

Legislative provision with Respect to Child Labour

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INTRODUCTION

Children are valuable assets on which a nation's progress depends. If there is no proper growth of children today, the future of the country will be in dark. It is thus, an obligation of generation to bring up children who will be citizens of tomorrow in a proper way. Today's children will be the leaders who will hold country's banner and maintain prestige of the nation. If a child goes wrong for want of proper attention, training and guidance, it will indeed be a deficiency of the society and of government of the day. Every society thus, must devote full attention to ensure that children are properly cared for and brought up in a proper atmosphere where they would receive adequate training, education and guidance in order that they may be able to have their rightful place in society when they grew up.¹ But the child Cannot develop into full blown human beings, unless constructive and congenial environment is assured for child's development. The child is to be provided planned care and adequate socialization opportunities in order to enable him/her to attain human status.

A child is vulnerable to environment threats so his/her survival and health needs must be met first. A child's cognitive and emotional development has to be strengthened with stimulus surroundings, love, affection, human warmth and security.² Child is the father of man. To enable father of

¹ Ashaad Ahmad, Child Labour in India, Kalpaz Publications, Delhi, 2004, p. 20.

² Chandragupt, S. Sanon, Working Children: A Sociological Analysis, APH Publishing Corporation, New Delhi, 1998, p.1.

ABSTRACT

From several decades, legislation of India has tried to control and regulate labour. For several decades in India, laws exist to regulate and control to child labour. The main concern of the legislation was to regulate working hours for children, to prescribe the lowest age limit for working of children, to ensure the life, health of the child workers, and to restrict the working of children in dangerous work.

Child Labour legislations are which restrict the working of children below the age group of 14 years and 15 years in some of the prescribed occupations. In absence of provisions to resolve the problem and due to lack of political will, the number of child labour in total labour force of the Nation is keeping on increasing.

Since, 1881, an oversized numbers of laws were enacted that gives the legal protection to the operating youngsters. The Child (Pledging of Labour) Act, 1933 followed by the Employment of Child Act, 1986. Various recommendations given by a series of Commissions and because of which Child Labour (Prohibition and Regulation) Act, 1986 enacted.

KEYWORDS: Child Labour, Constitution Laws, Acts

a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and lesson in such an atmosphere that on reaching adult age, he is found to be a man with a mission, a man who matters so far as the society is concerned.³In India, child labour is an incessant problem which is a challenge before the nation. Government has taken various protective measures to deal with this problem through strict enforcement of assorted legislative provisions along with simultaneous rehabilitative policies. Several committees, sub-committees and commissions have been appointed from time to time by the government to find out ways and means to prevent child labour.

Indian Constitutional Law

The Constitution of India, which came into effect from 26th, Jan, 1950, introduced a revolutionary chapter on the rights of the child. The framers of the Indian Constitution incorporated various important provisions for the betterment for children in view of the dictum "Children are the wealth of a nation. The Constitution are expressly or impliedly, directly or indirectly related with the protection of childhood, child education and elimination of child labour system in India.⁴ Before its enactment, there were bits and

³ Janak Raj Jai, "Protection of Rights of a Child in the National Development" Indian Bar Review, Vol. xxxix (1)2012, pp. 59-72.

⁴ Jayashree V. Doddawadmath and Ramesh, "Rights of Child and Child Labour in India: A Critical Study", Legal News and Views Vol. 23, No.10, 2009, pp. 5-7.

pieces of various legislations which had dealt with the child and child labour. The implementation of those was not tardy but half hearted. The Constitution of India recognized the right of the child for the first time and included several articles dealing with their liberty, livelihood, development of childhood, non-discrimination in educational spheres, compulsory and free education and prohibition of their employment in factories, mines and hazardous employment.⁵

A Constitution is the documentation of the founding faiths of a nation and the fundamental directions for their fulfillment.⁶ After Independence, however, the State has become fully conscious of its responsibility towards children. Consequently this consciousness is reflected in some of the Constitutional provisions passed for protecting the rights and well-being of children.⁷

The Constitution of India is primarily a social document which aims at evolving a just social order covering all facts of the society.⁸

The Constitution makers were wise enough to understand this problem which the country is facing after its independence. That is why Constitution includes these provisions for the welfare of children. The Constitutional philosophy should be allowed to become a part of every man's life in this country and then only the constitution can reach everyone and the ideals of the constituent framers would be achieved since the people would be nearer the goal set by the Constitution-an ideal situation but a far cry presently.⁹

The Constitution of the country includes the rights of the children in part III and Part IV of the Constitution. Part III of the Constitution of India deals with the Fundamental Rights, and is termed as a great chapter of liberty. It has made the Constitution guaranteeing against State interference certain rights vital to the freedom and well being of the people.¹⁰ Fundamental Rights are enforceable in courts. Article 32 provides remedy to file writs before the Supreme Court for enforcing the Fundamental Rights. Similarly the Article 226 provides remedy to file writs before High Courts of various States for the enforcement of Fundamental Rights. Constitution recognizes the need for granting special protection to children. The founding fathers were wise enough to provide that the children should also have their distributive justice in future, in free India. special provisions ensuring justice to children have been incorporated in Part III with Fundamental Rights and Part IV devoted to Directive

Principles of State Policies.¹¹ Constitution of the Country includes some provisions deal expressly with the protection of children and some deals indirectly with Children.

Protection Guaranteed under Article 15(3)

According to Article 15(3), the State can make special provisions for children.¹² It shows the concern of the framers of the Constitution that the State strives to promote the welfare of the children without any discrimination. It means the founding fathers add this positive provision enabling the State to make law for the welfare of children and to give them preferential treatment over other persons in the society.¹³ The objective to incarnate Article 15(3) is to avoid any controversy and demonstrate the concern of the framers of the Constitution that the State shall strive to promote the welfare of children. Frankly admitting the solitude for children and repulsion for the exploitation of children of tender age impelled that founding fathers to add such a specific positive provision enabling the State to make law for the welfare of children and given them preferential treatment over other persons in the society.¹⁴

Child's Right to Education Art.21

Article 21¹⁵ is very much important Article regarding children because while interpreting Article 21 Supreme Court in 1993 has declared right to education is a Fundamental Right. The Constitutional (86th Amendment) Act, 2002 added a new Article 21A¹⁶ which makes education is a Fundamental Right for all children between ages 6-14. Actually Child (labour & prohibition) Act, 1986 does not talk about the complete prohibition of child labour rather it regulate child labour in certain premises and Article 21 is talking about compulsory schooling and if Article 21 is read with child (labour & prohibition) Act, both cannot move together. So, it is better to amend child (labour & prohibition) Act in the light of Article 21.

Right against Exploitation Art.23(1)

Although Article 23 (1)¹⁷ does not specifically speak of children, yet it is applied to them and is more relevant in their context because children are the most valuable section of the society. It is a known fact that many children are exploited even by the parents who allow their exploitation because of their poverty and in the absence of parents their exploitation by close relatives still deeper. They are deprived of education, made to do all sorts of work injurious to their health and personality.¹⁸ It is clearly designed to protect the

⁵ Id, p. 61.

⁶ Fatehchand v. State of Maharashtra AIR 1977 SC 1828.

⁷ Sunil Deshta and Kiran Deshta, Law and Menace of Child Labour, Anmol Publications Pvt. Ltd., New Delhi, 2000, p. 107.

⁸ Austinnn, Granville, "The Indian Constitution Cornerstone of a Nation" Punjab University Law Review (Special Number), March 30, 1974, p. 50.

⁹ Balbir kaur v. Steel authority of India Ltd., AIR 2000 SC 1596

¹⁰ G.B. Reddy and Muhd Suheb, constitutional of India and professional ethics, I.K. International publishing house, Pvt.Ltd., 2006, p.22.

¹¹ S.Wal (ed), combating child labour approach, Sarup and sons, New Delhi, 2006, p.251.

¹² Tapan Kumar and Shandilya et.al., Child Labour-A Global Challenge, Deep & Deep Publications, New Delhi, 2006, p. 71.

¹³ Article 14, Constitution of India.

¹⁴ Id, p. 108.

¹⁵ Article 21 provides for the protection of life and personal liberty of the people including children.

¹⁶ Article 21A explains that- the State shall provide free and compulsory education to all children of the age 6 to 14 years in such manner as the state may, by law, determine.

¹⁷ Article 23 explains- "Traffic in human beings and beggar and similar forms of force labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

¹⁸ V.N. Shukla, The Constitution of India, Eastern Book Company, Lucknow, 2001, p. 310.

individual not only against state but also against other private citizens. Article 23 is not limited in its application against the state but it prohibits “traffic in human beings and begar and other similar forms of forced labour” wherever they are found. „Begar“ (labour or service which a person is forced to give without receiving any remuneration for it) is only a form of forced labour. What the article prohibits is not merely „begar“ but all other similar forms of forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values.¹⁹

Protection under Article 24

Under Article 24²⁰, the Constitution of India makes a loud assertion for the protection of tender aged minors and gives them a fundamental right of education and well being. It says, “In peoples union for democratic rights v. union of India.²¹ The Supreme Court held that though the Employment of Children Act, 1938 did not include the construction work on projects because the construction industry was not a process specified in the schedule to the Act, yet, such construction was a hazardous occupation and under Art.24 children under 14 could not be employed in a hazardous occupation.

The right of a child against exploitation under Art.24 was enforceable even in the absence of implementing legislation, and in a public interest proceeding.²² The legislations such as Child Labour (Prohibition and Regulation) Act, 1986, Merchant Shipping Act, 1958, Motor Transport Act, 1961, Apprentices Act, 1961, Bidi and Cigar Workers Act, 1966, Plantation Labour Act, 1951, Factories Act, 1948, deal with employment and working conditions of workers and prescribed the eligible age as 14 for both the boys and girls will straight away contradict this fundamental right guaranteed under Article 24 and deserves to be declared unconstitutional. Article 24 read with Article 21A, also read with various judgments of Supreme Court on Right to Education of children and about the prohibition of child labour are totally violated by these legislations as they permit the children to be employed in factories and other areas of work. Argument that Article 24 permits employment of children in non-hazardous employment does not hold any water because that article says no child below the age of 14 years shall be employed to work in any factory or mine or in any other hazardous employment. unconstitutional. Article 24 read with Article 21A, also read with various judgments of Supreme Court on Right to Education of children and about the prohibition of child labour are totally violated by these legislations as they permit the children to be employed in factories and other areas of work. Argument that Article 24 permits employment of children in non-hazardous employment does not hold any water because that article says no child below the age of 14 years shall be employed to work in any factory or mine or in any other hazardous employment.

¹⁹ Thomas Paul, “Judicial Response to Child Labour in India: A Human Rights perspective” Asia Law Quarterly, Vol. 1, No. 1, pp. 63-86.

²⁰ According to Article 24 - No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment

²¹ (1982)3 SCC 235; AIR 1982 SC1473.

²² Retrieved from www.hr.cr.org, last visited on 24-5-2013.

Special Protection under Directive Principles of State Policy

Initially it was thought that the Directive Principles of State Policy enshrined in Part IV was merely a pious obligation on the part of state and that they could not be enforceable in any courts. Article 37 itself states that these articles are not enforceable in any courts but nevertheless the principles laid down therein are fundamental in the governance of the country and it was felt that it was the duty of the state to apply these principles in making laws.²³ Article 39(e) & (f)²⁴ direct the state to evolve a policy eliminating the abuse of tender age to free children from the circumstances forcing them to enter into avocations unsuited to their age or strength .The State is also directed to create social and economic conditions and infrastructure for the healthy development of children and to provide facilities and climate for exercise of freedoms and maintenance of dignity. The state is further directed to protect the children against exploitation and moral and material abandonment.²⁵ The Supreme Court in Sheela Barse v, Union of India²⁶ held that Article 39(f) of the constitution provides that the state shall direct the policy towards securing the goal that children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and the childhood and youth are protected against exploitation and against moral and material abandonment. The Supreme Court further stated that though various States have enacted Children Act for the fulfillment of constitutional obligation for welfare of children under Article 39(f), yet it is not enforced in some states and the Court directed that such beneficial statutes should be brought into force and administered without delay.²⁷ Under Article 45²⁸ a duty is imposed upon the state to provide free and compulsory education within a period of ten years of the commencement of the constitution for all the children until they complete the age of 14 years. This Directive Principle signifies that it is not only confined to primary education, but extends to free education whatever it may be upon the age of 14 years. Article 45 is thus supplementary to Article 24 on the ground that when the child is not to be employed before the age of 14 years, he is to be kept occupied in some educational institutions.²⁹ Article 45 provides compulsory and free education for children up to the age of 14 years. One of the objectives of these Articles is that the State should provide free and compulsory education to all.

²³ Id, p. 62.

²⁴ Article 39(e) of the Constitution enjoins that: The state shall direct its policy towards securing the health and strength of workers, men and women, and the tender age of children are not abused and the citizens by economic necessity to enter avocations unsuited to their age and strength. Article 39(f) states- That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children and youth are protected against exploitation and against moral and material abandonment.

²⁵ Id, p. 117.

²⁶ AIR 1986 SCC 596.

²⁷ Ibid.

²⁸ Article 45- 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 children until they complete the age of fourteen years.

²⁹ Id, p. 118.

- A. **Article-39(e)** - to ensure that they are not forced by economic necessity is the duty of the state and to ensure that the tender age of children are not abused to enter vocations unsuited in their strength or age.
- B. **Article-39(f)** - children are given facilities to develop in a healthy manner and opportunities are to be given with dignity and freedom and that, the youth and childhood are protected against moral and exploitation.
- C. **Article- 45-** early childhood education and care until they completed the age of six years for all children.
- D. **Article 51A (k)** - between the age of 6 and 14 years it is a fundamental duty of the Guardian or parents to provide opportunities for education to the child. It is very much clear that constitution makers has taken many initiatives for the welfare and protection of children. No doubt, the parliament has amended the constitution to insert Article-21A but it took six years for enacting a law for making Article-21A.

The Factories Act, 1948

Under the significant provision, the factories Act expressly prohibited Child Labour Against exploitation, it is nothing but a protection guaranteed to the child labourers. Employment of child less than the age of 14 years in any factory is prohibited under the Act,³⁰The law has provisions for pre-adults between the age group of 15-18 years employed in any factory about who, when and how long employment is done.

No child can be allowed lubricating or adjusting any part of machine, clean which expose to the risk of injury to young person of any adjacent machinery, from any moving part of that machine and all this mentioned in section 22 of the Act. No child can be allowed to employee on hazardous machines defined under the Section 23 of the Act. Employment of child in industries for pressing cotton in which a cotton-opener is used is prohibited under Section 27 of the Act.

Minimum Wages Act, 1948

Toward the minimum times rate of wages, there is fixation by the state government. It also assured time rates of payment for different industries and minimum piece rate of wages, and children, adolescences and apprentices, localities of class of work and adult through is a fixation.³¹

The Plantation labour Act, 1951

For the regulating child labour, this Act provides specific provisions Government enacted rules, so as to assure educational facilities to every employer for the children in such manner and standards as prescribed, where the children between the age of 6-12 of workers employed in many plantation which are more than twenty-five in numbers.³²

Between 6a.m and 7p.m, the children and women can employed. Only the permission of the State Government they can employed beyond these hours.³³

To work in any plantation no adolescent and no child shall be required or allowed unless, under Section 27 a fitness certificate is granted with the reference is in the custody o

the employer; and adolescent or child is to carry a token with him while he is at work which gives a reference to such certificate.³⁴

The Mines Act, 1952

The working of child less than the age of 18 years in a mine the Act prohibits. The child shall be there in any part of mine, or neither they shall work in any open cast in which any mining operations are carried out.³⁵

The Merchant Shipping Act, 1958

Children below the age of 14 can work where other family members work such as, home ship or a ship, and a training ship prohibited in this act. Employment of person less than the age of 18 as stokers and trimmers are also prohibited under this Act, but except under certain conditions.³⁶

The children Act, 1960

This law restrict the working of child for begging and exploitation of child employee.³⁷ For exploitation of child employees, it provides generally upto one thousand rupees,³⁸

The Apprentices Act, 1961

Unless a child is of fourteen years old-time not a soul shall be qualified for engaged as Associate in Nursing apprentice to bear place coaching in any selected trade and such standards of education and shape as prescribed.³⁹

The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

This Act prohibits working of child under the industries manufacturing beedi and cigar.⁴⁰It also prohibits employment of child and women during certain hours.⁴¹

The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

The involvement of children in working in certain occupations is prohibited under the Act. The indulgement of children less than 14 years of age in any hazardous occupations by law prohibited under the Act,⁴²To restrict the involvement of children in work under certain conditions

³⁴ Id, at s.26.

³⁵ The Mines Act, 1952, ss.40, 45.

³⁶ The Merchant Shipping Act, 1958, s.110.

³⁷ The Children Act, 1960, s.42.

³⁸ The Children Act, 1960, s.44, Exploitation of child employees, whoever ostensibly procures a child for the purpose of any employment and withholds the earnings of the child or uses such earnings for his own purposes shall be punishable with fine which may extend to one thousand rupees.

³⁹ The Apprentices Act, 1961, s.3.

⁴⁰ The Beedi and Cigar workers (Conditions of Employment) Act, 1966, s.24, Prohibition of employment of children. -No child shall be required or allowed to work in any industrial premises.

⁴¹ The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, s.25, Prohibition of employment of women or young persons during certain hours.—No woman or young person shall be required or allowed to work in any industrial premises except between 6 a.m. and 7 p.m.

⁴² The Child Labour (Prohibition and Regulation) Act, 1986, s.3.

³⁰ The factories Act,1948

³¹ The Minimum Wages Act, 1948, s.3.

³² The Plantation Labour Act, 1951, s.14.

³³ Id, at s.25.

and to address the social concern is the main object of the Act who have not attained 14 years of age and to control the conditions of work of children that are restricted in occupations which are as follows

- I. Transport of goods or mails by railways, passengers
- II. Carpet weaving
- III. Bidi making
- IV. Soap manufacture
- V. Manufacturing of explosives and fire, matches

Conclusion:- Legislative Provision with regard to child labour

Children constitute the nation's valuable human resources. The future well being of the nation depends on how its children grow and develop. The great poet Milton said "Child shows the man as morning shows the day". So it is the duty of the society to look after every child with a view to assuring full development of its personality. Children are the future custodians and torch bearers of the society; they are the messengers of our knowledge. Cultural heritage, ideologies and philosophies. Children are really future components in the form of great teachers, scientists, judges, rulers, doctors, planners, engineers, politicians on whom the entire society founded (rests). Unfortunately millions of children are deprived of their childhood and right to education and there by they are subjected to exploitation and abuse. The age of the child has been differently defined in different laws. There is no definite criteria or scientific parameters in defining the age of the child. The constitution of India under Art.24 defines "Child" as any one below the age of 14 years and who shall not be employed to work in any factory or mine or engaged in any other hazardous employment. Under Child Labour (Prohibition and Regulation) Act, 1986 "Child" means a person who has not completed his 14 years of age. Article 21-A of the Constitution states that 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. Now, amended Article 45 of the Constitution states that, the state shall endeavor to provide early childhood care and education for all children until they complete the age of six years.

International Labour Organization is committed to the abolition of the worst forms of child labour and gradually other forms also. This is the first child labour convention, which prohibited, the work of children under the age of fourteen in industrial establishments. The protection of child against exploitation in employment is one of the major concerns of this Convention. It has moved totally 19 conventions. International Labour Organization's Worst Forms of child Labour Convention, 1999 (No. 182). Minimum Age Convention, 1973 (No. 138), Minimum Age Recommendation, 1973 (No. 146) and International Programme for the Elimination of the Child Labour (IPEC).

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- [13] Article 14, Constitution of India.
- [14] Id, p. 108.
- [15] Article 21 provides for the protection of life and personal liberty of the people including children.
- [16] Article 21A explains that- the State shall provide free and compulsory education to all children of the age 6 to 14 years in such manner as the state may, by law, determine.
- [17] Article 23 explains- "Traffic in human beings and beggar and similar forms of force labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
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- [21] (1982)3 SCC 235; AIR 1982 SC1473.
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