ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

Issue I

August 2019

VIPS STUDENT LAW REVIEW

VIVEKANANDA INSTITUE OF PROFESSIONAL STUDIES

ISO 9001:2015 Certified Institution
(Affiliated to GGSIP University & Approved by BCI & AICTE)
The Institute is NAAC Accredited 'A' Grade, recognized by UGC under section 2(f)
& NBA Accredited for MCA Programme

TABLE OF CONTENTS

S.No Title of the Paper/Author **Page No.**

Implementation of Mediation in District Courts:
Issues, Challenges and Solutions..... 1
Sudhir Kumar Jain

Prolegomenon to Presumption as a Canon of Justice: The Judicial Perspective..... 8
V. Sree Vidya

Protective Legislation for Men in Matrimonial Violence - Need for Law in India..... 19
Virek Aggarwal

Performer's Right under Copyrights Act, 1957: Critical Analysis..... 25
Saksham Bhardwaj

Right to be Forgotten: Can it be for Real?..... 36
Archana Gadekar

Regulatory Challenges Faced by the Coal Sector in India vis-a vis needs..... 44
for an Independent Regulator : An Insight
Priya Bhatnagar

Crime of Rape and Laws: Need of Gender Neutral Approach..... 59
Ankita Kumar Gupta

Globalisation: An Analysis in The Context of Sustainable Justice..... 72
Kanchan Lavania

STUDENT SECTION

Child Labour in India: Unheard Screams..... 87
Neha Jain

Reservation in Private Sector and Right to Employment: Critical analysis..... 98
Diksha Dubey

The DNA Technology (Use and Application) Regulation Bill, 2019 and
its Effectiveness in Upholding the Principles of Privacy..... 114
Udhaya Karthika and Ms. Tanisha Verma

Case Comments

Dr. Subhas Kashinath Mahajan V. *State of Maharashtra* :
A Critique: AIR 2018 SC 1498 129
Indrajeet Dey

Shayara Bano v. *Union of India*: AIR 2017 SC 4609..... 135
Adarsh Pandey and Mr. Arunaditya Singh Parihar

CHILD LABOUR IN INDIA: UNHEARD SCREAMS

Neha Jain*

Abstract

Children are the future of nation. Their mental health and physical development is of utmost importance to any nation. Child labour is the most prominent evil that stands in the way of the all-round development of a child and is in practice since ancient times. Recognizing the detrimental nature of child labour, the government has enacted several provisions and laws to curb this menace. This research article aims to analyze and examine the various provisions incorporated in the Constitution and various other legislations in the country. Additionally, the article also elaborates upon the provisions and flaws of the Child Labour (Prohibition and Regulation) Act, 1986. The Amendment Act of 2016 has introduced major changes in the legislation which have, in a way, actually made the practice of child labour relatively easier. The impact of this and the suggestions for improvement have also been incorporated in the article.

Keywords: *Child Labour, Child Labour (Prohibition and Regulation) Act, 1986, Fundamental Rights, Constitution, Child Education*

INTRODUCTION

Children are considered to be the incarnation of innocence in a human embodiment. Unperturbed by materialistic considerations, children are the purest forms of mankind. To a certain extent, it is also believed that the fate of a country can be well determined by the condition of its children and women. However, the childhood innocence, purity and morality get snatched away from them when they are forced to work and earn a livelihood. Child labour is one of the oldest and most prominent problems that India, the home to the world's largest youth population, faces. Even though several legislations have been put in place by the law makers of the country, child labour is still rampant in a number of areas, especially the rural areas in India.

* Student, BALLB, Rajiv Gandhi National University of Law, Punjab

As per Article 1 of the United Nations Convention on Rights of the Child, 1989, "a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier."[1] However, in India, under the Child Labour (Prohibition and Regulation) Act, 1986, a child is defined as "a person who has not completed his fourteen years of age"[2]. Child Labour is the act of employing any child in any establishment to work so as to enable him/her to earn wages and a livelihood. By doing so, the child is deprived of his childhood, a time that he can never get back and relive. It takes away his/her chance to have peace of mind, get education and live a decent and dignified life.

According to the data collected by UNICEF, an estimated 150 million children are involved in child labour worldwide of which about 33 million children employed in various forms of child labour in India itself[3]. The ratio of male and female child labourers is 2:1. Approximately 6.6% of the entire population of child labour is found in Andhra Pradesh.[4] While male child labour is most prevalent in Orrisa (ratio of 13 males per female), female child labour is predominantly found in Sikkim (ratio of 89 females per 100 males).

The menace of child labour is not a recent phenomenon. The dark ages of industrial revolution revealed this concept during the 1780s. Approximately 60% of those employed in the textile mills in England and Scotland were children. During that period, children were not just employed in factories and industries, but instances of child trafficking, bonded labour, child prostitution, etc. were also reported. In India, since times immemorial, children have been accompanying their fathers and mothers to the fields, agricultural lands and other workplaces. Child labour, therefore, has existed in several different forms in several different parts of the world.

Causes of Child Labour

Child Labour, as discussed earlier, is not a new concept. It has been in practice since ancient times for various different reasons. The primary cause behind the origin of this menace of child labour is poverty and the unavailability of basic necessities of life. In earlier times, due to the rapid increase in population of the country, families did not have enough money to send their children to school and give them education. Rather, owing to

1 Article 1, United Nations Convention on Rights of the Child, 1989

2 Section 2 (ii), Child Labour (Prohibition and Regulation) Act, 1986

3 Unicef Data: Monitoring the Situation of Children and Women, January, 2018, Available at https://data.unicef.org/topic/child-protection/child-labour/

4 *Ibid.*

the large family size, they sent their children to the fields and agricultural lands. This not only increased the number of helping hands they had on the fields but also helped them produce more which then could be sold in the markets to generate more disposable income. This is still the situation in many developing countries where parents are unable to generate sufficient income due largely to the lack of intellectual, social and cultural capital which would have enabled their gainful employment. They lack the requisite competencies as, during their childhood, their parents, instead of sending them to schools, sent them for work to supplement family income. Faced with the situation of insufficient income and resources, these parents send their children too for work and thus continues the vicious cycle of poverty and child labour uninterrupted. Thus the practice of child labour is more prevalent in areas marked by poverty & lower standards of living where factories and industries are set up to exploit the cheap labour.

Child labour is also practiced by many families across the country as a matter of tradition. It is believed that it is a cultural practice and destiny to send their children to work at an early age. Such families are under the impression that this employment will lead to development of their child's personality. However, they are unaware of the fact that this actually strips the children off of their chance to lead a normal life with an ordinary childhood like other more fortunate children. Contrary to what those parents believe, beginning to work at an early age actually interferes with the wholesome development of the personality of the child.

In many situations social and educational backwardness also contribute to the incidence of child labour. The parents, in such cases, are unaware of the negative impact of child labour on the development of children in the initial years. The parents, themselves uneducated, fail to realise that education and literacy can play a very significant role in improving the quality of life and the future of their children. Reeling under the incidence of poverty, they send their children to work instead. These children, when they grow up continue to send their children to work on similar logic resulting in continuation of an unending vicious cycle of child labour.

Tackling the Menace of Child Labour

Taking cognisance of the extent of child labour plaguing the country, the framers of the Constitution incorporated specific provisions in the Constitution for preventing incidence of child labour. Article 24 of the Constitution of India specifically states that the employment of any child under the age of 14 years in any factory or mine or any other hazardous

employment is prohibited[5]. Also, the Right to Free and Compulsory Education Act, 2009, has added Article 21 (A) to the Constitution making it the fundamental right of every child in the age group of 6-14 years to receive education irrespective of the financial and social conditions of his/her family. Apart from the Fundamental Rights guaranteed above, the Directive Principle under Article 39(e) of the Constitution states that the government shall endeavour to make and formulate policies "that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength."[6]

In order to further strengthen the Government's resolve to prohibit child labour, the legislature also enacted The Child Labour (Prohibition and Regulation) Act, 1986. The object of this Act clearly states that the Act seeks to "prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments"[7]. Along with this legislation, there are several other legislations that have been put in place to curb rampant child labour, including the Factories Act of 1948, the Mines Act of 1952, Juvenile Justice Act of 2000, etc. However, these legislations suffer from several deficiencies/loopholes. Coupled with this, the lack of effective implementation of the provisions ensures that the child labour is still prevalent in India. This paper seeks to critically analyse the various provisions and subsequently proposes suggestions for improvement.

The Child Labour (Prohibition and Regulation) Act, 1986

The Child Labour (Prohibition and Regulation) Act, 1986 was enacted on the recommendations of the Gurupadaswamy Committee which was the first committee constituted, way back in 1979, to deal with the problem of child labour in the country. According to the Committee, the main cause behind child labour is poverty and without reducing poverty, eliminating child labour would merely be a dream. However, since it is not possible to remove poverty only through legislative measures, the Committee recommended enactment of a specific law banning child labour in hazardous occupations and regulating it in other employments. Consequently, the Child Labour (Prohibition and Regulation) Act, 1986 was enacted. The main provision of the Act are discussed in the following paragraphs.

First and foremost, this Act seeks to establish uniformity in the definition of child across

5 Article 24, Constitution of India.

6 Article 39(e), Constitution of India.

7 Preamble, The Child Labour (Prohibition and Regulation) Act, 1986

the legislations in India. It defines a child as "a person who has completed his fourteenth year of age."[8] The Act specified that no child would be employed in the employments and occupations listed in the Schedule to the Act. The Schedule consisted of 83 occupations and processes which were prohibited. These occupations include employment in slaughter houses, port authorities, handloom and textile industries, mines, etc. The list of prohibited processes include *bidi* making, dye making, carpet weaving, cloth printing, etc. However, in a Supreme Court judgement it was held that children could be employed in the process of packing but the place of that packing has to be away from the place of manufacture to avoid the exposure to the hazardous process.[9]

The Act also provides for the establishment of an Advisory Committee called the Child Labour Technical Advisory Committee which is primarily concerned with giving advice to the Central Government on issues relating to the list of occupations and processes prohibited.[10] In pursuance of the objective with which the Committee has been set up, the Committee has made special provisions in the Factories Act, 1948 as well as the Mines Act, 1952 so as to ensure that *firstly*, employment of children in hazardous occupations does not take place, and *secondly*, where the children are already employed, the conditions of work are regulated.

Part III of this Act calls for regulation of the conditions of employment for the children. It establishes that the period of work may be fixed for every day and such schedule shall not involve a child working for more than 3 hours at a stretch. No night shift (working between 7 p.m. to 6 a.m.) or overtime is permitted for the children. It also states that in every week the child has to be given one complete day of rest (weekly holiday).[11] The Act also appoints an Inspector who has to be informed about the employment of any children in any establishment by the employer within 30 days of such employment. This provision has been incorporated so that someone outside the employment is kept aware of the presence of a child employee or worker in that occupation and he is able to keep a check on the working conditions.

The Act also prescribes "Penalties" for the breach of the provisions provided against child labour in not only this Act, but also the other legislations dealing with curbing child labour.[12] The punishment under the Act ranges from 3 months to 1 year of imprisonment

8 Section 2 (ii), The Child Labour (Prohibition and Regulation) Act, 1986

9 *M.C. Mehta vs. State of Tamil Nadu*, (1991) SC 417

10 Section 5, The Child Labour (Prohibition and Regulation) Act, 1986

11 Section 8, The Child Labour (Prohibition and Regulation) Act, 1986

12 Section 14 and 15,

and/or fine ranging from Rs. 10,000 to Rs.20,000. Repeat offenders may be punished with imprisonment ranging from 6 months to 2 years. These penalties have been enforced in several situations. In the case of *Hayath Khan v. The Deputy Labour Commissioner*[13], a child of about 12 years was employed in a motor cycle shop. This was found to be in contravention of Section 3 of the Act. Thereafter, a criminal case was lodged against the petitioner and the Deputy Commissioner imposed a fine of Rs. 20,000 to be deposited in the District Child labour Rehabilitation and Welfare Fund.

Amendment of 2016

In order to further pursue the objective of completely eliminating the practice of child labour, the Central Legislature has promulgated the Child Labour (Prohibition and Regulation) Amendment Bill, 2016. These changes and amendments have been made effective and enforceable with effect from 30th July, 2016. Some of the major changes introduced by this amendment have been discussed below.

This Amendment Act, for the first time introduced the concept of adolescent labour. In other words, this amendment aims at increasing and widening the scope of this legislature. It changed the name of the legislation from "the Child Labour (Prohibition and Regulation) Act, 1986", to "the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986." This Act led to the creation of a new category of adolescents, i.e., children between the age of 14 to 18 years. It imposed a complete ban on the employment of any child under the age of 14 years. This was done in consequence of the provisions stipulated under the Right of Children to Free and Compulsory Education Act, 2009 and consequently, Article 21 A of the Constitution of India.

However, on the other hand, this Amendment Act also reduced the list of prohibited occupations and processes from 83 occupations to merely 3 such occupation. These occupations are mines, inflammable substances or explosives and hazardous process as provided in clause (cb) of the Factories Act, 1948. This is, infact, extremely disadvantageous to the children as they can be employed in the other 80 occupations earlier considered hazardous or unsuitable for employment of the children. The Amendment Act also allowed the employment of children and adolescents in family enterprises or working from home subject to two conditions: firstly, it should not be any hazardous occupation or process, and secondly, the work should either be after school hours or during vacations.

Legalising family employment is detrimental to the welfare of the children primarily

13 *Hayath Khan v. The Deputy Labour Commissioner* 2006 (1) KarLJ 365

because even though it stated that the children cannot be employed during school hours, it did not limit the number of hours for which the children could be employed in a day and at a stretch. Also, family enterprise was defined as "any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons". This could also result in forced and bonded labour. The definition of family was also expanded to include not only parents and siblings but also the siblings of either parent. These changes, instead of curbing the menace of child labour, would help the practice thrive.

In addition, the child could be employed even in audio-visual industries (advertisements, television serials, etc.), entertainment industries or sports activities (except circus) provided that such employment shall not, in any circumstance, effect the school education of the concerned child.[14] Also, such employment in family enterprises and audio-visual industries was also going to be subject to the health and safety requirements to be met in that particular occupation.

With respect to the criminalization of the offence, the Amendment Act stipulated that child labour and the employment of children in any other occupation other than those allowed and permitted would be a cognizable offence. The penalty originally laid down under the Act has been increased. Earlier, where the employment of children below 14 years was punishable with imprisonment between 3 months to 1 year, the latest Amendment Act increased the same to between 6 months to 2 years. The fine which was initially upto Rs. 20,000 was raised to between Rs. 20,000 to Rs. 50,000. In case of repeat offenders, the imprisonment would be for a term which could be 1 year to 3 years (earlier 6 months to 2 years). Additionally, this Act also stipulated that if the offender is the parent or guardian, the fine may be extended upto Rs. 10,000.

The Amendment Act made provisions for rehabilitation of the victims of the evil of child labour. It provided for the setting up of a fund in every district or two which would be called "Child and Adolescent Labour Rehabilitation Fund". The Fund would comprise of contributions in the form of fines paid by the employers of child labourers. The appropriate Government in whose jurisdiction the Fund is located shall contribute Rs. 15,000 for every child for the employment of whom a fine has been levied. The rehabilitation of the child rescued from the clutches of child labour has to be done in accordance with the existing laws at the time of the rescue. Also, the money that is paid as fine for employment of such child should also be given to him for his welfare.

14 Section 5, Child Labour (Prohibition and Regulation) Amendment Bill, 2016

The primary point of criticism of this legislation is the inclusion of family employment within the limits of permissible employment for children. This provision, along with the extended definition of family, creates a scope of child labour, unrestricted and unregulated. In his article "A Law against Children", Harsh Mander opines,

> *...on closer scrutiny, we discover the same pattern as many other pronouncements of this government vis a vis the poor: The reality of what is being offered is the reverse of what appears on paper. The ban on hazardous adolescent work is accompanied by changes in the schedule of hazardous work in the statute, bringing these down from 83 prohibited activities to only three. Apart from mining and explosives, the law only prohibits processes deemed hazardous under the Factories Act 1948. In other words, the amended law prohibits only that child work which is considered hazardous for adult workers, without recognising the specific vulnerabilities of children.*[15]

The claim of the government that this provision was also present in the original Act and that it is based on economic reality and seeks to leave behind the idealism of the law, thereby making it more practical, is irrelevant. Curbing all forms of exploitative child labour and regulating child employment is the basic objective of the legislation and in order to achieve the same, exclusion of family enterprises from permissible employment and increase in the number of prohibited occupations and processes is extremely essential.

Another reason why complete prohibition is necessitated is that the regulation of more number of permitted occupations for children will be comparatively difficult. The creation of an additional category of adolescents also increases the burden on the government. Keeping a check on and regulating the employment and working conditions of the adolescents along with the children require more number of hands at work. Therefore, more officials have to be put in place by the appropriate government and such officials have to be trustworthy and actively working towards the cause.

Conclusion and Suggestions

The importance of the well-being of children is recognised across the globe. It has been established in *Sheela Barse and Others v. Union of India*[16] that "The Nation's children (are) a supremely important asset. Their nurture and solicitude are our responsibility. Children's

15 Harsh Mander, *"Law Against Children",* Indian Express, July 29, 2016.

16 *Sheela Barse and Others v. Union of India*, (1995) 5 SCC 654

programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skill and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our purpose of reducing inequality and ensuring social justice."

In order to effectively protect and nurture this asset of the country, the Government has enacted several laws and legislations, the most prominent one being the Child Labour (Prevention and Regulation) Act, 1986. These laws have been repeatedly amended so as to remove any lacunae that may develop with time. However, like all coins have two sides, even the amendments so enacted have a progressive as well as regressive side as has been elaborated in the above paragraphs. In spite of various Acts & provisions, the menace of Child labour still continues to prevail and flourish.

It is also essential to realise that merely debating and discussing and formulating laws will not curb the menace of child labour. The problem lies not in having suitable laws but in poor & ineffective implementation of the same. It is speedy, swift and effective implementation of the laws that will help us finally to attain the objective. The officials and police personnel need to take active steps when dealing with situations involving presence of child labourers. Lodging complaints immediately and following up with effective investigation in such matters should be the main goal of implementing and monitoring agencies.

The first step that needs to be taken in the direction of eradicating child labour from root is progressive amendments in the law. In addition to increasing the scope of the prohibited list of occupations and processes, severe and more stringent punishments need to be stipulated for violation of any of the provisions for child labour. This will not only punish the offenders and violators but will also subsequently create a deterrent effect for the others. This new amendment of 2016 has actually worked against this and resulted in more room for child labour to flourish by reducing the entries in the prohibited list.

It is well established that the main cause of child labour is the increasing incidence of poverty. This needs to be tackled by the Government through various social welfare schemes with targeted beneficiaries. These schemes need to be sustained over a long period of time. If the government is able to reduce poverty and improve the standards of living of the population, it will be able to nip the menace of child labour in the bud. Once the wages of the families rise they would no longer be required to send their children to work thereby directly reducing child labour. Additionally, instead of working, the children could be sent to schools and educational institutions for a better and all-round development of

their personality which will consequently improve their lives and make them independent.

Education is the only key which can break the vicious cycle of poverty and child labour. Once educated, the children can build a better life for themselves, improve their standards of living. They can also contribute to the betterment of the lives of their parents, who would have undoubtedly struggled financially to educate them. These children, as adults would have to struggle comparatively lesser to educate their children. Knowing the fruits of education, their children will also get education and thus, a new world will be ushered in.

To aid the government in such an uphill task, it is important that various NGOs and Business Organisations are incentivised to take up such welfare schemes and measure and would help the government extend its reach. Merely the legislators or the police personnel and other concerned officials cannot bring about the required change in the society on their own. Active participation from the public is also necessary. On the knowledge of employment of a child in any occupation, there should be no hesitation from the side of the individuals in coming forward and reporting the same. This can be achieved only through increasing and spreading awareness about the ill effects and detrimental nature of child labour.

Furthermore, the public also needs to be discouraged from employing children as domestic help. Coming to those children who are already employed, they can be substituted with the unemployed adult labourers who are available in plenty. This is an area where media can play a very important role. Mediums such as Print & electronic media as well as motion pictures need to be galvanised and made more sensitive to the issue. They would help spreading awareness which would in turn have a positive impact on human psyche.

Once all the concerned associations and people in the society collectively pool in their efforts, the dream of elimination of child labour could turn into reality. India has seen a massive reduction in child labour in the last 2 decades. For instance, there was a marked 45% reduction in child labour between 2004-05 and 2009-10, due to schemes like Right to Education, MNREGA, Mid-Day Meal, which gave children an incentive to study. Then further on, more optimistic signs were sign in 2014 by which the number of child labourers had decreased by 65%, i.e., from 1.26 crore in 2001 to 82.2 lakh.[17] It was also revealed that Delhi alone had seen over 1500 Child labour rescues between 2013-2014.[18]

Therefore, it has become increasingly evident that with participation of the society and government, this number can be considerably reduced further in the coming years.

17 *Statistic of Child Labour in India State Wise*, https://www.savethechildren.in/articles/statistics-of-child labour-in-india-state-wise, 4th May 2016

18 Answer to a question in the Rajya Sabha.

Preservation of the tender age of children, their innocence and childhood, is essential in this day and age of technological innovations and scientific advancements. Every child deserves to grow up playing with games and friends rather than working with machines or serving tea to customers. The capabilities that a child may have can be explored only if he or she is given adequate opportunities and that cannot happen if they are forced to work or be employed. Therefore, it is the absolute need of the hour that the people join hands with the Government and fight against the menace of child labour and everything that seeks to encourage it, including the 2016 amendment. The dream of eliminating child labour from the country can be achieved only if steps are taken towards this together and only then can each child live the life he or she dreams of.