

Role of Indian Judiciary to Protect the Interest of Child Abuse in India

Abstract

Child in Indian society has always been a less spoken or discussed. The reasons of the same can be traced back to the socio-cultural background of the country. In the world children are taken as the greatest gift to society. Childhood is an important stage of human development as it holds the potential to the future of any society. Therefore every society relates its future to the present level of its children. Today child has been specified differently by different organizations. This paper aims to study the role of Indian judiciary to the interest of child abuse. This paper introduces that a lot of action taken by the judiciary for the protection of child abuse in his decision and guidelines.

Keywords: Child Abuse, India Judiciary.

Introduction

Today's children constitute tomorrow's future. However, it is a matter of grave concern that in India despite the constitutional mandate and legislative measures, many children are denied their basic rights and thereby they are deprived of childhood. The world report on child labour observed that child labour can compromise the productive capacity of workers during adulthood and thereby contain both national and economic growth and efforts to reduce poverty. There is a need for legislative and judicial reforms and vigorously implement the law dealing with child abuse. Moreover, in order to monitor convergence of service, social accountability and people's participations.

Objectives of the Study

Preventing and responding to exploitation and abuse is essential to ensuring children's rights to survival, development and well-being. The aim of this paper is to create a protective environment, where girls and boys are free from abuse and exploitation where laws, services, behaviours and practices minimize children's vulnerability, and strengthen children's own resilience. This approach is human rights-based, and emphasizes prevention as well as the accountability of legislature and judiciary. This protective environment rests on 2 strategic pillars: strengthening of national systems and social change.

Role of Supreme Court to preventing Child Abuse

*M.C. Mehta v. State of Tamil Nadu*¹ is an important judgment of the Supreme Court on the law relating to employment of children. In this case, the Supreme Court has not only made a distinct contribution to safeguard the interest of child labour but has displayed the creative role to protect the interest of children employed in hazardous employment. The court observed that:

"In this country people are assured under the interpretation given to Article 21..... to live with human dignity... It must include the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor the State Government, has the right to take any action which will deprive a person of the enjoyment of these basic essentials which go to make up a life of human dignity."²

Role of High Court to Protect child abuse

In *A. Srirama Babu V. The Chief Secretary to the Government of Karnataka*,³ the Karnataka High Court emphasized the need for taking stringent measures to prevent child labour. In lieu of this, the Court issued the following directions in this behalf:

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1. To begin with, the State shall take every step to educate the people to prevent child abuse and child labour.
2. As indicated by Supreme Court, the State should create a separate independent department concerned with child welfare. It cannot be denied independent department concerned with child welfare. It cannot be denied that the future of the Nation depends on the children of today, and hence appropriate steps should be taken to safeguard their interests.
3. It should take such effective steps to prevent vagrant child roaming in the city and towns. It should prevent the child existing as if unaccounted. Children just out of their cribs, begging and roaming in Railway Platform, Bus-Stations and Road Junctions is a common sight in any city. Such children huddling in the foot path during winter struggling to keep themselves warm, should generate a legitimate question in any passers by. Do we not have any responsibility for them? The answer should be an emphatic Yes. The State has to act in this behalf.
4. The State should organize and maintain after care home to take over the vagrant children. Appropriate legislation be made and be enforced strictly against vagrancy of children.
5. The State should establish as many after care homes as are feasible where the street children are taken care of and are trained to be useful citizen of the Country. The Government should encourage the formation of authentic, secular non-governmental organization to work with the Department of Children Welfare to be formed, for eradicating the child vagrancy.

Remedial Measures to Prevent Child Labour

The Karnataka High Court in *A. Srirama Babu v. The Chief Secretary to the Government of Karnataka*⁴, has suggested the following remedial measure to be taken to prevent child labour:

1. The poor parent sends his child to work to earn a pittance for want of any or proper employment avenue for himself. The employer, enticed by the prospect of paying low wages and longer hours of work, engages the child; the child works, without complaint as long as the master wants; there are not Trade Unions to clamour and protect his rights. The Factories Act states that a child may work at the most six hours a day. It means, if he turns out that quantum of work, it can be presumed that he turns out work of normal person. It so, There need not be distinction in the matter of wages to be paid to him. Equal wages may be notified under the Minimum Wages Act for a child as well as the adult.
2. The factory or workplace must be made congenial and hygienic. In places where large number of children are employed, the State should endeavour establishing of a school with the assistance of industrial undertakings in the area to educate the working child as indicated by the Supreme Court.
3. The State should consider taking steps to amend the Child Labour (Prohibition and Regulation) Act,

1986 in the manner indicated above to achieve desired effect.

4. The Government should see that each of the directions issued by the Government on the basis of the Court orders are strictly implemented and the Labour Laws are enforced. A mere inspection by the Labour Department for the sake of satisfying the statistics is not what is intended to be performed by them.

Abuse of Human Rights of Children in Circuses

The Supreme Court in *Bachpan Bachao Andolan v. Union of India*⁵ was called upon to deal with not only the question of abuse of human rights of children/ juveniles working in circuses and the issues relating to their, rehabilitation and social integration but a broader issue of evil of child trafficking and violation of children's rights in general.

In this case, a public interest litigation was filed before the Supreme Court under Article 32 of the Constitution complaining about serious violations and abuse of children who were forcefully detained in circuses and in several cases without any access to their families under extreme inhuman conditions. They were deprived of basic human needs such as insufficient space, food and water inadequate to satisfy the appetite of young growing children, erratic sleeping time, poor sanitation, no health care, high risk factor and meager salaries. They were bound by the contract in the wake of serious violations and abuse of children who are forcefully detained in circuses.

Conclusion

In the light of these, we have given careful thought to a suggestion that a time frame by indicated by us, starting with a few occupations/ processes which can be notified as hazardous, even for children upto the age of 18 years, and slowly expanding this list as time goes by. We do not think that a time frame can be fixed or a road map drawn up in a matter like this; occupations and processes keep changing constantly, new hazardous substances and processes may be identified and alongside, equally efficacious methods of containing or combating such hazards could be found out; the whole thing is a continuous process depending on advancements in science and technology coupled with the human desire to make all occupations and processes hazard free and safe. In a short run, however, we can make a beginning, based on existing legal provisions in India. We have made is such an attempt in Part IV. All occupations and processes involved in mining (both underground and open cast) and in building and construction work can be statutorily notified as hazardous for all children upto the age of 18 years. Likewise, we would suggest that all occupations and processes involved in doc work as defined in Dock Workers (Regulations of Employment) Act 1948 and Dock Workers (Safety, Health and Welfare) Act 1986 may also be notified, along with those as dangerous machines notified under Dangerous Machines (Regulation) Act, 1983. We would also, as indicated in Part IV consider for similar notification, all occupations and processes connected with the hazardous wastes, chemical accidents, biomedical waste management and so on,

in respect of which elaborate rules have been made under the Environment (Protection) Act 1986. Prior consultations with the Child Labour Technical Advisory Committee and with representatives of employers and workers organizations concerned would be a *sine qua non*.

Endnotes

1. AIR 1991 SC 417
2. Srivastava S.C. *Child Labour Law and its Implementation*, Universal Law Publishing, Nov. 2016
3. ILF 1997 Kar 2269: 1998 (1) Kar LJ 191.
4. ILR 1997 Kar 2269: 1998 (I) Kar LJ 191.
5. (2011) 5 SCC 1