil of child labour problem and exploitation. The Constitution of India has also given due emphasis to eliminate this social evil. Over and above the Apex Court, as well as the High Courts has given valuable mandate and direction on issue of this social evil. The role of National Human Rights Commission on the issue of child labour and related problems cannot be forgotten. International Programme on the Elimination of Child Labour (IPEC), National Child Labour Project (NCLP) and recently INDUS Child Labour Project, which is a Technical Co-operation Project of Government of India, Ministry of Labour and Department of Education and the United States, Department of Labour, are still in aid to eliminate the child labour system from India as well as from the globe gradually. To get rid of this problem several amendments were made in the above stated laws and still the work is in progress towards the aim of child labour free India as well as world so that we can say one day with high head that we did it what we dreamt for our children to give in legacy.

REFERENCE

1. 1982 (3) SCC 235, 1982 (45) FLR 140 (SC)
2. 1984 (3) SCC 161

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