

AN ANALYSIS OF CHILD ABUSE IN INDIAN SCENARIO**Prof.Dr.J.Vijayalakshmi LL.M., PhD.,****Principal, Govt. Law College, Chengalpet.****Abstract**

Public conscience is not outraged, despite occasional investigative media reporting and social action litigation in appellate courts in labour-surplus economy and chronic unemployment which provide passport for ruthless exploitation. According to Precht, the promotion of the basic rights of persona and nations will be successful if they will be considered from the perspective of the poor people. Among factors contributing to child labour, the important are rapid population growth, adultery unemployment, bad working conditions, lack of minimum wages, exploitation of workers, low standard of living, low quality of education, lack of legal provisions and enforcement, low capacity of institutions, gender discrimination conceptual thinking about childhood. Mindset of the people can be changed by imparting value based education and culture.

Introduction

The Constitution commands law not in the model of politics of production but in that of production of politics. These processes involve varieties of disarticulation of the 'unorganized' labour. The citizen works are denied even the freedom of speech and expression. This denial of voice of bonded labour, landless labour, child labour, rag pickers, hawkers, pavement dwellers, artisans and craft persons etc., means that they become virtually invisible in and to political process. They are unable to cultivate public opinion of their plight, which paradoxically is used by the managers of the people for their own distinctive interests and ends. Public conscience is not outraged, despite occasional investigative media reporting and social action litigation in appellate courts in labour-surplus economy and chronic unemployment which provide passport for ruthless exploitation. Social activists intervention on behalf of unorganized labour provides

only symbolic results, which sometimes aggravating the hardship of the purported beneficiaries. This is not an argument against social activists interventions but plan for their more sustained presence.

The National Policy for Children,1974 declared that, “Children are supremely important national asset” and the same was approved in a celebrated case Sheela Barse Vs Union of India. The future well-being of the nation depends on how its children grow and develop. It is the duty of the State to look after every child with a view to assuring full development of its personality. The National Policy in unequivocal words expresses the importance of children as the foundation of the nation that: “The nation’s children are supremely important asset. Their nature and solicitude are our responsibility. Children’s programmes should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit mentally alert and morally healthy, endowed with skills and motivations. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice”.

Definition of the term ‘Rights’

A ‘right’ may be defined as something to which an individual has a claim through certain rules of legitimacy. According to Naidu (1991), ‘right’ means two kinds of guarantee that the state provides to a citizen one, the positive right to live and to pursue certain activities as an individual and as a member of the society; the other, the negative right the citizen will not be disabled by other citizens or by the state itself, from such pursuit and enjoyment. According to Precht, the promotion of the basic rights of persona and nations will be successful if they will be considered from the perspective of the poor people.

Nexus between Indian Constitution and the Child Rights

Even before the Declaration of the Rights of the Child in 1959, the framers of the Indian Constitution realized the importance of the needs of the children. They have provided certain

guidelines, which would contribute towards meeting the needs of children. They are enshrined in the Indian Constitution. They are:

- a. The Right to Education,
- b. The Right to Expression
- c. The Right to Information
- d. The Right to Nutrition
- e. The Right to Health Care
- f. The Right to Protection from Sexual Abuse
- g. The Right to Protection from Neglect
- h. The Right to Development
- i. The Right to Recreation
- j. The Right to a Name and Nationality
- k. The Right to Survival
- l. The Right to Housing
- m. The Right to Protection from exploitation

The constitution of India mandates the state under Article 39 to ensure that “Children are not abused and that childhood and youth are protected against exploitation and against moral and material abandonment”. Children are youngest, innocent and tender and hence they deserve the eldest care and concern. Unfortunately, the children in India are subjected to various forms of abuse. Child labour and its exploitation has become a biggest challenge on the problem of child exploitation High Court of Kerala in Satyan Kottanrakkara V State, held that, “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, Article 21, 39,41, 45, and 46.

In M.C.Mehta vs State of Tamil Nadu (AIR 1997 SC 699 paras 29, 30, 31) the Supreme Court has held the strictly speaking a strong case exists to invoke the aid of Art. 41 of the Constitution regarding the right to work and to give meaning to what has been provided in Art.

47 relating to raise of standard of living of the population and Art. 39 (e) and (f) as to non-abuse of tender age of children and giving opportunities and facilities to them to develop in a healthy manner, for asking the State to see that an adult member of the family, whose child is in employment in a factory or a mine or in any other hazardous work, get a job anywhere, in lieu of the child. This would also see the fulfillment of the wish contained in Art. 41 after about half a century of its being in the paramount parchment, like primary education, desired by the Art. 45 having been given the status of fundamental right by the decision in Unni Krishnan case (AIR 1993 SC 2178).

Myron Weiner in his book 'The Child and the State in India' has pointed out that India is an exception to the global trend towards the removal of children from the labour force and establishment of compulsory, universal primary school education, as many countries of Africa like Zambia, Ghana, Ivory Coast, Libya, Zimbabwe, with income levels lower than India, having done better in these matters. In *Bandhua Mukthi Morcha vs Union of India* [(1997) 10 SCC 549 paras 12, 13] the Supreme Court has reiterated the decisions given in *M.C.Mehta vs State of Tamil Nadu* for the abolition of child labour.

Two main approaches defining child labour which consequently affects on the whole some personality of child are:

- i. Any labour force activity by children below a stipulated minimum age.
- ii. Any work, economic or not, that is injurious to the health safety and development of children.

Root causes for child abuse

Hommerfolks, chairman of United Nations Child Labour Committee has defined child labour as, "any work by children that interferes with their full physical development, their opportunities for a desirable level of education and of their need of recreation. The issue of child abuse in the form of child labour cuts across policy boundaries and is cause and consequence of poverty, displacements, illiteracy play a crucial unemployment. Extreme forms of poverty and illiteracy play a crucial role in child labour. This implies that child labour cannot

be addressed in isolation. Among factors contributing to child labour, the important are rapid population growth, adultery unemployment, bad working conditions, lack of minimum wages, exploitation of workers, low standard of living, low quality of education, lack of legal provisions and enforcement, low capacity of institutions, gender discrimination conceptual thinking about childhood.

The word 'abuse' is defined in Black's Law Dictionary as, everything which is contrary to a good order established by usage, departure from reasonable use, improper use, physical or mental treatment, deception. Thus the term "Child abuse" encompasses a broad and wide range of acts and maltreatment of Children. Various attempts to define child abuse have not achieved a consensus. There is also no consensus about its various forms, which can include child battering, extreme punishment, hard labour, emotional abuse, sexual abuse, including incest and exploitation, and abandonment.

In addition to the above mentioned factors responsible for child labour, there are several other causes too. Firstly, the provisions of the protective labour legislations are lopsided and do not cover agriculture and small scale industries. Secondly, the enforcing machineries, which are provided by the governments, are inadequate almost everywhere and failed to check employment of children in various sectors. The children are mostly silent listeners on non-listeners of the policies and programmes meant for them and hence, their problems are not properly realized, for which nobody pays serious attention. Child labour is rooted in poverty and its relation to education is often considered two sides of the same coin. Poverty and child labour are still considered two sides of the same coin. Poverty and child labour are still witnessed in India, but these problems are distributed unequally throughout the country.

Child Labour (Prohibition and Regulation) Act, 1986

The main object of Child Labour (Prohibition and Regulation) Act, 1986 is to prohibit the engagement of children who have not completed the 14th year of age in certain employments and to regulate the conditions of work of children in certain other employments. The Act provides that no child shall be permitted to work between 7 pm and 8 am and shall not be

permitted to work over time. No child shall work for more than 3 hours before he has an interval of one hour. Spread over has been fixed at six hours. A child cannot work in more than one establishment on one day. A weekly holiday is allowed.

Conclusion

India is a developing country; socio-economic conditions prevailing in the society are strongly responsible for abuse of child in different forms. The problem of child abuse is deeply rooted in the socio-culture spectrums. High literacy and low literacy rate, both equally contribute to the problem of child abuse. This is a challenge to the civil society, which can be tackled by bringing attitudinal and behavioral change. Mindset of the people can be changed by imparting value based education and culture. Capacity building in children especially during abusive situations and school age children need to be sensitized to different forms of child abuse. Perceptions and attitudes of parents and people towards children are modified to understand the problem of child abuse.

According to Kofi .A. Annan “There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in peace.” Protection of children from all forms of abuse and exploitation across the world is the need of the hour. Children face three-fold exploitation of age, economic status and caste. The future of Indian nation and prosperity of the people depend on the health and happiness of children and the care they receive from the family and society to grow up as good human beings and citizens. Their upbringing in a proper environment promoting their health, education and mental development is an important commitment. The following measures can be strictly taken to reduce the rate of child labour in India:

1. Develop comprehensive national agenda for children, based on the child convention.
2. Ensure that all legislation is fully compatible with the convention- incorporating the convention into domestic laws, or ensuring that its principles take precedence in cases of conflict.

3. Make children, visible in the process of policy development
4. Ensure effective coordination of children policies across government employ departments.
5. Allocate maximum resources for child related policies and programmes.
6. Conduct awareness programmes on child rights.

Books referred:

Child Labour In India- Legal Regultion by Dr. Lingaraj M. Koninkar

Child Labour Rights And Violations by J.Cyril Kanmony

The Constitution of India- An Analytical Approach by H.K.Saharay

The Constitution of India by V.N.Shukla