

*Review*

# Human rights perspective and legal framework of child labour with special reference to India

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Human rights were formally acknowledged and declared in realization of the need to safeguard and promote the inherent dignity of all members of human society. Prior to the Convention on the Rights of the Child, human rights standards applicable to all members of the human family had been expressed in legal instruments such as covenants, conventions and declarations. By, 1989, the standards concerning children were brought together in a single legal instrument agreed to by the international community. It unambiguously spelt out the rights to which every child is entitled, regardless of place of birth, descent, sex, religion, or social origin. India has always been a land of many social problems and one amongst them is child labour. The Constitution of India guarantees fundamental rights and full freedom to enjoy childhood for the children of the country. In spite of that millions of children are being put to arduous work for short and narrow gains. Legal protection to children from such exploitation and the human rights perspective is the crux of this article.

**Key words:** Child rights, human rights, United Nations, UNICEF, convention, Ilo, constitution, article, act, hazardous work.

## INTRODUCTION

Child labour is a pervasive problem throughout the world. Industrialized economies especially of Europe, North America, Australia, etc. have by now reduced it to a considerable extent. But the problem as faced by the developing economies today has indeed serious dimensions. Africa and Asia together account for over ninety percent of the total child employment. Though there are more child workers in Asia than anywhere else, a higher percentage of African children participate in the labour force. The International Labour Organization (ILO) estimates that the number of children aged five to fourteen years in the year 2005 who were economically active was 246 million. Of these 61% are in Asia, 32% in Africa, and 7% in Latin America.

From times immemorial child labour has always existed under different names. Employment of children in different sectors of the economy is a *fait accompli* of any and every Human Society, be it underdeveloped, developing or the developed one. While the problem is rampant in certain sectors and economies, it is less prevalent in other sectors. Nevertheless the unorganized sector remains by far the most vulnerable sector where

the magnitude of exploitation and abuse of children is found in an alarming proportion (ILO). As a matter of fact the problem is vexed and wide spread and is not a characteristic feature of any particular type of economy.

## CONVENTION ON THE RIGHTS OF THE CHILD

The General Assembly of the United Nations adopted the Convention on the Rights of the Child (CRC) on 20<sup>th</sup> November 1989. It bears the opinion regarding protection of children everywhere against exploitation, neglect and abuse (Kailash Satyarthi et al., 2006). The Convention draws attention to four sets of civil, political, social, economic and cultural rights of every child. These include (1) The Right to Survival; (2) The Right to Protection; (3) The Right to Development; and (4) The Right to Participation. Article 23 of the Convention says, 'All States should work to end such child labour practices and see how the conditions and circumstances of children in legitimate employment can be protected to provide adequate opportunity for their healthy upbringing and deve-

lopment (UNICEF, 2004).

## WORLD CONFERENCE ON HUMAN RIGHTS

The World Conference on Human Rights organized by the U.N.O., which was held in Vienna, Austria from 14<sup>th</sup> - 25<sup>th</sup> June, 1993 deeply, concerned the rights of Children in global society. The conference reiterated the principle of "First Call for Children" (UNICEF, 1990) and, in this respect it underlined the importance of major national and international efforts, especially those of the United Nations Children's Emergency Fund (UNICEF), for promoting respect for the rights of the child to survival, protection, development and participation. It called on states to integrate the Convention on the Rights of the child into their National Action Plans (Anandarajakumar, 2004).

The World Conference on Human Rights urged all states, with the support of international cooperation, to address the acute problem of children under difficult circumstances. Exploitation and abuse of children should be actively combated, by addressing their root causes. Effective measures are required against harmful child labour. The conference supported all measures by the United Nations and its specialized agencies to ensure the effective protection and promotion of human rights of the female child. It urged states to respect existing laws and regulations and remove customs and practices, which discriminate against and cause harm to the female child. It recognized the important role played by NGOs in the effective implementation of all human rights instruments and, in particular, the Convention on the Rights of the Child (Vienna Declaration and Programme of Action, 1993).

As early as 1921, when the International Labour Organization (ILO) passed the first Minimum Age Convention, the world has attempted to protect children's right to an education and to prevent any child labour which would prejudice their school attendance (Children under the age of fourteen years may not be employed or work in any public or private agricultural undertaking, or in any branch thereof, save outside the hours fixed for school attendance, the employment shall not be such as to prejudice their attendance at school." Article 1 in: ILO. 1921. C10: Minimum age (agriculture) convention). The ILOs Minimum Age Convention 138 of 1973 (UN, 1973) set the standard for the minimum age for admission to employment as 15 years, or in special cases where economic and educational facilities are insufficiently developed, 14 years; light work not harmful to the child or prejudicial to his or her attendance at school is permissible after age 12. Since 1990, with the entry into force of the Convention on the Rights of the Child (UN, 1989), the child's right to be protected from "any work that is likely to be hazardous or to interfere with the child's education" (Article 32) and his or her right, on an equal, non-

discriminatory basis to "primary education compulsory and available free to all" (Article 28) have gained the status of internationally recognized norms, while imposing an obligation on the 192 states parties to the Convention to realize these rights for the children under their jurisdiction (UNICEF, 2000). In 2000, children were provided further protection through the entry into force of ILO Convention 182 (ILO, 2000), which was ratified by 150 countries as of May 2004 (ILO, 2005). Convention 182 prohibits the worst forms of child labour, defined as all forms of slavery and similar practices; child prostitution and pornography; illicit activities (in particular the production and trafficking of drugs); and work that is likely to harm the health, safety or morals of children (Gibbons Elizabeth, 2005).

The Geneva declaration of the Rights of the Child 1924 was the first convention of League of Nations to discuss the rights of child (Confusion prevailed from the 1920s concerning the respective roles of the League of Nations and the UN in dealing with (child) slavery and of the ILO in dealing with child labour. This deficit regarding one of the worst forms of child labour persisted until 1999-2000). The Universal Declaration of Human Rights as adopted by the United Nations in 1948, incorporate the basic rights of children for growth and education. An independent "Declaration on the Rights of child" was made by United Nations in 1959 (C.K. Shukla, 2006). This emphasized on special protection and care for child to develop in a normal and healthy manner in an atmosphere of freedom and dignity.

The United Nations Declarations emphasized on child welfare having applications to every social condition, by conferring specific rights to children through social legislation prohibiting any discrimination (Chanlett, 1968). The year 1979 (In 1976, the General Assembly proclaimed 1979 as the International Year of the Child. The general objectives were to promote the wellbeing of children, drawing attention to their special needs and encouraging national action, particularly for the least privileged and those at work. It was only during the IYC that international attention became fully re-focussed on the problem of child labour. The IYC acted as a spur to international agencies and civil society actors alike), was designated as International Year of the Child (IYC) by United Nations which gave importance on the co-operation of the (Alfred De Souza) Nations in common tasks of meeting the basic needs of the children, that is, nutrition, health, education, maternal protection, family care, equal society status and protection from racial and other forms of discrimination (Alfred De Savza, 1979). This was a challenge to the conscience of mankind and to the community of nations.

On November 20, 1989, the General Assembly of the United Nations adopted a Convention on Rights of the Child which was ratified by 107 member countries within a year and India was a signatory to it. The convention contains 54 articles, each dealing with different types of rights. These can be broken down into four broad catego-

ries such as- survival rights, developing rights, protection right and participation rights (UNICEF). Several rights cover a child's right to the life and the basic need for existence which include adequate living standard, shelter, nutrition and access to medical services. Developing rights include the aspects those held children to reach their fullest potential, such as, rights to education, play and leisure, culture activities, access to information, and freedom of thought conscience and religion. Protection right require the children be safeguarded against all forms of abuse, neglected and exploitation which include child labour, drug abuse, sexual exploitation, abuses in criminal justice system, etc. Protection right allow children to take an active role in their communities and nations. These encompass the freedom of expression, to join associations and to assemble peacefully which is necessary for preparation of a complete and responsible adulthood (Ali et al., 2006).

In, 1919, International Labour Organization, in its first session adopted a convention on minimum age of children for admission into industrial employment. It laid down that no child under 14 should be employed in any public or private undertaking other than in which only family members are employed (Alec Fyfe, 2007). Industrial undertaking, here include mines, quarries, manufacturing units, construction, maintenance and repairs and transportation of passengers and goods by road, rail or in water way. The minimum age was revised from 14 - 15 in the Convention No. 59 of 1973. The Convention which grew out of the personal initiative of the Director-General Wilfred Jenks (the idea of Wilfred Jenks was to consolidate the minimum age standards and to present a standard that developing countries would adopt), marks important progress in raising the standard for general employment in developed countries from 14 years (accepted during the first reading in 1972) to 15 years, or the age at which compulsory education ended, whichever was the higher (accepted in 1973, Alec Fyfe, 2007). Subsequently ILO, prohibited employment of children in agriculture undertaking, shops, hotels, restaurants, officers, places of public employment, etc. ratified all its conventions. The Convention No. 138 of 1973 of ILO emphasized that each member for which the convention was in force undertakes to pursue a national designed to ensure the effective abolition of child labour and to raise regressively the minimum age for admission of children to employment of work. The same convention also recommended for special attention for working conditions of young persons below 18 years, in terms of fair remuneration, limited working hours, prohibited night work, weekly and annual holidays with leave, coverage by all social schemes, maintenance of satisfactory standards of health, safety, etc.

ILO has adopted five conventions for making medical examination of young persons, a condition precedent for employment. This is to ensure fitness of the young persons for the employment where he/she is to be employed

(Kofi Annan, 2001). Also, three conventions were made in support of prohibition of night work of young persons both in industrial and non-industrial establishments. However, ILO, through various conventions and recommendations made rules and guided the member countries for abolition of child labour through various measures.

## CONSTITUTIONAL SAFEGUARDS IN INDIA

The constitution of India carries important expression of the attitude of the State towards children, Article-15 (3) of the constitution authorizes the state for the making any special provision for women and children. 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. Article 39 (E) proclaims that the State shall 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. Article 39 (E) enjoins that childhood and youth are to be protected against exploitation, against moral and material abandonment. In Article- 45 the constitution also endeavours to provide free and compulsory education for all children until they complete the age of 14 years (C.K. Shukla et al., 2006).

The general provisions under Article, 38, 42, 43, 45 and 47 of Directive Principles of State Policy, although do not deal directly with child welfare but provides strategy for indirectly promoting welfare of children. Article-38 (1) provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively, as it may secure a social order in which justice, social, economic and political shall be ensured.

Article-42 and 43 provide for securing just and human conditions of work and hold out a promise that the State shall endeavour to secure, by suitable legislation, economic organization or in any other way, for all workers, a living wage with specified conditions of work ensuring a decent standard of life and full employment of leisure and social and culture opportunities. This definitely includes child labourers in widest sense (S. Ali, 2006). Article-46 makes provisions for promotion, with special care of the educational and economic interest of SC and STs and other weaker sections of the society. Article-47 lays emphasis on raising standard of living of people by the State. These also include children in their purview.

While assessing the progress and implementation of these provisions, it is disappointing to note that child labour exploitation is rampant in all spheres and increasing day by day. For this responsibility does not lie exclusively with the State but with parents and children. Parents consider sending children for education brings double loss by them. Also, the problem is so complex that it involves many social and economic factors. Unless they are taken care of, the problem is difficult to be solved.

## LEGAL MEASURES FOR PROTECTION OF CHILD LABOUR

The Factories Act of 1881 was the first law to define child and to prescribe prohibitory regulations for employment of children below 7 years of age. The Factories Act, 1911 prohibited employment of children in dangerous occupations and working during night hours. The first Convention of ILO, compelled amendment of the Act in 1922, to rise the minimum age of child to 15 years. However, children below the age of 12 years were prohibited for employment. The age rose to 13 years in 1935 under the Act. The present Factories Act, 1948, prescribes prohibitory regulations for employment of children below 14 years of age in any factory. India Mines Act, 1951 prohibits employment of children below 16 years in any underground mines. But Plantation Labour Act, 1951 has prescribed this age as 12 years. The Motor Transport Workers Act 1961 absolutely prohibits employment of children in it. The Shops and Commercial Establishments Acts of different States, also prohibit employment of children in the shops and commercial establishments.

These legislations are also careful about the health of young persons to be employed. While restricting the night work, they provides for medical fitness certificates by the young persons. They also clarify about the conditions where they are to be employed. Of course, in many cases deliberate violations of the provisions take place either by the medical practitioners or employers. Also, the parents who satisfy their economic needs lie about the age of their children. Besides the above legislations, The Apprentice Act, 1961, The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, The Atomic Energy Act, 1962 and Contract Labour (Regulation and Abolition) Act, 1970 provide Prohibitory and Regularity measures for employment of children.

As required by ILO Convention and as envisaged in National Seminar on Employment of Children in 1975, to prevent exploitation of children, Indian Government felt to enact a single Act to deal with prohibition of child labour.

The Gurupadaswamy Report of 1979, also emphasized on such a comprehensive law for the purpose. As a result, the Child Labour (Prohibition and Regulation) Act was enacted in 1986. The Act prohibited employment of children below the age of 14 years in certain occupations and processes. These include the transport of passengers, goods and mails and other hazardous work in railways and ports, the process like Beedi making, cement manufacturing, manufacturing of matches and explosives, mica cutting, soap manufacturing, wool cleaning and building and construction industries.

The 3<sup>rd</sup> part of the Act provides for regulations of conditions of work by prescribing minimum working hours, prohibiting work at night, prohibiting overtime work, and weekly holiday. Also, the Act provides measures for health and safety of child workers. It emphasized on maintenance of a register having details of children if employed by any organization. While prohibiting employment in certain occupation and processes, the law legalized employment of children in other cases. Indirect support was extended for such an evil practice which should be totally prohibited irrespective of the nature of employment.

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