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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CHILD LABOUR AND ELMINATION OF CHILD LABOUR

AUTHORED BY - RAJA DEEKSHITHA M

INTRODUCTION:

Child Labour is a very harmful practice, resulting in denial of the joy of childhood and access to education, which ultimately damages the personality and creativity of children, the development, and growth of the citizens of the future. The issue of Child Labour began to emerge in the 19th Century in Europe and in US. It was only in the 20th Century that Child Labour was begun to be seen as a matter of global concern for all nations and peoples of the world. Children are the citizens of the future. The future of our country depends on the proper education to turn out to be good citizens. The future of our country will be dark if there isn't proper growth of children of today. It is the obligation of every generation to bring up the children in a proper manner. Every society must therefore, give full attention to guarantee that children are properly cared and brought up in a proper atmosphere. That makes the children to be a good citizen in the society when they grow up.

India has been following an active policy for advanced withdrawal and rehabilitation of Child Labour. Constitution of India gives Specific provisions which prohibits employment of children in the hazardous industries and provide free and compulsory elementary education to all children until they complete the age of fourteen years. It further provides that, in the tender age children shall not be abused on account of economic necessity. Several legislation exist which prescribe the minimum age of entry into employment. Also, a number of committees have looked into the problem of Child Labour and made various Recommendations which resulted in Child Labour (Prohibition & Regulation) Act, 1986 and Child Labour Policy in 1987.

CHILD LABOUR:

Child Labour is a denial of all basic rights to children. Working children are denied their rights to survival and development, education, freedom and play, opportunity for developing their physical and mental talents, and protection from abuse and neglect. India has the largest numbers of child labourers in the world and withdrawing them from work and ensuring their rehabilitation is a major

challenge facing the country. Child Labourers are found in all the three sectors of the Indian economy viz., agrarian sector, industrial sector, and services sector where they work as migrant labour, bonded labour, invisible labour, wage based and self-employed labourers.

According to Justice P.N. Bhagwati, Former Chief Justice of India;

“The Child is a soul with a being, a nature and capacities of its own who must be helped to find them, to grow into their maturity into a fullness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being, otherwise these children cannot be a healthy growth of the nation,”

DEFINITION OF CHILD LABOUR:

The definition of child labour is not uniform all over the world. However, the working child, who is below the age of 14 and who is paid either in cash or kind, is normally considered as a child labour.

According to the Encyclopaedia of Social Sciences: “When the business of wage earning or of participation in self or family support conflicts directly or indirectly with the business of growth and education, the result is child labourer.”

According to International Labour Organization (1983): “Child labour includes children prematurely leading adult lives, working long hours for low wages under conditions damaging to their health and to their physical and mental development, sometimes separated from their families, frequently deprived of meaningful education and training opportunities that would open up for them a better future.”

According to Operation Research Group in Baroda: “A child falling within the 5- 15 age bracket and who is at remunerative work may be paid or unpaid, and busy in any hour of the day within or outside the family”.

Child Labour in India:

In India the problem of child labour is very serious. The common existence of child labour has been viewed by the Government of India with great fear. The enactment of Child Labour (Prohibition and Regulation) Act, 1986 is the outcome of the government to prohibit the employment in 8 occupations and 54 processes through various Central Government notifications. From agriculture to modern

industry, we witness the employment of children between the age of 5 to 14. Children are also employed in hazardous occupations. Tender children have to work in humiliating environments without the freedom to express the torture they have to undergo. It is estimated that around 200 million children all over the world go through similar sufferings.

CAUSES OF CHILD LABOUR:

Child labour is no longer a medium of economic exploitation but is necessitated by economic deprivations of the parents and in many cases that of the child himself. There are many causes of child labour of which some of the principal causes are:

1. Poverty:

The most important cause of child labour is widespread poverty. In India, which is a developing country, poverty forces the parents to send their children to seek employment. According to a study, 92 million out of 228 million of Indian children are in the families below poverty line. Nearly 1 lakh children die actually as a result of malnutrition. There are nearly 2 lakh beggars and vagabonds among the children.

Another study reveals that more than 40% of the Indian population is below poverty line, half of which belongs to Scheduled Castes and Scheduled Tribes.

So, those parents who are under the poverty line send their children to different employments, to enhance their family income.

2. Low Income of adult earner of the family:

In some cases, the inadequacy of wages of adult members of the family induces them to send their children to work and enhance the family income. It is clear up in the report of ILO that, “this problem of child labour is not the problem on its own but it is the problem of the maintenance of child and the living wage of adult wage earner so that they can maintain their family at adequate standard”.

3. Unemployment:

This is also one of the important causes as the children work because of their unemployed parents which is sometimes because of under-employment of the adults. In our country, the agricultural workers are engaged in maximum period of 290 days in different agricultural and allied works; but sit absolutely idle for the rest of the other 75 days, which sometimes induces them to send their children for small jobs.

4. Large family:

In case of large family with less income cannot give shielded childhood to their children. In order to compensate the daily income, children are sent to work instead of schools. And made them work for their livelihood.

5. Illiteracy and Ignorance:

Majority of the population is usually illiterate, especially the lower socio-economic groups. Per se, the illiterates are satisfied with what they gain by the earnings of children.

6. Child labour is cheaply available:

Employers started increasing their production at cheap labour costs which they get easily from employing the child labourer than the adults to ensure higher margins of profit. These employers get the poor children more easily from the labour market.

The number of child labourers in India :

- In 1975, around **15.1 million** Child labours were found.
- In 1978, According to The National Statistical Survey's 32nd round, they assessed around **16.25 million** child workers in the age group of 5 to 14.
- The 1981 census states child labour at **16.5 million**.
- In 1983, the Planning Commission estimated **17.4 million** Child workers.
- In the same year, The Operations Research Group, Baroda (published in 1983) gave an estimate of **44 million** working children in India.
- The Balai Data Bank, Manila estimated that about **111 million** child workers existed in India.
- In 1995, According to the Labour Force and Planning Commission the number of child labourers went up to **3.765 lakhs**.
- In 1996, According to an estimate of International Labour Organization (1996), there were **12.66 million** children working **full time** and **10.50 million** others were working as **part time** workers. By the year 2000 it rises to **25 million**
- The UNICEF report (1997) reveals that **250 million** child labour sufferers in the world, over **1/3 are in India**.
- Among the children about **75%** of the children are working in homes and hotels. However,

the estimates made by the UNICEF and ILO reveal that there were about **44 million** working children in India.

Among these children, the majority are in rural areas. A 1995 report by the government appointed Commission on Labour Standards and International Trade (LSIT) reveals that child labour has been **increasing at the rate of 14% a year in India.**

GOVERNMENT POLICIES AND INTERNATIONAL INITIATIVES:

National Initiatives:

Social Awareness against the evil effects of child labour was created during the Industrial Revolution in England. India has all along followed a proactive policy in the matter of tackling the problem of child labour. Child labour was considered as a social evil before independence also.

- British Government made many Acts to prohibit child labour like *Indian Factories Act, 1881, Mines Act, 1923, Children (Pledging of Labour) Act, 1933, Factories Act, 1934* which were related to child labour's minimum wage and their working hours.
- After Independence, these acts were reformed and many other Acts were also made, They are: *The Factories Act, 1948; Employment of Children (Amendment) Act, 1951; The Mines Act; Employment of Children (Amendment) Act, 1978; and the Child Labour (under Prohibition and Regulation) Act, 1986.*

National Child Labour Policy, 1987, a Child Labour Technical Advisory Committee had been set up to advise the Central Government on addition of occupations and processes to the schedule contained in the Child Labour (Prohibition and Regulation) Act, 1986 and to intensify the Anti-Poverty Programmes such as, *Integrated Rural Development Programme, National Rural Employment Programme, etc.*

National Child Labour Projects (NCLP) was launched for the first time in 1988 in areas of high concentration of child labour. The NCLPs are area specific, time bound projects where priority is given to the withdrawal and rehabilitation of children engaged in hazardous employment. Major activities undertaken under the NCLP is the establishment of special schools to provide non-formal education, vocational training, supplementary nutrition, etc., to children withdrawn from such hazardous employment. The special schools / Rehabilitation Centres provide, Non-formal/bridge education, Skilled/ vocational training, Mid-day meal, Stipend of Rs.150/- per child per month,

Health care facilities through a doctor appointed for a group of 20 schools.

Present Status of NCLP Scheme:

NCLP scheme was approved for implementation up to 31.03.2021 and since then the scheme has been subsumed or merged with the Samagra Shiksha Abhiyan (SSA) Scheme of the Ministry of Education. Further, the NCLP Scheme was sanctioned in 324 districts and operational in 59 districts of the country as on 31.03.2021.

INTERNATIONAL INITIATIVES:

Child labour is not only in India, it is a global problem. Various organizations are fighting to combat this evil and to get rid of the hazard of child labour from the world. International agencies have come forward to supplement the government and non-government initiatives in India.

1) **The International Labour Organisation (ILO):** To supplement the governmental initiatives at the national level, International donor agencies came forward to support two parallel programmes in 1992:

(a) **The Child Labour Action Support Programme (CLASP).**

(b) **International Programme on the Elimination of Child Labour (IPEC).**

The IPEC is a global project of the ILO. India was one of the first countries to join the programme, which is under implementation in several other countries. The long-term objective of IPEC is to contribute to effective abolition of child labour. The IPEC programme in India is the largest in the world and one of the best implemented.

The CLASP was aided by the Government of Germany. It aimed at strengthening the capability of agencies implementing child labour programmes. Assistance taken under this programme has been used for the purpose of supporting on-going activities under the National Policy on Child labour.

2) **UNICEF:** It acknowledges the need to seriously address labour as a key component of the organisation's policy to advocate the implementation of the Conventions on the Rights of the Child and the achievement of goals for improving the conditions and well-being of children.

The objectives of UNICEF are:

a) To promote compulsory primary education to prohibit child labour, particularly in hazardous

industries.

- b) To assist Central and state governments to develop and implement programmes and action plans for the withdrawal and rehabilitation of child labour.
- c) To promote convergence of all sectoral and development programmes for “at risk” families.
- d) To strengthen Monitoring systems on child labour.
- e) To strengthen alliances between NGO’s, media, industry and the legal-set-up for social mobilization in support of elimination of child labour.

Contributions of ILO to Prohibition and Regulation:

The child labour is not a recent phenomenon and that too not confined to any particular state. It has existed in one form or the other on almost all the countries of the world which shocked the conscience of the people and, therefore at the international level with a view to eradicate child labour the International Labour organisation (ILO) has adopted as many as 18 Conventions and 16 Recommendations.

The main thrust of the ILO Conventions have been on:

- i) **Minimum age for employment of children,**
- ii) **Medical examination of children,** iii) **Prohibition of night work for children.**

In order to safeguard interest of the children effectively and really the U.N. General Assembly on November 20, 1989 adopted **Convention on the Rights of the Child**. With **India’s Accession to the Convention in December 1992**, it has now become obligatory for the Government of India to undertake measures effectively to eliminate the scourge of child labour which has assumed serious proportions in recent days.

The Government of India deposited its instrument of accession to the Conventions on 11.12.1992 with the United Nations Secretary- General. That instrument contains the following declaration:

“ While fully subscribing to the objectives and purposes of the Convention, realising that certain of the rights of the child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international cooperation; recognising that the child has to be protected

from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India, having prescribed minimum age for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment and being aware that it is not practical immediately to prescribe minimum age for admission to each and every area of employment in India – the Government of India undertakes to take measures to progressively implement the provisions of Article 32, particularly paragraph 2(a) in accordance with its national legislation and relevant international instruments to which it is a State Party.”

Article 32 of which mention has been made in the instrument of accession reads as:

1. “State parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.
2. State Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article.

To this end, and having regard to the relevant provisions of other international instruments, State Parties shall in particular:

- a) Provide for a minimum age for admission to employment,
- b) Provide for appropriate regulations of the hours and conditions of employment,
- c) Provided for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.”

The **Supreme Court stated** that the International Labour Organisation has been playing an important role in the process of gradual elimination of child labour and to protect the child from industrial exploitation. It has focussed five main issues:

1. Prohibition of child labour.
2. Protecting child labour at work.
3. Attacking the basic causes of child labour.
4. Helping children to adapt to future work.
5. Protecting the children of working parents.

18 Conventions and 16 recommendations have been adopted by the ILO in the interest of working children all over the worlds.

Constitutional Safeguards for Child Labours:

The following Articles of the Constitution of India determine the nations concern for eradicating Child Labour:

❖ **Article – 21A: Right to Education.**

The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State, by law, may determine.

❖ **Article-24: Prohibition of employment of children in factories, etc.**

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.

❖ **Article – 39(e) :**

It states 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.

❖ **Article – 39(f) :**

States that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

❖ **Article – 41: Right to work, to educate and to public assistance in certain cases.**

The state shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of underserved want.

❖ **Article – 45: Provision for free and compulsory education for children.**

The state shall endeavour 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. Article – 45 was, therefore, inserted in our paramount parchment casting a duty on the State to endeavour to provide free and compulsory education to children. It is known that this provision in Part IV of our Constitution is, after the decision by a Constitution Bench of this Court in *Unni Krishnan,*

J.P. v. State of Andhra Pradesh has acquired the status of a fundamental right.

❖ **Article – 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health.**

The state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health”.

Legal Efforts to Eliminate Child Labour:

To eliminate this problem various acts of legislation have passed by the government of India and various state governments.

❖ **Factories Act, 1948:**

Factories Act, 1948 has defined „child“ as a person below 14 years of age. This Act has regulated the employment of child labour in our country. Section 67 of Factories Act says that “No child below the age of 14 can be employed in any factory or industry”. For child above 14 years, it has fixed 4- ½ hours as working day. Employment during night and in hazardous occupation is prohibited.

❖ **Mines Act, 1952:**

Minimum age of employment in mines is fixed at 15. The Act prohibits employment of children below that age in any part of mines. Section- 45 of Mines Act also states that after such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, no child shall be allowed to be present in any part of a mine above ground where any operation connected with of incidental to any mining operation is being carried on”.

❖ **Children (Pledging of Labour) Act, 1933:**

It was passed largely as a result of the recommendations of the Royal Commission on Labour. This Act was brought into force to prohibit the making of agreements to pledge the labour of children by

their parents / guardians, etc., and make such agreements to be void. For the purpose of the Act, persons below 15 years of age are to be treated as children. The penalty for breach of the law is fine upto Rs. 200 on the employer and Rs.50 on the parents.

❖ **Employment of Children Act, 1938:**

This Act also prohibits the employment of children below 15 years. No child between the age of 15 – 17 can be employed or permitted to work unless he is allowed a rest interval of at least 12 consecutive hours a day. This Act also requires maintenance of registers by the employers showing the names and dates of birth of children below 17 years. Amendments were made Employment of children (Amendment) Act, 1951 & Employment of children (Amendment) Act,1978.

❖ **Child labour (Prohibition & Regulation) Act, 1986:**

It has made provisions for regulating working hours for children, restriction of employment during night, overtime work and has also provided stringent punishment for violation of the provisions of the Act.

❖ **Child Labour (Prohibition & Regulation) Amendment Act, 2016:**

An Act to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto.

❖ **Child Labour (Prohibition & Regulation) Amendment Act, 2017:**

Under this Act a broad and specific framework for prevention, prohibition, rescue and rehabilitation of children and as well as adolescent workers. Clarity on issues relation to family enterprises is added. It Safeguards the creative workers or an artists who are permitted to work under the Act, with respect to working hours and working conditions.

❖ **Section 24 of Beedi and Cigar Workers (Conditions of Employment) Act, 1966:**

It prohibits the employment of children, that is no child shall be required or allowed to work in any industrial premises.

❖ **Apprentices Act, 1961:**

Section -3 of Apprentices Act,1961 gives qualifications for being engaged as an apprentice. Under this section a person shall not be qualified for being engaged as an apprentice o undergo apprenticeship training in any designated trade, unless he;

1. Not less than 14 years and
2. Satisfies such standards of education and physical fitness as may be prescribed:

Provided that different standards may be prescribed in relation to apprenticeship training in different designated trades and for different categories of apprentices.

❖ **Motor Transport Workers Act, 1961:**

Section – 21 of this Act states that no child shall be required or allowed to work in any capacity in any motor transport undertaking.”

JUDICIAL PRONOUNCEMENTS:

1) **M.C. Mehta v. State of Tamil Nadu (1996),**

The children who were employed in Sivakasi Cracker industries, a Public Interest Litigation under Article 32 of the Constitution was brought before court. The Landmark judgement of the Supreme Court observed that the children should not be employed in the hazardous employment, but they can be employed in some other less important works.

The court issued appropriate directions to the government to eradicate the process of child labour exploitation.

- Survey for identification of working children.
- Withdrawal of children working in hazardous industry and ensuring their education in appropriate institutions.
- Contribution of Rs.20,000/- per child to be paid by the offending employers of children to a welfare fund to be established for this purpose.
- Employment to one adult member of the family of the child so withdrawn from work and the child must be insured for a sum of Rs. 5,000/- to the welfare fund made by the State Government.
- Financial assistance to the families of the children, withdrawn to be paid out of the interest earnings on the corpus of Rs.20,000/ 25,000 deposited in the welfare fund as long as the child is actually sent to the schools.
- Regulating hours of work for children working in non-hazardous occupations so that their working hours do not exceed six hours per day and education for at least two hours is ensured. The entire expenditure on education is to be borne by the concerned employer.

2) **People's Union for Democratic Rights v. UIO (1982)**

In this case, The Supreme Court of India highlighted the rights of construction workers and the responsibility of the government to protect their rights. The court directed the government to enforce labour law and provide benefits and welfare measures for construction workers, including maternity benefits, healthcare, and protective equipment.

CONCLUSION:

The response of the judiciary with regard to Child Labour were high. The various judgements of the Supreme Court are the testimony of the fact that the Court is very much serious about the Child Labourers. With regard to Child Labour, The Former Chief Justice Subba Rao, remarked: "Social Justice must begin with the child. Unless a tender plant is properly nourished, it has little chance of growing into strong and useful tree. So, first priority in the scale of justice should be given to the welfare of children".

I conclude by saying that the Amendment made on Child Labour (Prohibition and Regulation) Act, 1986 made several change in the society. It ensures all children who are all under the age of 14 years are in school as per the Right to Education Act. Children are allowed to work only after they complete their school hours. This improves the life values of the children like discipline, decision making, and responsibility over the family. It protects the adolescent's health by prohibiting children between 14 to 18 years to work in hazardous occupation. This Act bans not only those 18 occupations and 65 processes, it prohibits all the occupations, the complete ban of employment. It turned into a Cognizable offence and the action on FIR on violation of the child labour legislation can be taken without an approval of the District Magistrate.

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W H I T E B L A C K
L E G A L