

Assessment of Legal Provisions to Curb exploitation of Child Labour in Food Service Industry (Un-organized Sector).

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Abstract

The reason for choosing this topic is that it has always pained me when I see a child working in dhabas, or road side eateries for the reason that the "Chotu" working at dhabas is not the "Chotu" but is the "responsible one" shouldering the responsibility of his family.

When casually asked ...why he works and if he has ever gone to school..with his faint smile and empty eyes he says.... "Sir ji..mann to bahuttha school jaaneka par family ko support bhi to karnatha". And he continues with his job with his un-deteriorating passion, keeping me in dilemma and confusion as if it was right to ask him this question. More than this, it kept me in deep thoughts... that what is it that has deprived him of his education and forced him to take care his family. Was it a compulsion for him to support his family or was it his upbringing that forced him to work in this..or was it his family tradition or his own willingness to not to go to school for studies.

His father told," Saahabpadhkebhikyakarega..wahi 10-15 hazzarkinaukri.. iss se aacha to apnadhandha hi hai... itna to hum aaram se kamaletelain.. aurphir.. apnajakamajamayakaamhai.."

Introduction

Child labour has become a social stigma and a blot on our society, as we proclaim to be one of the most advancing and progressive nations. Although many legislative provisions and initiatives have been enforced and a lot has been done, and the data in reports suggests that we have taken up the things seriously and have substantially reduced this problem to a lot extent. But still the reality is far away from the truth. One can easily spot these violations at least in Gurugram and particularly on the road side dhabas and road side eateries /stalls and the truth is exposed and put these claims and reports at stake.

Child labour is now more invisible because the location of the work has changed from the more formal setting of factories, to business owners' homes. There has also been an increasing involvement of children in the home-based and informal sectors. With urbanization and cut throat competition came challenges and hardships, as people moved to metro cities or cosmopolitan cities in search of job or business or higher studies. Along with it, came the challenge to feed their stomach. Sensing this, many food service industries came in and a new trend for feeding the hunger started. Now, food service industry is flourishing leaps and bounds and is one of the most vibrant industry having a major impact on the socio-economic condition of India. At one end it has pumped in lot of revenue by generating business and at the other end it has fulfilled the needs of those who needed a solution for hunger.

Definition of Child Labour

"Child" as defined by the child labour (prohibition and regulation) Act 1986 is a person who has not completed the age of 14 years.

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.

| Legislation | Section | Definition of the term Child |
|---|------------------------------------|--|
| <ul style="list-style-type: none"> CLPR Act, 1986 The Minimum Wages Act, 1948 The Beedi & Cigar Workers (Conditions of Employment) Act, 1966 Plantations Labour Act, 1951 | 2 (ii) 2 (bb) 2 (b) 2 (c) | Child is a person who has not completed "fourteen" years of age |
| <ul style="list-style-type: none"> Factories Act, 1948 | 2 (c) | "Child" means a person who has not completed his "fifteenth" year of age |
| <ul style="list-style-type: none"> The Motor Transport Workers Act, 1961 Shops & Establishments Act, 1948 | 2 (c) 2 (2) | "Child" means a person who has not completed his "fifteen" year of age |
| <ul style="list-style-type: none"> The Juvenile Justice (Care & Protection) of Children Act, 2000 The Mines Act, 1952 | 2 (k) 40 | "Child" is any person below the age of "eighteen" years |

***Legal Age for Working in India:** Children below age of 14 years cannot be hired for work. However, Adolescents between the age of 14 – 18 years cannot be employed in any hazardous occupation.

Causes and nature of child labour

- The poverty and illiteracy of a child's parents
- The family's social and economic circumstances
- Lack of awareness about the harmful effects of child labour
- Lack of access to basic and meaningful quality education and skills training
- High rates of adult unemployment and under-employment
- The cultural values of the family and surrounding society.
- Out of school children (OOSC) or those children at risk of dropping out can easily be drawn into work and are more vulnerable to exploitation.
- Rural poverty and urban migration also often exposes children to being trafficked for work.

Characteristics of Child labour

Child labour involves at least one of the following:

- It deprives a child from his childhood
- It has a negative impact on the physical, mental and emotional well being
- It makes the child get involved in various malicious or illicit activities.
- Involves intolerable abuse, and undue pressure of the family as well as the society.
- Prevents a child from going to school

Literature review on Legal & Constitutional Provisions

Child labour is a socio-economic issue, inevitably linked to poverty and illiteracy. To solve this problem, many proactive measures have been taken by the government.

Prominent Legal provisions are listed below:

1. ***The Factories Act of 1948*** : The Act prohibits the employment of children below the age of 14 years in any factory. The law also placed rules on who, when and how long can pre-adults aged 15–18 years be employed in any factory.

2. **The Mines Act of 1952** : The Act prohibits the employment of children below 18 years of age in a mine. Mining being one of the most dangerous occupations, which in the past has led to many major accidents taking life of children is completely banned for them.
3. **The Child Labour (Prohibition and Regulation) Act of 1986** : The Act prohibits the employment of children below 14 years in any of the occupations and processes specified in the schedule. Section 7 of the Act specifies that the period of work of a child in any establishment on each day is fixed so as not to exceed 6 hours. Section 7(4) prohibits night work between 7 pm to 8 am, and Section 7(5) prohibits double employment of a child in any establishment. Section 14 of the Act deals with penalties.
4. **The Juvenile Justice (Care and Protection) of Children Act of 2000** : This law made it a crime, punishable with a prison term, for anyone to procure or employ a child in any hazardous employment or in bondage. This act provides punishment to those who act in contravention to the previous acts by employing children to work.
5. **The Right of Children to Free and Compulsory Education Act of 2009**: The law mandates free and compulsory education to all children aged 6 to 14 years. This legislation also mandated that 25 percent of seats in every private school must be allocated for children from disadvantaged groups and physically challenged children.

Constitutional Provisions:

1. Constitution of India contains provisions for survival, development and protection of children; these are mainly included in Part III and Part IV of the Constitution, i.e., fundamental rights and directive principles of state policy.
2. India follows pro-active policy towards tackling child labour problem.
3. The concern for children in general and child labour in particular is reflected through the Articles of the Constitution of India.
4. Several articles of Indian Constitution provide protection and provisions for child labour.
5. **Article 15 (3)**: The State is empowered to make the special provisions relating to child, which will not be violative of right to equality.
6. **Article 21**: No person shall be deprived of his life or personal liberty, except according to procedure established by law. The Supreme Court held that „life“ includes free from exploitation and to live a dignified life.
7. **Article 21A(Right to Education)**: The State shall provide free and compulsory education to all children of the age of six to fourteen years, in such manner as the State may, by law, determine.

8. **Article 23:** Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence punishable in accordance with law.
9. **Article 24(Prohibition of Employment of Children in Factories, etc.):** No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
10. **Article 39 (e):** The State shall, in particular, direct its policy towards securing the health and strength of 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.
11. **Article 39 (f):** The State shall, in particular, direct its policy towards securing 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.
12. **Article 45:** The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.
13. **Article 51A (e):** It shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child or ward as the case may be, between the age of six and fourteen years.

Punishment for violation of Labour laws

The parents are not aware of the offence and are unaware of the consequences of exploiting the child. In strengthening the financial position of the family and the child in supporting the family business, is unaware of the long term consequences of this evil.

Today it is ok for them but in the long term these children shall be deprived of education and shall be forced to continue on with the family business of eatery. They are unaware that in coming years, the laws pertaining to un-organized food industry is going to be stringent and the un-organized food industry shall be bound to move towards organized sector.

Any person who employs a child or permits any child to work in contravention to the Child and Adolescent Labour (Prohibition and Regulation) Act is punishable with imprisonment for a term which would not be less than 6 months but which could extend to 2 years. In addition to imprisonment, the employer can also be fined an amount of Rs.20,000 to Rs.50,000.

| OFFENCE | CHILD LABOUR ACT | AMENDED CHILD LABOUR ACT |
|--|--|---|
| | PENALTY | PENALTY |
| Employment of a child or permitting a child to work in any occupation or process in contravention to the statute | Imprisonment: 3 - 12 months Fine: Rs.10,000 - Rs. 20,000OR both | Imprisonment: 6 months - 2 years Fine: Rs.20,000 - Rs. 50,000 OR both |
| Employment of an adolescent or permitting an adolescent to work in hazardous occupations or processes. | <i>Not prescribed</i> | Imprisonment: 6 months to 2 years Fine: Rs.20,000 - Rs. 50,000 OR both |
| Second or subsequent offence of employing any child or adolescent in contravention of the statute | Imprisonment: 6 months - 2 years | Imprisonment: 1 - 3 years |

Punishment for parents/guardians relaxed: There shall not be any punishment in case of a first offence by parents/guardians. In case of a second and subsequent offence, the penalty prescribed is a maximum fine of Rs. 10,000.

RESEARCH METHODOLOGY

The methodology adopted in analyzing and interpreting the findings of the empirical study is a descriptive one. In the empirical study the collection of data from primary source is important and necessary.

For comprehending the conceptual frame-work, use of secondary data from secondary source relevant to the issue shall also be made.

Sample Procedure and Data Collection:

To arrive at certain reliable inferences, 150 children, 100 dhaba owners including road side eateries, and 100 parents have been interviewed.

Certain findings while conducting this study:

1. Dhabas, road side eateries, have been exploiting the Child by using them as "Labour" in their day to day operations.

2. They are very hard to be traced out and have ways and means to distort the facts and manipulate the truth as the "owners / parents" don't verify the age.
3. In 13 incidences, it was observed that the age of the child was less than 12 years but the owners/ parents told that the child was above 15 years.
4. Since, these are volatile sectors, and mostly on transit, it becomes difficult to identify the people who exploit the child and involve him / her in daily work.
5. 65 out of 100, parents have rented a space or a stall/ rehdi and have to pay their owners by the end of the month a fixed amount of rent irrespective of the business volume. This ranges from 800/-to 1200/- Rs. per day
6. 25 out of 100 parents have deliberately stopped the schooling of their child giving an excuse of supporting their business.
7. One good thing that was observed and noticed was that there were no girl child involved in these stalls/ rehdi.
8. Seasons impact the business wherein, summers and rains are a bit sluggish, winters are a bit ok. But extreme weather conditions make it worse.
9. With entry of organized food players such as Mc Donald's, Pizza Hut, Swiggy, Uber eats etc the un-organized sectors have been deeply impacted.
10. In future, it will be very difficult for the road side eateries/ stalls to survive because of the increased competition from the organized players as they don't violate the norms and maintain good food hygiene practices.
11. To match up with the quality and hygiene standards, the road side stalls and eateries have started using standard ingredients and oil.
12. This has further increased the cost of food but even then they are satisfied as they serve hygienic food to their customers and they have repeated customers.
13. With this increasing cost, it becomes difficult to manage their family expenses.
14. With increase in number of customers and since they can't afford to employ an outside person, they have to engage their children as helping hands to manage the crowd at the time of lunch and dinner.

Conclusion

Although we have been sensitive and progressive in past few years, and have improved a lot when it comes to engaging child labour, still we have miles to go and make our country "child labour free".

The increased literacy levels could be attributed to the enforcement of the Right to Education Act and SarvaShikshaAbhiyan.

Despite the higher rates of literacy and school attendance, several children are still forced to work. Some micro-studies have reported a variety of reasons, such as:

- i) Location of schools at long distances;
- ii) Dilapidated school buildings;
- iii) Dearth of drinking water and toilet facilities,
- iv) Absence of separate toilets for girls;
- v) Insufficient number of teachers; and
- vi) Irregular attendance of teachers.

Such factors make education an ordeal for children. Timings of formal schools are rigid and are often in conflict with other activities, especially in rural areas. Even when children do go to school, they do not find any incentive to complete various school stages since the post-school employment scenario remains bleak and there are no additional returns to school education. The interplay of all these factors persuades children to leave school, and these decisions are taken mostly by their parents. This means that even as efforts to improve schooling and literacy levels have been rewarding, policy initiatives also need to focus on compensating families for the loss of wages incurred on withdrawing the children from paid employment. Along with rehabilitation of the children in terms of providing them education, there is a need to facilitate the economic rehabilitation of families.

Many government schemes pertaining to child education have been launched and substantial improvements have been noted and found. Along with this, legislative provisions and increased awareness has been observed among the owner/ parents by various NGOs and social activists.

Recommendations

Implementation of Free and Compulsory Education: There is a need to effectively implement free and compulsory education for the child atleast upto 12 years with increased resources and expansion of educational infrastructure.

Economic Rehabilitation of the Family: No parents wants their children to be uneducated, but are forced to do so because of economic constrains.

Adequate measures need to be taken to eliminate poverty, so that, families are able to overcome the economic crises that forced them to send their children to work.

Sensitization Programmes for the Community: Although people are aware and about the exploitation & ill-effects of the child labour, yet continuous sensitization programs must be organized by NGOs, schools, colleges, independent volunteers through plays, small gatherings etc. The community needs to be sensitized more so that these ill-effects could be minimized and voices must be raised against the exploitation.

Enforcement and Amendment of Labour Laws: As far as the enforcement of laws pertaining to the prohibition of employment of child labour is concerned, though there has been an improvement in efforts with regard to inspection. However, such efforts have not significantly translated into prosecution and finally conviction. In view of this, the gap between the conduct of raids, filing of cases and reaching a logical end should be minimized.

Raising of Minimum Wages: Limited employment opportunities and lower wages lead families to migrate to other states where rates for minimum wages are higher. Children in many of these families also take-up paid work. A raise in the minimum wages in states where the rates are low would result in controlling the processes of distress migration and debt bondage to some extent, preventing child labour and enabling children to continue with their schooling at their native place.

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