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Present Legal Provision to Combat Child and Women Labour Problem.

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ABSTRACT: *Today child labour as well as women labour is a global phenomenon and a harsh reality. Though the magnitude differs, the problem exists not only in under- developed and developing countries, but also in developed countries. More than 10 per cent of the world's 2.2 billion children are engaged in child labour, the majority of them working in agriculture, often with hazardous chemicals or machinery. About 10 million are trapped in slavery, trafficking, prostitution, and armed conflict. According to the census 2001, there are 12.5 million working children in the age group of 5-14 years as compared to the total child population of 252 million i.e. 4.96 percent of total children are child and women labour in India. The problem of child and women labour can be traced to the industrial revolution which emerged in the middle of 18th century in England and 19th century in India. It was around this time that the exploitation of labour began in order to maximize the profits. Viewing child and women labour as a social problem and the need to protect them came to fore front when exploitation of children became very common during this era. Overtime consciousness regarding labour rights evolved and legal measures was introduced both in developed and developing countries to curb this problem mainly to protect the employment and wages of adult workers. This paper will look into the major policy intervention as well as legal provisions for eradication of child and women labour. Firstly, history of child and women labour problem will be described then legal measures for protection of child and women labour in India will be discussed.*

Keywords: *Child and Women labour problem, Eradication, Legal provision, India.*

I. Introduction:

Throughout the centuries, the attitude of law towards children has been a fluctuating one. Prior to the 19th century children were not given separate legal recognition though the jurisprudential emphasis was on the child as property. Parents were not expected to maintain their children as a legal duty. The 19th century witnessed a series of developments which transformed the legal status of the child and women. This transformation was mainly due to the realization that the society cannot disown the responsibility of child-care and under the doctrine of "state protection" child came to occupy the centre of the legal stage. The



introduction of prevention of child and women labour laws and compulsory education were two important changes which affected the legal status of the child as well as women.

Now, there is a better understanding of the factors that give rise to child labour and of its consequences. Child labour is clearly detrimental to individual children, preventing them from enjoying their childhood, hampering their development and sometimes causing lifelong physical or psychological damage; it is also detrimental to families, to communities and to society as a whole. As both a result and a cause of poverty, child labour perpetuates disadvantage and social exclusion. It undermines national development by keeping children out of school, preventing them from gaining the education and skills that would enable them as adults to contribute to economic growth and prosperity.

This paper tries to take a stock of policy intervention for elimination of child and women labour in India. India has been very proactive in formulating policies and programmes to tackle child and women labour problem. Our constitution itself has provisions for welfare and rights of children. Even the Common Minimum Programmes of the present government also speak about the concern of the government towards the problem of child and women labour. It states that the government will strive for the elimination of child and women labour. However, the reduction in number of child labour has not been very encouraging especially, in case of girls child labour whose number has increased drastically over last decade. Therefore, this paper aims to critically look in to policy measures by government and international organizations.

II. Objectives of the Study:

This paper deals mainly with the following objectives-

- (i) To study the history of Child and Women labour problem.
- (ii) To analyze the legal measures for eradication of child and women labour problem in India.



III: Methodology:

The paper is writing mainly based on secondary data and information which are collected from various books, journals, news paper, magazines and internet sources. The collected information is explained as descriptive method.

IV. Result and Discussion:

Legal measures for protection of child and women labour problem in India: The legal history on the protection of child and his working condition in India begin with the Indian Factories Act, 1881, providing minimum age of employment to seven years and restricting working hour to 9 hours. It also provided at least four holidays in a month and prohibited successive employment of child worker. The act was revised every 10 years; The Factories Act was revised in 1891² with the following changes –

- The minimum age was increased to 9 .:
- Hours of work reduced to seven hours from nine hours per day.
- Prohibited of work at night during 8 p.m. to 5 a.m.

In 1901, this act was further revised and now known as the mines act- 1901. Minimum age was increased to 12 from 9 years. Children's are prohibited to work in hazardous mines.

In 1911, Factory Act was revised again with following changes-

- Prohibition of children to work between 7 p.m.-5.30 a.m.
- Prohibition of children to work in certain dangerous processes.
- It required a certificate of age and fitness.

In 1922, the Factories act was amended to implement the ILO convention, 1919, with following changes-

- Minimum age limit was increased to 15 years.
- Reduced working hours to six hours and also an interval of half an hour.
- Was provided if child was employed for more than 5 & half hours.
- It also prohibited employment of children below the age of 18 and women in certain processes.
- Strengthened the provision for medical certificate.



In 1923, **The Indian Mines Act** prescribed a higher minimum age for employment in mines for 12 to 13 years.

In 1926, the Factories Act Strengthened to impose certain penalties on the Parents and guardian for allowing their children to work in two separate factories on the same day. In 1929³ a royal commission on labour was set up under the chairmanship of John Henry Whitley. The commission recommended the legal prohibition of children below the age of ten from work and to enter the name of all working children in wage books. The commission also prohibited the pledging of children. The main aim of the commission was to restrict the children from working. In 1931, the **Indian Ports Act** amended and prohibited the children below the age of 12 in employment in ports. In 1932, the **Tea Districts Emigrants Labour Act** was passed to check the migration of labourers. It also provided that no child should be employed or allowed to migrate unless the child was accompanied by his parent or an adult on whom the child is dependent. In, 1933, the **Children (pledging of labour) Act** prohibited taking Of advances by parents and guardians in return for bonds. Pledging the labour of their children, a system similar to that of the present day bonded labour system. The Act recommends that any bonded labour contract would be void if the labour was under 15 years of age. In 1934, the Factories Act was again amended and elaborated certain provisions for regulating the employment of children of various age groups with regard to factories such as:

- Prohibition of employment for the children under 12 years. .
- For the Children between 12 and 15 years; employment restricted to 5 hours a day.
- Children between 15 and 17 years certain restrictions on employment were imposed.

In 1935, the Mines Act was amended for introduction of division of children according to age- groups. It raised the minimum age to 15 and required a certificate of physical fitness from a qualified medical practitioner for those in between 15 and 17 years of age. It also restricted working time to a maximum of 10 hours a day and 54 hours a week for work above the ground and 9 hours a day for work underground.

In 1938, the **Employment of children Act** was passed to implement the convention adopted by the 23rd session of the ILO, 1937 which provided a special article for India, which



state that "children under age of 13 years shall not be employed or work in the transport of passengers, or goods or mail, by rails, or in the handling of goods at docks, quays on wharves but excluding transport by land. Children under the age of 15 years shall not be employed or work in occupations to which this article applies which are scheduled as dangerous on health ground by the competent authority. "So it:

- Prohibited the employment of children less than 15 years in occupation relating to transport of goods, passengers mails, on railways.
- Minimum age for handling goods on docks was raised to 14 from 12 years.
- Requirement of certificate of age.
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In 1944, the Labour Investigation Committee⁴ popularly known as the *Rege Committee* observed that child labour increased during war time. The report specially referred to the prevalence of child labour in the match industry in South India, cement industries in Rajasthan, carpet industries in Kashmir, glass industries of UP, etc. The Committee recommended that prohibition of employment of children was not enough, but also essential to adopt positive measures to wean them away from industrial employment.

The first post-independence legislation on child labour in the country was the **Minimum Wage Act** passed in 1948. This also provided normal working for a child to be 4 and half hours. In 1948, the Factories Act raised the minimum age for employment in factories to 14 years.

The Constitution of India has several provisions for the protection of children against various forms of abuse. This prohibits employment of children up to 14 years of age and guarantees them protection against exploitation and makes free and compulsory education to children. Article 15 of the Constitution tells about equality and prohibitions of discrimination on the basis of sex, religion and caste. It mentions: "nothing in this article shall prevent the state from making any special provision for women and children.,,5 The article 23 of the constitution tells about personal liberty. It provides certain provision to prevent exploitation of



weaker sections of the society by unscrupulous individual or even by the state. It prohibits trafficking of human being and forced labour," Article 24 is the most important article regarding child, provide that "no child below the age of 14 years, shall be employed to work in any factory or mine or engaged in any hazardous employment."⁷ Article 39 says, "Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom. and dignity and childhood and youth are protected against exploitation and against moral and material abandonment."! Article 45 says "the state shall Endeavour to provide free and compulsory education for children until they complete the age of 14 years."

After the constitution came into force many amendments had been made in various Acts. As well as various legislations related to child labour were passed. In 1948, the Factory Act replaced all the previous enactments on factories and the minimum age for employment in factories raised to 14 years. In 1949, **Employment of Children (Amendment) Act** raised the minimum age to 14 years for employment. In 1951, the Act regarding employment of children had been amended and prohibited the employment of children between 15 and 17 years at night in railways and ports and also provided for requirement of register of children below 17 years of age.

In 1952, the Mines Act prohibited the employment of children less than 15 years in mines. The Act defines two conditions for underground work:

- A person should have completed 16 years of age, and
- Person should submit a certificate of physical fitness from a surgeon.

In 1954, the Factories Act was again amended including a prohibition of employment of person below the age of 17 years at night. The 'night' was defined as a period of 12 consecutive hours and which included hours between 10 p.m. and 7 a.m.

In 1958, the Merchant Shipping Act prohibited the employment of children below the age of 15 years in any ship except in school ship, In 1961, **the Motor Transport Workers Act** prohibited the employment of children below the 15 years in motor transport undertakings. **The Apprentice Act** was also passed in 1961 which prohibited the apprenticeship of training of children less than 14 years of age.



In 1966, the **Bidi Cigar Workers Act** was passed which prohibited the employment of children below 14 years of age in any industrial premises manufacturing biddy and cigars. It also prohibited the employment of children between 14 years of age to work at night between 7 p.m. to 6 a.m. In 1978, the Employment of Children Act was amended; it prohibited the employment of children below 15 years of age in occupation in railway premises, like under picking or cleaning of ash pit or building operation, in catering establishments and any other work which was carried on or in close proximity to or between the railway lines.

In 1979, a committee on child labour was set up under the chairmanship of Gurupadaswamy. By analyzing various factors, organizations, institutions, persons related to child labour, the committee recommended that the existing law regarding the prohibition and regulation of the employment of children be consolidated into a single comprehensive one, adopting uniform definitions of the child and adolescents while prescribing the hours of work, conditions of work etc.

A major breakthrough regarding child labour was made in 1986. A concrete law had been enacted in 1986 which was commonly known as the in **Child Labour (Prohibition and Regulation) Act, 1986**. The policy of the government is to ban employment of children below the age of 14 years factories, mines and hazardous employment and to regulate the working conditions of children in other employments. It prohibits employment of children in 13 occupations and 57 processes.

The Act also regulates the working conditions of children in all other employment, which are not prohibited under the child labour (Prohibition and Regulation) Act, 1986. Section 14 of the Act provides for penalties for contravention of the various provisions under the Act. The Act stipulates punishment of a prison term ranging from three months to two years, with or without a fine of Rs 1 0,000-20,000 for violators. The State Governments and Union Territory Administrations furnish information to the central government on implementation of the provisions of the Act in the form of periodical reports.



In 1992, **Child Labour Deterrence Act** was passed prohibiting the import of any product made by children below the 15 years of age. In a significant step, Ministry of Labour through a notification, issued on August 1, 2006, which came into effect on October 10, banned the employment of children under the age of 14 as domestic help or in the hospitality industry, as such employment is hazardous to their well-being. From October 2006, children cannot be legally employed in homes, teashops, dhabas (eating joints along highways), roadside snack kiosks and eateries, restaurants, hotels, spas or any other similar and violators would be liable to prosecution and other penal action under the Child Labour (Prohibition and Regulation) Act, 1986.

V. Conclusion:

Children are the greatest gift to humanity and Childhood is an important and impressionable stage of human development as it holds the potential to the future development of any society. Children who are brought up in an environment, which is conducive to their intellectual, physical and social health, grow up to be responsible and productive members of society. Every nation links its future with the present status of its children. By performing work when they are too young for the task, children unduly reduce their present welfare or their future income earning capabilities, either by shrinking their future external choice sets or by reducing their own future individual productive capabilities. Under extreme economic distress, children are forced to forego educational opportunities and take up jobs which are mostly exploitative as they are usually underpaid and engaged in hazardous conditions. Parents decide to send their child for engaging in a job as a desperate measure due to poor economic conditions. It is therefore no wonder that the poor households predominantly send their children to work in early ages of their life. One of the disconcerting aspects of child labour is that children are sent to work at the expense of education. There is a strong effect of child labour on school attendance rates and the length of a child's work day is negatively associated with his or her capacity to attend school. Child labour restricts the right of children to access and benefit from education and denies the fundamental opportunity to attend school. Child labour, thus, prejudices children's education and adversely affects their health and safety. India has all along followed a proactive policy in addressing the problem of child labour and has always stood for constitutional, statutory and developmental measures that are required to



eliminate child labour. The Constitution of India has relevant provisions to secure compulsory universal primary education. Labour Commissions and Committees have gone into the problems of child labour and made extensive recommendations. India's judiciary, right up to the 2 apex level, has demonstrated profoundly empathetic responses against the practice of child labour. Despite several proactive legislations, policies and judicial pronouncements, the problem of child labour persists as a challenge to the country

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