

Child Labour and Human Right -A Study of Legislative and Judicial Trends-

Muktak Sharma

Research Scholar

Faculty of Law, Singhania University, distt Jhunjhunu

ABSTRACT

Human rights are essentially the rights of people as individuals and the groups. It is therefore, obvious that the activity on behalf of human rights cannot yield much practical results, if it remains confined to actions by government or to discussions and recommendations at the inter-government level and acceptance of their recommendations (Which in practice are disregarded with impunity) by the governments so, there is a need for institutional arrangements at local/regional/global level as well as persistent vigilance and living action by the people themselves.

CHILD LABOUR AND HUMAN RIGHTS -A STUDY OF LEGISLATIVE AND JUDICIAL TRENDS-

INTRODUCTION

If we look at the contemporary world in a wide perspective, we find that the most challenging problem of our time is now to utilize the vast knowledge and resources available today for the welfare and development of all humankind. The basic objective of the international peace and security, and equitable management of world resources is not an end in itself but a means to achieve the human welfare objective.

The urge for freedom is one of the strongest urges of mankind. It has duly emphasized by great philosophers that rights are essential for the development of man, especially for the moral development of man. J.S. Mill in his book "on liberty" and T.H. Green, a philosopher of the English liberal tradition, regarded rights as those conditions in which moral development can be possible. For the Greek Philosopher, Plato, therefore, exactly in terms of human rights philosophy, 'Justice involves giving each person his due'.

The philosophy of 'Aryavarta' has preached that the humanity is the virtue of humanity and arrogance the voice of an oppressive tyrant. Our ancient literature, viz., the Ramayana, the Mahabharata etc. and other codes given guidance on the principles of natural rights are find suitable place in modern human rights. In the **Rigveda**, it is said, 'Aryavarta Akanistasa etc.

SamBhrataro nor Vridhunosowbhagya.'

No one is superior (ajesyesthasaha) or inferior (akanisthasha). All are brethren (etc.

Bhrataraha). All should strive for the interest of all and should progress collectively (Sowbhagayasamvavidhula.)

It is well known that ours has been the philosophy of '**Vasudaiva Kutumbakam**'- the whole world is a one family.

The term human right is as such is not found in traditional religions.²Kautilaya jurisprudence through ample light in his renowned work 'Arthshastra' on human right of labour including dignity of women employment, wages, labour rate, death compensation, labour welfare and bonded labour etc.

1. Rigveda, Mandala-5, Sukta-60, Mantra-

2. See Jorone J., *The Jurisprudence of human rights in Meron Theodar, human rights in international law-* (1984) 75

The international community, represented at the United Nations has not only taken the initial steps in its long journey towards the goal but also set the meaning and direction of that journey. It has spelt out that the welfare and development of mankind includes universal respect for an observance of human rights and fundamental freedom for all without distinction as to race, colour, sex, language, religion, politics and other beliefs, or birth or other status.

Establishments Engaged in protection of Human Rights

Following the establishment of the United Nations, whose charter proclaims the protection of human rights as one of its principal purpose, scores of international instruments have adopted spelling out norms and standards to promote universal respect for, and observance of, human rights and fundamental freedom for all. Most instruments contain a set of Rights and freedoms which they seek to protect. Some are general, such as the universal declaration of Rights, and the international covenants on Human Rights, while other deals with specific rights, for instances, the rights of association and collective bargaining, or for specific groups like women and children and other vulnerable sections of the society. Other instruments are directed to eliminate such evil practices as racial discrimination against women, torture, slavery and slave like practices. Most instruments establish some machinery for their supervisions and implementation and impose an obligation on the member-states to report

periodically to an international body on the measures they have adopted to implement the provisions of the individual petitions or interested complaints against violation of rights. However, overall experience of international supervision and enforcements has been rather poor.

The struggle for human rights has always been a continuous attempt to respond to the ideals of humanism in a better way, and these ideals demand implementation by providing to each justice, equality and liberty as well as the rule of law. Hence, these key words are central to any discussion pertaining to human rights. Inherent dignity and worth of every human being has to be recognized and this is the foundation of human rights system. It also incorporates the willingness to participate in the solution of common problems of human kind to contribute towards the maintenance of the rule of law, and to make efforts for the advancement of equality and justice. It we take a note of the significant events of history in the direction of human freedom we find that declaration of rights took place on various occasions in different forms. In 1215, the Magnacarta sought to protect the rights of people by placing restrictions on the power of the king. The French revolution took place under the banner of rights to liberty equality and fraternity as these rights were regarded as preconditions to democracy.

The universal declaration of human rights

The universal declaration of human rights is the starting point of recognition by the nations of the world. At international level, that the inherent dignity and the equal and inalienable rights of all individuals are the foundations of freedom, peace and development in the world.

The universal declaration of human rights is a landmark to lay down the 'Jural postulates' which the civilization of the day demands. The preamble treats the declaration 'as a common standard of achievement for all people and all nations' which states are under duty to implement....the declaration, is not a statement of the interests actually protected by particular nations but of the ideal values which the more sensitive nations approve.¹

The Nobel peace prize and the prompter and protector of human rights, Rena Cassin, who drafted the declaration called it 'an epoch-making document'².

The universal declaration of human rights is the first global document giving a clear definition of basic human Rights. Article 1, states that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".³

The universal declaration of human rights, 1948 is not a bulky volume. But this slim document

ensures basic freedom, human dignity, right to life, decent standard of life, better working conditions for every man, woman and child worker.

The creation of the 30 instrument on various Human Rights adopted in 1966, known as the international bill of Human rights was one of the first tasks of the young United Nations.

The first two articles of the universal declaration emphasized that all human being, without distinction, are born free and equal in dignity and non-discrimination in the enjoyment of human rights and fundamental freedoms. The next 19 articles deals with the civil and political rights to which all human being are entitled. The next seven articles (22 to 28) deal with economic, social and cultural rights.

In accordance with the article 28, everyone is entitled to a social and international order in which the rights and freedoms set forth in the declaration can be fully realized.

The declaration of Philadelphia 1944 declares that "labor is not a commodity". This is one of the basic tenet underlying the ILO programs.

The ILO endeavor has been in the pursuit of human rights and equality of opportunity, it has been making a continuous effort to secure social justice to workers of all the nations of the world.

1. Paton, G.M. A Text Book of Jurisprudence, (1972), P.127.

2. Human Rights Day, Nagpur Times, 16th Dec. 1983(4).

3. See Universal Declaration of Human Rights, 1948.

Human rights are essentially the rights of people as individuals and the groups. It is therefore, obvious that the activity on behalf of human rights cannot yield much practical results, if it remains confined to actions by government of to discussions and recommendations at the inter-government level and acceptance of their recommendations (Which in practice are disregarded with impunity) by the governments so, there is a need for institutional arrangements at local/regional/global level as well as persistent vigilance and living action by the people themselves.

Over the decades and most specially since 1970s, there has been an explosive emergence of local, national and international organizations formed by people themselves on every continent and in almost every country of the world working for the promotion and protection of human rights. These non-governmental organizations (NGO'S) very enormously in their membership, in the scope of their activities and programs, and the influence or impact they have in domestic, regional and international arena. This is so because NGO's have emerged in response to specific conditions and crisis and are the product of social action, history and culture. Nonetheless there NGO's in all their diversity comprises a human rights movement, the dynamo that had driven the struggle against

arbitrary rule, for self-determination for social and economic justice. However, there is still need for evolving an all pervasive people's forum, at global level. These NGO's focus attention on some specific facts of H.R. problems (socio-economic) like liberation of bonded labourers rights and welfare of child labour, women labour and persons working in unorganized sector. These NGO'S also focused attention on the need for safe environments.

The NGO'S especially in the developing countries have little opportunity for exchange of experience, information sharing among themselves. Thus, there is an urgent need for greater interaction leading to the development of more enduring linkages between human rights activists, educationalist and jurists as individuals or in organized groups.

The first category consists of right to life, personal liberty, freedom of movement, equality before law, rights to noninterference by the state in certain matters, and so on. Under the second category fall the right to employment, education, freedom of thought, conscience and religion, freedom of opinion and expression, right to 'just and favorable remuneration expression.....and existence worthy of human dignity', and so on. Article 25 of the declaration says that 'everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the rights to security in the event of unemployment, sickness, disability, widowhood, old age other lack of livelihood in circumstances beyond his control. 'It is in fact this collective conscience of humankind which has given birth to a number of national and international voluntary and government organizations rendering help to the sick, poor, aged and the unprotected.

The legal process in the universalization of human rights effectively commenced with the Universal Declaration of Human Rights (UDHR) of 1948. The very first instrument- the charter of the United Nations (1945)-did contain the reaffirmation of "faith in fundamental human rights, in the dignity and worth of the human persons, in the equal rights of man and women and of nations large and small. " A major achievement of its draftsman was the emphasis of the importance of social justice and human rights as the foundation of a stable international order.

Indeed among the most vulnerable class of all groups in the society are the children. Although, concern of the international community for the well-being of a child has been repeatedly expressed in various instruments and the two specific ones, namely; the declaration and the convention on the rights of child respectively, set forth some basic principles, which includes enjoyment of special

protection and provision for special opportunities and facilities by law and other means, to enable a child to develop physically, mentally, morally, socially in health and conducive atmosphere. Every child is entitled to adequate nutrition, medical care, education, housing and recreation. He is to be protected from all forms of neglect, cruelty and exploitation. The said objectives were also incorporated in the U.N. declaration as proclaimed, "Mankind owes the child the best it has to give".

HYPOTHESIS OF THE RESEARCH

A very high percentage of children are subjected to forced labour. Child labour is a common phenomenon in almost all countries of the third world. What is still worse is 50 per cent do not get the basic needs of life; and 30 percent, there is no shelter from the sun, of the wind , rain of cool. They suffer from hidden hunger. What is referring to in the U.N. Jargon, as "Invisible malnutrition".

Exploitation of child labour is everybody's talk in these days and needs special care to save the future generation of workers from exploitation. Women workers, especially in seasonal occupation and unorganized sector as match factories, glass bangle industries, stone and lime workers, bricks kilns, mines. bidi workers and even in masonry work are not living a good life. In some exploitation cases their position is so poorly miserable that they are exploited economically, socially and even morally they are forced to live a life of below dignity attitude merely because they need two time meals. The gas leak disaster of union carbide has emerged as a calamity itself on the industrial and international scene.

RESEARCH METHODOLOGY

Exploitation of child labour in both the spheres unorganized child labourers and household workers - is a modern sub-realistic problem which needs immediate attention and fullest remedial action too.

The researcher analyzed the contents of various legal enactments pertaining to be child workers in India critically included the constitutional directives in this regard. The candidate has also examined the various judgments of the courts on various aspects of child labour and human rights and the action taken, policies framed or amending the existing law according to the spirit of the judgments to protect the child workers and their well-fare.

Note;- Must be printed at the End of the paper

Muktak Sharma

Research Scholar

Singhania University

Pacheri Bari, Jhunjhunu