



CONSTITUTIONAL SAFEGUARDS AND JUDICIAL RESPONSES TO CHILD LABOUR

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ABSTRACT:

The response of the judiciary with regard to child labour in India is highly commendable. It has in real sense brought a revolution in the field of child labour in India. It has always endeavored to expand and develop the scope of law so as to respond to the hope and aspirations of the framers of the Constitution as well as the people of India.

The paper seeks to analyse the Judicial Pronouncements with respect to child labour in India. In the analysis of the cases, an effort is made to examine how the problem of child labour has been viewed by the Judiciary especially the Supreme Court, High Court and what efforts have been made by the Court to take care of this problem. Judiciary in India under its policy for attainment of social justice has taken upon itself a pro- active role to protect children in general and child labour in particular.

The first part of the paper introduces the concept of child labour as social crime, the second part studies the concept of constitutional safeguards with respect to children, the third part precisely analyses the various court Judgements in respect to child labour. In this part an attempt has been made to discuss few cases decided by the Courts on the issue of child labour to assess the role played by them in prohibiting, ameliorating or alleviating the employment of children and their working conditions. The next part concludes the paper.

Key Words: Child, Labour, policy, Judiciary.

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INTRODUCTION:

CHILD LABOUR IS A SOCIAL CRIME

Childhood is an essential and powerful experience in each individual's lifetime. It is the most vital and important period of learning. A growing phenomenon is using children as child labours. The conditions in which children work is completely unregulated and they are often made to work without food, very low wages, resembling situations of slavery. Child labour, by and large, is a problem of poor and destitute families, where parents cannot afford education of their children. They have to depend on the earning of their children. It is great social problem.

Involvement of child labour in hazardous activities leads to numerous health and psychological problems like chest & abdominal pain, skin infections, eye or ear problem, headache, physical tardiness, respiratory infections. Due to no proper guardianship & care such children often exposed to theft, violence, criminal activities, physical & sexual abuses, drugs and other immoral activities.

Child Labour is a social crime as every child has a right to shine. The child labour work at the age when he/she must enjoy , play , study, etc. These children have the right to live , to express themselves freely but the greedy people exploit these children of their childhood just for the sake of economy. Child labour is a crime in which people hire children for work and hardly pay them. This is a criminal offence for which people are punished badly. Appointing children as child labour is a criminal act because it weakens the moral fibre of society, social order and its values. The employment of child labour is prohibited by law, prosecuted by public servants appointed by the government, the result of conviction is a punishment, not compensation to the injured party, therefore its criminal act which is forbidden by the law.

The statistics researched by Mint reveal some hard-hitting statistics on the issue of child labour in India are:

1	One in every 11 children in India is working.
2	Child labour has been decreasing at an abysmal rate of 2.2% per year from 2001 to 2011
3	80% of working children are based in rural areas and three out of four of these children work in agriculture, as cultivators or in household industries, most of which are home-based employments.
4	More than half of the 5.5 million working children in India are concentrated in five states— Bihar, Uttar Pradesh, Rajasthan, Madhya Pradesh and Maharashtra.
5	Adolescents between 15 and 17 years of age doing hazardous work form 62.8% of the overall child labour population.
6	Nearly 10% of adolescents working in hazardous conditions are working in family enterprises.
7	56% of the working adolescents are no longer studying. 70% of those in hazardous conditions are not studying.
8	More boys (38.7 million) than girls (8.8 million) are involved in hazardous work.

Constitutional Safeguards AND Statutory Protection

Legally speaking constitutional safeguards and legislative protections were conferred as against exploitation of children. In fact, the Constitution of India provides for quite some safeguards to protect children and prevent them from exploitation through labour.

1	Article-15(3) authorizes the state for the making any special provision for women and children.
2	Article-24 provides that no child below the age of 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment.
3	Article 39 (e) proclaims that the State shall endeavor its policy towards securing that the health strengths of the tender age of children are not forced by economic necessity to enter avocations unsuited to their age or strength.
4	Article 39 (f) enjoins that childhood and youth are to be protected against exploitation, against moral and material abandonment.
5	Article 45 also endeavors to provide free and compulsory education for all children until they complete the age of 14 years. Now a fundamental right under article 21-A.



6	Article 42 and 43 provide for securing just and human conditions of work, and this definitely includes child laborers in its widest sense.
7	2002 amendment to the Constitution included Article 51-A(k) making it a fundamental duty on parents to provide education to children falling in the age group of 6-14 years.

Statutory Protection:

Acknowledgment of child labour as a distinct constituent of the workforce has been on India's statute book since 1881. As a result most of the labour legislations permit the child to work on different age specifics under different legislations.

The Factories Act of 1881 was the earliest legislation on this matter, which set the minimum age for child employees at 7 years. Subsequent to the ILO Convention No.5, in 1922, the minimum age in the Factories Act was raised to 15 years. There were various other pre-constitutional laws directed towards child labour in specific industries or sectors.

In the year 1938, the Employment of Children Act was passed which served as the first enactment squarely addressing the issue of child labour in India. This followed from the twenty-third session of the ILO, held in 1937, which adopted a special article exclusively on India, recommending that children below thirteen years be prohibited from work in certain categories of employment.

Subsequently, the Labour Investigation Committee (1944-1946), also known as the Rege Committee, found that child labour was extensive in beedimaking, carpet weaving, glass and other small-scale industries.

In 1969, the National Commission of Labour, chaired by Justice P.B. Gajendragadkar, had observed that child labour was "noticed mostly in agriculture, plantations and shops." In the meantime, the Factories Act of 1948 prohibited a child under fourteen from working in a factory. The Plantations Labour Act of 1951 prohibited the employment of children below twelve and



adolescents between the ages of twelve and eighteen were required to obtain a certificate of fitness. The Mines Act of 1952 has categorically rejected the employment of persons below the age of eighteen years, with the exception of apprentices under the Apprentices Act of 1961 or other trainees under proper supervision who may be as young as sixteen years. The Merchant Shipping Act of 1958 prohibits employment of children under fourteen.

The Gurupadaswamy Committee on Child Labour, in 1979 and thereafter, the Sanat Mehta Committee, in 1986 stressed on the need to have uniformity in defining the age of the child, along with the regulation of conditions of work. Therefore, the Child Labour (Prohibition and Regulation) Act (CLPRA) was passed in 1986, which sought to achieve uniformity in the definition of child labour, prescribing a uniform age of fourteen years in the definition of a child. It also sought to prohibit employment of children in a scheduled list of occupations and a scheduled list of processes. It was further amended in 2016 wherein it prohibited the employment of children (below the age of 14 years) in all occupations and also prohibited the employment of adolescents in hazardous occupations and processes. It defines “adolescents” as those children who have completed 14 years of age but have not completed 18 years. This amendment was introduced to bring the labour laws in conformity with the Right of Children to Free and Compulsory Education Act, 2009 and to also regulate the conditions of service of adolescents in line with the ILO Conventions 138 and 182.

Main features of the CLPRA as amended in 2016 :

The substantial changes affected to the Child labour (Prohibition and Regulation) Act 1986 in 2016 include the following:

- a. The Child Labour (Prohibition and Regulation) Act 1986 has been changed to Child and Adolescent Labour (Prohibition and Regulation) Act 1986.
- b. A complete ban on employment of children who are below the age of 14 years has been imposed in any establishment whether hazardous or non hazardous.
- c. A child is permitted to work only to help in family or in family enterprise or as child artist after the school hours or during vacation.



- d. The age of admission to employment has been linked to the age of compulsory education under the Right to Free and Compulsory Education Act, 2009.
- e. The new Act introduced the concept of “Adolescent Labour” that is for the first time under the amended Act defined as a person between 14 to 18 years.
- f. The new Act permits adolescent labour in non hazardous processes or occupations.
- g. The number of hazardous occupations processes is reduced from 83 to only 38.
- h. The offences have now been made compoundable and cognizable notwithstanding the provisions of CRPC.
- i. The new Act also provides for setting up of the child and adolescent labour rehabilitation fund.
- j. Now the liability is fixed apart from employer on the parents and guardian of the affected child
- k. The act also enhanced the imprisonment and penalties ranging between 6 months to 2 years imprisonment and Rs. 20,000 to Rs.50,000 penalty.

JUDICIAL RESPONSES AND ITS CONTRIBUTION TO TACKLE THE CHILD LABOUR ISSUE

The Courts of India have proved themselves to be the torchbearer of progressive attitudes towards Child Labour. Courts acted as Harbinger for this issue. Judicial pronouncements are classified into four phases:

<u>PHASE I: 1981 TO 1990</u>		
1	In Francis Coralie Mullin vs. Union Territory of Delhi: (by Supreme Court on dt.13-1-1981)	The Supreme Court held that Article 21 covers protection of health and strength of workers, men, women and minorities of children versus abuse. According to the court, the occasion and services for children to grow and build in a healthy way and in order of freedom and decorum and educational benefits.

2	<p>People’s Union for Democratic Rights v. Union of India (by Supreme Court on dt. 8-9-1982)</p>	<p>A liberal interpretation was given to the term ‘hazardous employment’. The Supreme Court held that the term was wide enough to include employment in construction work and directed that the schedule to the Employment of Children Act, 1938 should be suitably amended to include the construction industry in it. It was held by the Court that:</p> <p style="padding-left: 40px;">Construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. This is a constitutional prohibition which even if not followed up by appropriate legislation must operate proprio vigore”.</p>
3	<p>Labourers Working on Salal vs. the State Of Jammu And Kashmir (by Supreme Court on dt.2-3-1983)</p>	<p>A bench of Justice P Bhagwati, R Misra directs “That no child under the age of 14 years is employed by any contractor/sub-contractor on any factories in the schemes. In case any child labourer is included by any contractor/subcontractor prompt orders for their break should be furnished forthwith and an outline report provided to the sanction”.</p>
4	<p>Bandhua Mukti Mocha V. Union of India (by Supreme Court on dt.16-12-1983)</p>	<p>The Supreme Court found that the State of Uttar Pradesh had not yet filed the list setting out the particulars of the criminal cases which have been filed against carpet manufacturers and are pending trials in the courts despite its directions</p>

		<p>to the State Government to do so within four days from the date of its order on 18.08.1986 the Court also found that inspite of the assurance given by the State Government that it would do the needful to rehabilitate the children employed in the carpet manufacturing industry within a short time it had not put forward any scheme.</p> <p>The Court observed that “it is a matter of regret that the orders made by this court should be blatantly flouted by the State Government. It looks as if the State Government is not interested at all in eliminating child labour in the carpet manufacturing industry though the said child labour is prohibited under the Employment of Children Act 1938, nor does the State Government seem to be interested in providing for the rehabilitation of the said children” .</p>
5	<p>Bapuji Education Association v. State of Karnataka (by High Court of Karnataka on dt.3-9-1984)</p>	<p>Justice Rama Jois of the Karnataka High Court held that the right of an individual to have and/or to impart education is one of the most valuable and sacred right, that among various types of personal liberties, which can be regarded or included in the expression “personal liberty” and in Article 21, education is certainly foremost.</p>
6	<p><u>SheelaBarse v. Union of India</u> (by Supreme Court on dt.29-8-1988)</p>	<p>In the court held “it was held that child is a state blessing, and it is the responsibility of the state to focus behind the child with a perspective to guarantee proper development of its personality. Judicial institutions have played an essential role</p>



		not only for fixing issues but also has regularly attempt to grow and expand the law so as to answer to the desire and dreams of the people who are looking to the judiciary to give life and fulfilled to the law”.
PHASE II: 1991-2000		
1	Unni Krishnan v.State of A.P (by Supreme Court on dt.4-2-1993)	Another landmark judgment, , in which the basic question was whether the constitution of India guarantees a fundamental right to education to its citizens. It was held that Article 21 guarantees no fundamental right to professional education and as regards the question whether the right to primary education mentioned in Article 45 of the constitution is fundamental or not it was held that right to education is a fundamental right. The Court observed: “ The fundamental purpose of education is the same at all times and in all places. It is to transfigure the human personality into a pattern of perfection through a synthetic process of development of the body, enrichment of the mind, sublimation of emotions and illumination of the spirit. Education is a preparation for a living and for life. Education is a social and Political necessity in a country like India”. The Parliament and State legislatures made various welfare enactments have so far remained on paper and illusory and are not being implemented fruitfully.

		<p>The right to life of the child driven to labour is not made a reality. The problem has not changed. Unless pragmatic, realistic, constructive steps and actions are taken, the children belonging to weaker sections of the society can not develop qualitative childhood, enjoy and build their personality. Child labour must be eradicated. Alternatively education, health care, nutritious food must be provided start with ban of employment of children from the most hazardous activities and bonded labour.</p>
2	<p>SathyavanKottarakkara And Anr. vs State Of Kerala And Ors. (by High Court of Kerala on dt. 8-11-1996)</p>	<p>The High Court held : “ Exploitation of children in any form which has the tendency to exploit them either physically, mentally or otherwise is objectionable. Any attempt in this direction should be put an end to achieve the goals enshrined by the Indian constitution, makers, which are reflected in various provisions of the constitution, namely Articles 21, 39, 41, 45 and 46. The Government of India, in pursuance of the constitutional provisions of clauses(e) and (f) of Article 39, evolved a National Policy for the welfare of children. In a civilized society the importance of child welfare cannot be over emphasized because the welfare of the entire community, its growth and welfare depends on the wellbeing and health of its children. Children are a ‘ supremely important national asset’ and the future well-</p>

		<p>being of the nation depends on how its children grow and develop. Children need special protection because of their tender age and physique, mental immaturity and incapacity to look after themselves. There is a growing realization in every part of the globe that children must be brought up in an atmosphere of love and affection and under tender care and attention so that they may be able to attain full emotional, intellectual and spiritual stability and maturity and acquire self-confidence and self-respect and a balanced view of life will full appreciation and realization of the role which they have to play in the nation-building process without which the nation cannot develop and attain real prosperity because a large segment of the society would then be left out of the developmental process. In India, this consciousness is reflected in the provisions enacted in the constitution”.</p>
3	<p>M.C. Mehta v. State of Tamil Nadu (by Supreme Court on dt.10-12-1996)</p>	<p>This is another public interest litigation concerned with the problem of employment of children in match factories of Sivakasi in Kamaraj District of Tamil Nadu. Sivakasi has been the traditional centre for manufacture of matchboxes and fireworks for almost the whole country and therefore lot of child labour employed in most of these factories. Manufacturing process of matches and fireworks is a hazardous one. Despite the improved</p>

		<p>techniques adopted and special care taken, fatal accidents occur almost every year. Working conditions and the process of manufacturing have serious health hazards in the normal course. Therefore, in the light of the constitutional provisions contained in article 39(f) the court was of the view that employment of children within the match factories directly connected with the manufacturing process upto final production of match sticks or fireworks should not at all be permitted.</p> <p>Supreme Court gave the following stringent directions to the State Governments and the Central Government</p> <ul style="list-style-type: none">• A survey of child labour within 6 months must be undertaken.• The Secretary of the Ministry of Labour of the Union of India would appraise the Court within one year about the compliance of th M.C. Mehta v. State of Tamil Nadu¹⁰ directions of the Court, which include:<ol style="list-style-type: none">a. The setting up of the Child Rehabilitation Welfare Fund;b. Offending employer to deposit a sum of Rs. 20,000/-c. Provide an alternative employment for the adult member of the family;d. The cost of education of the child shall be borne by the employer;
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		e. And directed that it is the duty of the Inspectors to see that the call of the Constitution is carried out.
4	A. SriramaBabu Vs. The Chief Secretary, (by Supreme Court on dt.6-6-1997)	In a bench of V M Kumar court has observed, “This needs a relook and an abolition of such difference would certainly go a long way in increasing employment potential for grown up and dissuade the employer from employing child labour”. So it is essential that the state should step in to retard the trend to employ child labour and directs that the State shall take every step to educate the people to prevent child abuse and child labour and the State should create a separate independent department concerned with child welfare. Moreover, the State should maintain a record of the birth and progress of the child. It should monitor the same. A child, after he is born, should not be allowed to melt and disappear in the vast society. The State should be able to monitor his education, health, progress, etc. The State should maintain records till he attains the age of 14 and should take such effective steps to prevent vagrant child roaming in the city and towns, organising and maintain aftercare home to take over the vagrant children. Appropriate legislation is made and is enforced strictly against vagrancy of children. Court also directed State to establish as many after-care homes as are feasible where the street children are taken care of and are

		trained to be useful citizen of the Country and the State should clothe itself with the power to proceed against the parents or guardians who willfully neglect the welfare of the children or their wards and who encourage them to lead a vagrant life. Begging in the street by children or employing children for begging to be made an offence and such provisions should be strictly enforced”.
5	<u>Mahesh Kumar Garg and Ors.</u> <u>Vs. State Of U.P. And Ors</u> (by High Court of Allahabad on dt.11-4-2000)	In a bench of Pradeep Kant held “I, therefore, provide that in all cases of like nature an inspection has to be made by the Inspector and in case, the Inspector is of the view that the Child Labour has been engaged in contravention of the Act, a show-cause notice shall be issued to the offending employer/occupier who within the time stipulated, may file objection against the said inspection report raising the plea regarding the age or any other relevant objections”.
<u>PHASE III: 2001 TO 2010</u>		
1	State Of Guj. vsBhupendrakumarJagjivandas, (by High Court of Gujarat on dt.12-1-2001)	In the a bench of D Mehta held “the sentence imposed by the Trial Court shall stand modified as – it is ordered that the accused shall pay a fine of Rs. 10,000/- (Rupees Ten Thousand only) for violation of provisions of <u>Section 27 of the</u>

		<p><u>Factories Act, 1948</u>, in default thereof the accused shall undergo simple imprisonment of three months. It is clarified that the amount of fine that may have already been paid shall be deducted and only the balance amount shall be payable by the accused”.</p>
2	<p>TMA Pai Foundation v. Union of India (by Supreme Court on dt.31-10-2002)</p>	<p>The court provided that, it is the fundamental duty of a parent or guardian to provide opportunities for education to his child who is under the age of 14 years. In completion of this development in the sector of education accept it as a fundamental right, the Parliament has enacted the <u>Right of Children to Free and Compulsory Education Act, 2009</u> which impart for free and compulsory education to all the children of the age of 6 to 14 years</p>
3	<p>Ganesh Ram vs State Of Jharkhand And Ors (by High Court of Jarkhand on dt.5-4-2006)</p>	<p>In a bench of S Mukhopadhaya, N Tiwari held “If a person, below 14 years of age, is appointed, penal order can be passed against the employer under the Child Labour (Prohibition and Regulation Act 1986) but no order, penal in nature, be passed against the employee”.</p>
4	<p>BachpanBachao&Ors. vs Union Of India & Others (by High Court of Delhi on dt. 24-12-2010)</p>	<p>1. , “Delhi High Court decides upon the duties of the Commission and the Committee.</p> <ul style="list-style-type: none"> • The Bench and the Jury shall entertain complaints made by the domestic workers herself/himself of through her/his guardian,

		<p>NGOs managing Childline services, the employer or the police in appropriate cases.</p> <ul style="list-style-type: none"> • The Commission and the Jury may hear the following types of cases <ol style="list-style-type: none"> 1. Abusive working conditions which are after the physical extent of the child in situations where persons between the ages of 14 and 18 are employed; 2. Long hours of work; 3. Absence of principal services including medical care and food. <ul style="list-style-type: none"> • The Bench or the Committee shall determine the objection build within a duration of 30 days”
<p><u>PHASE III: 2011 TO 2020</u></p>		
1	<p>Roshan Gupta V. The State Of Bihar & Ors (by Supreme Court on dt.20-3-2012)</p>	<p>The writ petition has been filed challenging the orders contained in Annexures 1 and 2 by which the petitioner has been imposed a fine of Rs.20,000/-The main submission on behalf of the petitioner is that without giving him an opportunity to explain the circumstances under which Ravi Kumar was working in the shop, fine has been imposed on the ground that the</p>

		petitioner had employed a child as labour in his shop. In the meantime operation of the order contained in Annexure 1 and 2 shall remain stayed. The writ petition is disposed of with the aforesaid observation and direction”.
2	Jayakumar Nat &Anrvs State Of NCT Of Delhi &Anr (by High Court of Delhi on dt.4-9-2015)	“Delhi High Court directs the Govt. of NCT of Delhi to come out with a proper scheme to address the issue of rehabilitation of these rescued children by providing some kind of economic help so that the parents or guardians do not force them to work as child labourers again to meet with their basic needs and to supplement their income for their basic survival”.

Conclusion

The Supreme Court, in a landmark decision, declared free education to age fourteen to be a Fundamental Right. The most iconic feature of the Indian Constitution, as regards the development of children can be seen in the form of Article 21A which puts an obligation on the State to provide free and compulsory education to all children in the age of 6-14 years.

It is relevant to mention that the Judiciary played a very important role in the protection of child labour. The Judiciary has always taken preventive measure to safeguard them from the employer by fixing their working hours, providing medical facilities, fixed the number of wages etc. The Judiciary has also directed State authority to create an environment where the child can grow and develop his personality without facing any abuse as mentioned in our constitution.



From the foregoing survey of cases on child labour it may be said that the Supreme Court has taken a conciliatory position of the problem and has accepted the inevitability of child labour in our country. In none of the cases brought before it, has the court called for an immediate ban of child labour. The initiative shown by the court in *Asiad* case prohibiting child labour from construction work even when no law provided for the same, has not been seen in the succeeding cases, be it the *M.C Mehta* cases or the other cases. Being convinced that poverty is the only cause for the continuance of child labour the court has only advocated amelioration of the working conditions of children rather than abolition of child labour. The directions of the court for the creation of welfare fund and the compulsory insurance scheme to be financed by the employers have to be seen for furthering that end. Once the poverty of parents is taken care of the problem of child labour will automatically come down is too simplistic a solution to the complex problem.

First of all, neither the Constitution nor the Child Labour Act defines what is hazardous. So much so that the Child Labour Act does not even mention the word ‘hazardous’ in any of its provisions. It only presumes that whatever is mentioned in the Schedule of the Act is hazardous for children and adolescents. Therefore, by not defining the word and confining it to those mentioned in the schedule, the Act has already narrowed down the meaning of the word hazardous as regards child employment.

Now that the Constitution has been amended and education has been made a fundamental right of every child, it is hoped that the court will in an appropriate case take a firm stand and direct the state to implement the right to education of every child and compel the state to provide quality education so that the children are seen in the class rooms rather than in factories.

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