Eradication of Child Labour- Socio–Legal Challenge and Judicial Activism in India

Dr. Vasundhara Patil
Assistant Professor,
National Institute of Construction Management and Research (NICMAR),
25/1, Balewadi, N.I.A. Post office, Pune 411045, INDIA.

Abstract: According to the NSSO (66th round of Survey) on Child Labour in Major Indian States, 2009-10 in the (Age group 5-14) is 49.83 lakh. Poverty and social conditions of the family are main reasons children are forced to work. Child labour is a phenomenon found in the almost all countries of the world though the number may vary. International Labour Organisation has passed many conventions to eradicate child labour. In India we observe that the laws and regulations can be implemented only in organised sector. The children working in unorganised sector are still being neglected. Their number is not known. The child labour is unorganised sector is invisible yet it cannot be ignored by any society or state. Mainly it is NGOs who take steps to prevent exploitation and render help to child labour in distress. The Government machinery seems to be inadequate. Judicial Activism is observed when in the Public interest litigations, writ petitions or regular cases are disposed of speedily by judges, It is also observed when Courts themselves i.e. “suo moto” take up cases. The important contribution made by the Judiciary in preventing child labour and giving guidelines for implementation of the laws and regulation is being researched and analysed in this paper.

Key words: Child labour, Judicial Activism, Unorganised sector child labour, Court judgments of child labour, Eradication of child labour, ILO and child labour

I. Introduction

According to the NSSO (66th round of Survey) on Child Labour in Major Indian States, 2009-10 in the (Age group 5-14) is 49, 83,871. The figure of 49.83 lakh child labour is from the organised sector. The number of child labour from unorganised sector is not taken into consideration but rough estimates by some NGO put the number in crores. Poverty and social security and two major contributors which compel the children to work as labour. The child labour is found in all sectors. The girls and boys from rural as well as urban places are into child labour working in organised sectors industries, factories, and unorganised sectors such as brick kiln, carpet making, beedi and cigar making units, construction sector, agricultural fields, as domestic help, dhabas/restaurants/hotels/motels, auto-workshop, vehicle repairs, Gem-cutting, Jewellery making units.

II. Legal framework

The Indian legal framework has different provisions for prohibition of child labour. The Constitution of India has various articles eg. Article 23, 24,39,45,47 which deal with the protection children against exploitation and duty of the state to provide free education to child up to the age of 14.

Article 23 states- Prohibition of trafficking in human beings and forced labour - (1) Trafficking in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Article 24 of the Constitution states, “Prohibition of employment of children in factories etc. No child below the age of fourteen years shall be employed in work in any factory or mine or engaged in any other hazardous employment.”

Article 39: The State shall, in particular, direct its policy towards securing
   (e) 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.
   (f) that 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 45 of the constitution declares that the State shall take steps for free and compulsory education for all children till they attain the age of 14.
Article 47 states it is Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

One of important act is “The Child Labour Prohibition and Regulation act, 1986” which bans the employment of child labour in hazardous occupations and 65 processes.

According to International labour organisation, the term “child labour” is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. Whilst child labour takes many different forms, a priority is to eliminate without delay the worst forms of child labour as defined by Article 3 of ILO Convention No. 182. India has not yet ratified the said convention no182 The large majority of child labourers in the age group of 5-17 years are unpaid family workers (68 per cent). 21 per cent are in paid employment and 5 per cent in self-employment. 2

A new bill was approved by the Union Cabinet on 28 August 2012, “Child & Adolescent Labour (Prohibition) Act” The object of the Act is to prohibit employment of children in all occupations and processes to facilitate their enrolment in schools in view of the Right of Children to Free and Compulsory Education Act, 2009 and to prohibit employment of adolescents (persons who have completed fourteenth year of age but have not completed eighteenth year) in hazardous occupations and processes and to regulate the conditions of service of adolescents in line with the ILO Convention 138 and Convention 182, respectively.

Prohibition of employment of children in any occupation and process and Prohibition of employment of adolescents in certain hazardous occupations and processes

(v) the amendment of section 3 of the said Act to prohibit employment of children in all occupations and processes except where the child helps his family after his school hours or helps his family in fields, home-based work, forest gathering or attends technical institutions during vacations for the purpose of learning.

(ix) the punishment under Section 14(1) is enhanced from imprisonment from term of present three months to one year to minimum six months to two years and fine is enhanced from minimum Rupees 10000 to 20000 and maximum Rupees20000 to 50000 or with both, for employment or permitting any children to work in any occupations or processes in contravention of section 3. However, the parents or guardians of such children shall not be liable for such punishment unless they permit such children for commercial purposes.

(x) The same penalty as above is prescribed for employers for employment or permitting to work any adolescent in any hazardous occupations or processes. However, the parents or guardians of such adolescents shall not be liable for punishment unless they permit such adolescents to work in contravention of the provisions of section 3A. These amendments are yet to be enacted.


III. National Policy on Child Labour

The National Policy on Child Labour was declared in August, 1987. The policy envisages the plans to prevent child labour. In 1988 National Child Labour Project (NCLP) scheme was initiated to withdraw children working in hazardous industries and rehabilitate them, send them to special schools. The details of the different national plans and the number of NCLPs operating is as under:—

<table>
<thead>
<tr>
<th>YEAR</th>
<th>NO. OF NCLPs SANCTIONED</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>12 NCLPs</td>
<td>12</td>
</tr>
<tr>
<td>IX Plan</td>
<td>88 NCLPs</td>
<td>100</td>
</tr>
<tr>
<td>X Plan</td>
<td>150 NCLPs</td>
<td>250</td>
</tr>
<tr>
<td>XI Plan</td>
<td>21 NCLPs (INDUS)</td>
<td>271</td>
</tr>
</tbody>
</table>

This figure is very meagre compared to the number of child labour who requires rehabilitation. The different laws provide punishments including imprisonment for any one who contravene the provisions of the law. But the implementation of the laws does not reflect the object of the different Acts.

The following table shows the figures of conviction.

IV. Enforcement Figures on Child Labour

As per the data received from various States, the details of inspections carried out, prosecutions launched, and convictions made under the Child Labour Act during the last five years and current year are given as under:

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Inspections</th>
<th>No. of Prosecutions</th>
<th>No. of Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>363927</td>
<td>12705</td>
<td>617</td>
</tr>
<tr>
<td>2008</td>
<td>355629</td>
<td>11318</td>
<td>763</td>
</tr>
<tr>
<td>2009</td>
<td>317063</td>
<td>114418</td>
<td>1312</td>
</tr>
<tr>
<td>2010</td>
<td>259612</td>
<td>8998</td>
<td>1308</td>
</tr>
<tr>
<td>2011</td>
<td>84935</td>
<td>4590</td>
<td>774</td>
</tr>
<tr>
<td>2012**</td>
<td>25040</td>
<td>589</td>
<td>167</td>
</tr>
</tbody>
</table>

Source: Annexure-I -
Data on Child Labour based on Employment Unemployment Survey During NSS 66th Round (2009-10)\textsuperscript{16}

\textbf{V. Judicial activism}

The judges of the different courts are also worried about the low rate of conviction. There are number of judgements given by the various judges which shows the Judiciary is actively involved in the implementation of the Laws by giving various directive to the Government for necessary action for implementing the laws.

i) In the case of State vs Nayan Ahmad, Delhi high court has passed the judgment on 2 July, 2012.

In the instant case, a girl namely Reshma, who was aged about ten years at the time when the inspection was carried out. On complaint of President, Scientific Welfare Society, New Delhi, a joint operation/inspection was conducted on 24.11.2009 at House of Mr. Nayan where she resides alongside her family and a girl child, Reshma age 10 years found to have been working as domestic help for the last 01 years and was immediately rescued from the said house. The said child requested the Committee to send her back to her aunty (Nayan) where she was living as she was missing her. It seems that said child was happy here. She was neither like a servant nor bonded labour. The Hon Judge has commented that, “The Government machinery do not have sufficient funds and moreover no attention towards such type of people. Laws have been made and enforced, but without infrastructure and proper planning.” Reshma was staying with the consent of her grandmother Smt. Tara Bai. Since she had been abducted by her father and her mother was of an unsound mind, her grandmother thought it would be in the best interest for the granddaughter’s future, if she be handed over to the Nays family. She was directed to be sent to Nayan’s place.

ii) This is a case of Karnataka State Vs Shahid of Sahid Autoworks filed in Karnataka High Court decided on 21\textsuperscript{st} Feb 2014. It is the case of complainant that accused namely Shahid, being the proprietor of M/s. Shahid Auto Works had employed one Washim Akram aged about 13 years in M/s. Shahid Auto Works, Kongadiyappana Main Road, Doddabaliapur. The learned trial judge on appreciation of evidence has held that complainant has failed to prove that accused was the owner of M/s. Shahid Auto Works. Therefore, it is not possible to hold that accused had employed the above said child. The prosecution for the reasons not apparent on record, has not examined the child labour namely Washim Akram. The learned trial judge by noticing this lacunae in the evidence adduced by complainant has dismissed the appeal. The High court also dismissed the appeal.

iii) This is case of Delhi high court filed by Khushoo Jain against Ministry of Railways, Union of India and others. The petitioner seeks direction from the court for protection of children who arrive and stay on Railway Stations, Section 2(d) of the Juvenile Justice (Care and Protection of Children) Act, 2000 Act defines child in need of care and protection. The petitioner sought directions from the court to the Railways to follow the provisions of said act. Delhi court has disposed off the writ petition with direction to the ministry of railways that as soon as a child is found sitting at a Railway Station, RPF, GRP/Station Master shall try to obtain name, address and other particulars of his parents/guardian/relatives from the child, the concerned Station Master shall make announcement on the public address system of the railway station with respect to the child found there and inform the local police station/police post as well as the parents/guardian/relatives of the child about his/her being found at the Railway Station. And also more directions regarding keeping the child with the Welfare Committee till the child’s parents or relatives or guardians claim the child and to take steps for announcements of the found child’s details so that parents/guardian/relatives can lodge the claims.

iv) On 18th April, 2011, in the case of Bachpan Bachao Andolan v. Union of India & Others [Writ Petition (C) No.51 of 2006], the Court examined the issue of exploitation of children in Indian circuses. The Court held that “in order to implement the fundamental right of the children under Article 21A of the Constitution it is imperative that the Central Government must issue suitable notifications prohibiting the employment of children in circuses.” The respondents were directed “to conduct simultaneous raids in all the circuses to liberate the children and check the violation of fundamental rights of the children” and also “to frame proper scheme of rehabilitation of rescued children from circuses.”

v) In the case of A. Srirama Babu vs The Chief Secretary of Labour Department and the Labour Commissioner decided by Karnataka High Court of 6\textsuperscript{th} June 1997. This writ petition is filed by a public spirited young Lawyer Shri A. Srirama Babu to espouse the cause of unorganised, less and underprivileged children commonly described as “Children of Lesser God” and who, according to him, have been left to fend for themselves uncared for, resulting in exploitation and deprivation of basic amenities of life and other constitutional and statutory safeguards guaranteed to a citizen of India which they are also entitled to enjoy like any other. The High court directed the Karnataka State to take steps to prevent child labour and to safeguard the interest of these children.

vi) Supreme Court had given many mandatory directions in the case of M.C. Mehta v. State of Tamil Nadu reported in AIR 1997 SC 699. A “Public Interest Litigation” was filed by Mr. M.C. Mehta under Article 32 of the Constitution of India, in respect of employment of children in the match industry in Sivakasi. In the course of the hearing, the court appointed an advocates committee to visit the area and make a comprehensive report relating to the various aspects of the matter. The Supreme court in its order gave many directions to Tamil Nadu State Government for resolving the problem of Child Labour. One of the important directions was to direct an
employer to pay a compensation of Rs. 20,000/- for having employed a child below the age of 14 years in hazardous work in contravention of Child Labour (Prohibition & Regulation) Act, 1986 The state government was also directed to contribute sum of Rs. 5,000/- for each such child employed in a hazardous job. The said sum of Rs. 25,000/- was to be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund and the income from such corpus was to be used for rehabilitation of the rescued child.

vii) In the case of Court On Its Own Motion Versus Govt of NCT DELHI, the Delhi High Court has on 15th July 2005 accepted the Delhi Action Plan which provides a detailed procedure for interim care and protection of the rescued children to be followed by Labour Department as prepared by the National Commission with the modifications mentioned in paragraph 20 to 26 of the judgment and further directed all the authorities concerned to immediately implement the same. The Government of NCT of Delhi through the Labour Department was directed to file its First Taken Report to said Court after six months.

viii) In the case of Vishnu Dayal Sharma vs. State Of Uttar Pradesh decided on 28 March, 2008 by Allahabad High Court It is stated in judgment that, “The prosecutions were 8251 upto January, 2008 but out of the total number of 10978 cases, 3328 cases were decided and only in 416 cases, i.e. only in 12 percent of the cases, convictions were secured under the Child Labour (Prohibition and Regulation) Act, 1986. This is an alarmingly low level of conviction and again we would like to receive information from the department as to the reasons why there has been such a poor level of convictions in the cases relating to the employment of child labourers. The pendency level of 7650 in child labour cases upto January, 2008, is also very high and we would like the labour department to move applications in the concerned courts for expeditious disposal of these cases, and we direct the condoned courts to make every effort to decide such case very expeditiously.”

VI. Analysis of the Judicial Decisions

Courts have on their own taken up the cases only on the basis of the letters written by some citizen who wants the courts to take active part for the delivering justice to the child labour as can be seen in the case of Court On Its Own Motion Versus Govt of NCT DELHI, the Delhi High Court has on 15th July 2005 accepted the Delhi Action Plan which provides a detailed procedure for interim care and protection of the rescued children. In some cases which are filed by NGOs(Non Governmental Organisations) Courts have commented on the Government machinery which do not have sufficient funds and moreover no attention towards such type of people. Laws have been made and enforced, but without infrastructure and proper planning. In some cases like M.C. Mehta v. State Of Tamil Nadu the Supreme Court gave directions to the State Government to create funds for the child welfare programmes from the amount generated from the penalty collected from the employer who was found guilty of engaging child labour. It also directed the state governments to ensure employment to any the adult member of family of child labour. It also give many directions. Allahabad high court was concerned with very low rate of convictions in cases under the child labour Regulation and Protection Act, 1986

Thus it can be seen Courts in India have been very active in considering the cases filed against the employers of child labour and even the explanation and interpretation of different articles constitution have been done whenever required. They have even given directions for implementation of laws preventing child labour. The role of judiciary in imparting justice without any fear and favour can be seen. They have helped in implementing the laws in the country. But in a few cases it can be seen that the technicalities supersede the spirit of law and justice.

VII. Conclusion

We would like to give some suggestions for amending some laws as well as more active participation of the Government agencies ,the NGOs and judiciary which decisions which will help to eradicate child labour.

1) The punishment under Child Labour (Prohibition and Regulation Act, 1986) should same as given under Section 92 of the Factories Act provides for imprisonment which may extend upto two years or a fine which is upto one lakh of rupees.

2) Amendment should made to “The Equal Remuneration Act, 1976.” to include any individual employer also. As per the provisions of the act, it has been made compulsory for any employer to pay equal remuneration to men and women for same work. The provision is contained in Section 4 – which is as follows, “Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature.”

And if we refer to Section 2(D), it does not make any distinction of adult or child employee. It reads as, Section 2 (d) “man” and “woman” mean male and female human beings, respectively, of any age; this act should be amended to make it applicable to all the workers employed by any employee not for specific establishments and employment. The definition of employee given in section2(c) should be suitable amended to include any individual employer also.
3) Judges should be more sensitive while deciding child labour cases so that when they award the punishment, they award the maximum punishment recommended under the act and not use discretion for awarding minimum punishment. The punishments should instil some fear in the minds of employers and deter them to employ child labour in future.

4) The new bill, “Child & Adolescent Labour (Prohibition) Act” should be further amended to include any employer whether in factory industry or any undertaking or any individual employee employing even a single child labour so as to include the organised as well as unorganised child labour sector.

5) Creating awareness of child labour hardships among the parents by NGO and Government will be the most deciding factor for reducing child labour.

6) The small shop owners, the small time contractors who hire children, the families who hire domestic help should not only be discouraged, punished by law, for engaging child labour, but also creating awareness among them will certainly reduce child labour in unorganised sector.

Further more active role should be taken by the Judiciary and the Government and Non Government Organisation and parents. We hope that we will overcome all the socio-legal challenges and eradicate child labour in India for ever.

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