

## **MIGRANT CHILD LABOUR IN KERALA – (WITH REFERENCE TO IMPLEMENTATION OF THE CONVENTION ON RIGHTS OF CHILD)**

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### **Abstract**

**Child Labour is a social evil which has to be eradicated. The volume of child labour in a country is the index of the extent of poverty on the one hand and an index of apathy and defective legislation to deal with the problem of child labour on the other hand. Socially, it is a disgrace for the society to exploit its children in utter disregard of moral and social values that any civilized society may be expected to maintain. From economic point of view it is wastage of a productive resource and a criminal misuse of the potentialities that could serve the future much more productivity than what they might be contributing at present.**

**The problem of child labour is a global phenomenon, though it might be more severe in the developing countries. Though the state of kerala is widely acknowledged for its remarkable achievements in the socio-economic scenario it has not able to keep its children away from labour force. That too migrant child labour is the most visible form of child labour in the state. Most of the working children are found in the unorganized sector and in marginal occupations on the streets including suffering from isolation, violence, sub standard working conditions, non-payment of wages, and the threat of being reported to the authorities. Further that amongst child labourers it is migrant children who receive less pay, work longer hours, less often attend school, and face higher death rates at work in comparison to local children.**

**This paper will discuss about the living and working conditions of the migrant child labour and the measures to solve the problems with reference to The Convention on the Rights of the Child (CRC).**

**Key Words: Child labour – problem- working conditions- unorganized sectors- measures – international conventions.**

### **1. INTRODUCTION**

Child Labour is a social evil which has to be eradicated. The volume of child labour in a country is the index of the extent of poverty on the one hand and an index of apathy and defective legislation to deal with the problem of child labour on the other hand. Socially, it is a disgrace for the society to exploit its children in utter disregard of moral and social values that any civilized society may be expected to maintain. From economic point of view it is a wastage of a productive resource and a criminal misuse of the potentialities that could serve the future much more productivity than what they might be contributing at present.

The problem of child labour is a global phenomenon, though it might be more severe in the developing countries. We have indications that the child labour is on an increase in India

which may be partly due to increased demographic pressures and partly due to perpetual problem of poverty in our country. Whatever might be the reasons for the existence of child labour and whatever may be the pattern of its distribution it is the problem facing the world community and demands that it (world community) rise to the occasion and resolve to take effective steps to eradicate this ugly blot on the face of human society.

In order to recognise the importance of children in the society the United Nations rightly decided to observe the year 1979 as the International Year of the Child. Such a decision has focused world attention on the problem of child labour and several programme have been chalked out under the auspices of I.L.O. to study the problem of child labour.

Besides low wages, child labour is also characterised by uncertainty of employment, shifting employers and jobs, lack of trade unionism and casualism. Child labour, perhaps presents one of the best examples of an information sector of a labour market. Several considerations enter into the fixation of wages, through bargaining power and the extent of economic compulsions that decide the wage to be paid by an employer.

Though the state of Kerala is widely acknowledged for its remarkable achievements in the socio-economic scenario it has not able to keep its children away from labour force. That too migrant child labour is the most visible form of child labour in the state. Most of the working children are found in the unorganized sector and in marginal occupations on the streets including suffering from isolation, violence, sub standard working conditions, non-payment of wages, and the threat of being reported to the authorities. Further that *amongst child labourers it is migrant children who receive less pay, work longer hours, less often attend school, and face higher death rates at work in comparison to local children.*

## **2. MIGRATION – AN IMPORTANT FACTOR FOR CHILD LABOUR:**

Migration is one of the most important factor for child labour. In article 32 of the Convention on Child Right says that ‘Government should consider ways to address the potential vulnerability of children to , in particular the worst forms of child labour. There are various types of migration which leads to child labour, they are the following family migration, independent child migration, and children left behind by migrant parents.

### **2. 1. Family Migration:**

Generally, most of the children move with their families. It serves as a common economic coping or survival strategy of households in many parts of the world and can provide families and their children with their opportunity on the other hand it also make them more vulnerable.

### **2.2. Independent Child migration:**

Although the majority of child migration moves with their families, significant number of children also moves independently. And also the study reveals that the girls are migrating more than the boys.

### **2.3. Children left behind by migrant parents:**

Comparing to family migration and individual child migration it is for the welfare of the children the study reveals that the left behind children has more emotional problems and other report reveals that they were more to abandon the school and most of them turn to drug

addiction on the other hand where parents have migrated, children must take over the domestic chores instead of education.

### **3. EXTENT OF CHILD LABOUR**

According to 1980 Report of the Bureau of Statistics and Special studies of the ILO, more than 52 million children were employed in a variety of occupations. Of these, South East Asia accounted for 29 million followed by 10 million in Africa, 9.1 million in West Asia,<sup>i</sup> 3.1 million in Latin America, 700,000 in Europe, 3,00,000 in North America and 10,00,000 in Oceania.<sup>ii</sup> India is one of the major countries of the world to have employed a good percentage of child labour. According to 1971 census there are 10.74 million child workers in the country of whom nearly 10 million that is 93.6% are employed in rural areas. Out of these about 78.7% are employed as cultivators and agricultural labourers. Of the remaining, 8.2% are engaged in livestock, fishing, plantation and orchards, about 6.0% in household industries. The rest are employed in trade, commerce, transportation and storage.<sup>iii</sup> However, according to the National Sample Survey estimate the country's child labour force in 1978 reached at 16.25 million.<sup>iv</sup> Be it as it may, a State-wise survey reveals that "Andhra Pradesh has the largest child labour force of 9.0% of the total of country, followed in Karnataka with 7.9%. The number of child workers in West Bengal is estimated at 5.11 lakhs. Most of the children are employed in hotels, restaurants, sweet shops, small engineering, foundries, and automobile repair shops and as cleaners for buses and taxis. Rag pickers are also generally the children below the age of 14. They generally work for private contractors and are made to work between 12 to 16 hours. They are also employed in book publishing concerns and binding shops."<sup>v</sup> From this it is evident that a considerable number of child workers are employed in agricultural and few in industrial sector.

The evil of employment of children in agriculture and industrial sectors in India is a product of economic, social and, among others, inadequate legislative measures. Social evil involved in the employment of children are widespread illiteracy resulting in lack of development of child's personality (which may continue even in his adult life), negligence and indifference of the society towards the question of child labour.<sup>vi</sup> There is also lack of proper appreciation on the part of parents as to how continuance of children in education would benefit their employment prospects and improve their standard of living.<sup>vii</sup> The economic problems involved in the employment of children are in no way less significant. The poverty resulting in inadequate family income and the desire to supplement compelled children to work. Indeed, the parents of low income group like artisans cannot afford to educate their wards even if education is free. For them an uneducated child is an asset; desire to be educated becomes a double liability because of:

- (a) loss of earning if the child did not work, and
- (b) expenditure on education howsoever small.<sup>viii</sup>

Thus the economic evils have not only deprived children at work from education but also led to high infant mortality, morbidity and malnutrition, particularly, in weaker sections of the society in urban area.<sup>ix</sup> The indifference of the legislator to provide adequate legislation to regulate the employment of children has failed to minimise the growth of child labour.

### **4. ABOLITION OF CHILD LABOUR: NOT PRACTICABLE**

Can the child labour be abolished? This issue may be answered in the negative, particularly in the present state of affairs where millions of families are below the poverty line and they have to deploy their children in the labour market in order to eke out a bare subsistence. In view of this the National Seminar on Employment of Children concluded.

Any legislation totally prohibiting child labour would virtually amount to inflicting on these children an unbearable suffering. Moreover, in the absence of possible alternatives, such a measure is likely to aggravate rather than mitigate their misery and hardships.<sup>x</sup> Thus the total eradication of child labour is neither feasible nor desirable in the foreseeable future unless basic human needs which includes food, shelter; clothing and educational facilities are provided to all people.

In order to meet the aforesaid situation policy should be framed both for the long run and short run. In the long term policy it is necessary to create conditions by providing proper climate and social security, educational training and other facilities in order to gradually eradicate child labour. In the short run it is necessary to eliminate and minimize the impact of adverse conditions<sup>xi</sup> affecting child labour, and to improve working condition of children. This can be done by regulating (i) hours of work, (ii) weekly holidays, (iii) leave, (iv) health, (v) safety, (vi) welfare and (vii) among others, social security.

## **5. SCOPE OF LEGISLATIVE PRESCRIPTIONS FOR CHILD LABOUR LIMITED**

In order to regulate the minimum age and working conditions of child labor the following legislations have been framed:

- (i) Children (Pledging of Labour) Act, 1933;
- (ii) Employment of Children Act, 1938;
- (iii) Factories Act, 1948;
- (iv) Mines Act, 1952;
- (v) Plantation Labour Act, 1951;
- (vi) Merchant Shipping Act, 1961;
- (vii) Apprentices Act, 1961;
- (viii) Motor Transport Workers' Act, 1961;
- (ix) Atomic Energy Act, 1962;
- (x) Beedi and Cigar Workers' (Conditions of Employment) Act, 1966;
- (xi) State Shops and Establishments Acts.

Quite apart from the aforesaid legislation the Minimum Wages Act, 1948 regulates the minimum wages of workers (including child labour).

However, the aforesaid legislation covers a very limited section of child labour. Thus the Factories Act, 1948 covers only the premises where manufacturing process is carried on and employing 10 or more workers where power is used and 20 or more workers where power is not used. Like the Factories Act, the scope of the Mines Act is also limited. Similarly, the Plantation Labour Act does not apply to plantations measuring less than 10.117 hectares. Likewise the Employment of Children Act does not apply in several establishments, Viz., building construction. But the Supreme Court in Peoples Union for Democratic Rights v. Union of India<sup>xiii</sup> found that it was hazardous work and it should be included under the Act. In response to the Supreme Court decision the Central Government issued a direction to the States to include building construction industry within its fold. Further, Merchant Shipping

Act does not bar employment of children (except trimmers and stokers) in home trade, ships of less than 200 ton gross, or in any other ship when the child is employed on nominal wages and in charge of his father or other adult make relatives.<sup>xiii</sup> Moreover, there is no law regulating employment of children in air transport, in land vessels and fishing vessels.<sup>xiv</sup>

However, there is no legislation (except those covered by the Plantation Labour Act and the Minimum Wages Act, 1948) which is applicable to child labour in agricultural and unorganized sectors which employ about 10 million i.e. 93% of the total child labour in terms of 1971 Census. Thus it is high time to have some legislation dealing with the child labour in such employment.

## **6. Problems of Child Labour**

### **6.1 Low Wages**

The main problem of child labour is that they are paid extremely low wages. These range from 0.50 paise to Rs.2.00 per day. Even judging by poorest standards of living, the wage is just not enough to provide even the subsistence living to the child. It, therefore, results in malnutrition on the one hand and hard physical labour on the other which subjects the child work to constant deterioration in terms of health and medical care and shortens his life span in the long run. It has a social dimension as well. Inadequate wages compel him to resort to social evil such as stealing, snatching and pick pocketing.

### **6.2. Long Working Hours**

The working hours of the child worker are unbelievably too long. He works for 12 to 16 hours a day. Before the affluent children are awake, the unfortunate child is at the workshop, sweeping, dusting and cleaning the shelves of his owner. He is to collect water for drinking, get cigarettes for his boss and obey all odd orders from his superior counterparts in the workshop. He is not even permitted a breathing space. He has no time to relax and replenish his energies or to have some recreation. He does not know the world beyond his routine.

### **6.3. Insecurity**

He is under constant threat and depression to lose his job. There is no law to protect him. There is no insurance, no provident fund and no pension for him. He is at the mercy of the unscrupulous master. He stays or goes according to whims and ways of his superior.

### **6.4. Loss of Talent:**

The more serious problem, in fact, is that child labour results in a considerable waste of national talent. Given the proper rear and care, education and training, who knows the child working in a workshop may have turned to be a great scientist, physician or a philosopher. Larger the extent of child labour, greater is the waste of national talents.

The other problem is with regard to the fixation of the minimum age of the child. Article 24 of the constitution prohibits the employment of children below the age of fourteen years in any factory, mine or in any other hazardous employment. "This is a constitutional prohibition which, even if not followed up by the appropriate legislation, must operate proprio vigore".<sup>xv</sup> Further, Article 24 is plainly and indubitably enforceable against everyone

and by reason of its compulsive mandate, no one can employ -a child below the age of 14 years in a hazardous employment.<sup>xvi</sup>

In order to fix the minimum age for employment of children different statutes prescribed different age. For instance, the Factories Act, 1948 prohibits the employment of children below fourteen years of age in factories.<sup>xvii</sup> The Mines Act prohibits not only the employment of any "child",<sup>xviii</sup> but even the presence of a child in any part of the mine which is below ground or in any open cast working in which any mining operation is carried on.<sup>xix</sup> The Plantation Labour Act prohibits the employment of children below twelve years of age in any plantation. Under Apprentices Act, 1961 no person shall be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade unless he has completed fourteen years of age. Beedi and Cigar Workers (Conditions of Employment) Act, 1966 prohibits employment of children below 14 years of age in any industrial premises. The Motor Transport Workers Act, 1961 prohibits the employment of children in the motor transport undertakings, The Children (Pledging of Labour) Act, 1933 declares void en agreement to pledge the labour of children below 15 years by the parent or guardian of a child in return for any payment or bone fit. The Employment of Children Act, 1938 also prohibits the employment of children below the age of 14 in workshops. Thus, there is a variation in regard to the minimum age for employment of children.

#### **6.5. WORKING HOURS FOR CHILD LABOUR:**

A few surveys which have been undertaken to assess the working conditions of child labour reveal that the working hours of child labour are beyond human expectation. It is hard, cruel and inhuman even to hear of children working for sixteen hours in eighties in twentieth century. However, a recent I. L. O. Report submitted to the United Nations Sub-Commission for fight against discriminatory measures and the protection of minorities,<sup>xx</sup> has highlighted that "about 28,000 children, some of them only five years old, were working in match factories in India for 16 hours a day from three in the morning."<sup>xxi</sup> Similarly, NIPCCD study reveals that (i) "children worked for long hours of work and average was 8.86 hours per day."<sup>xxii</sup> Likewise, a survey of child labour in Bombay shows that "the restaurant children would wake up nearly 2 hours before sunrise, put fire to the oven, wash the utensils, cups and plates, sweep the floor and arrange the furniture. They would then associate themselves with the preparation of tea, snacks and other breakfast items. They would serve the customers and perform varieties of chores till 11.00 p.m."<sup>xxiii</sup> this is true in many other parts of India. Under the circumstances, State cannot remain a mere helpless spectator in this state of affairs.

In order to meet the aforesaid situation the Factories Act prescribed four and a half hours of work per day for children. The Mines Act also prescribed the same working hours for an adolescent who does not possess a certificate from a certifying surgeon. The Shops and Commercial Establishment Acts of various provinces also provide for different daily hours of work for young persons. The Plantation Labour Act, 1951 does not, however, prescribe any limitation on daily hours of work. While the Factories Act, 1948, the Mines Act, 1952, the Plantation Labour Act, 1951, the Employment of Children Act, 1938, the Motor Transport Workers Act, 1951, Beedi & Cigar Workers (Conditions of Employment) Act, 1966, and the States Shops & Commercial Establishments Acts prohibit the employment of

children and in some cases even of young persons, but the provisions vary in respect to age and the duration of night.<sup>xxiv</sup>

### **6.6. HOLIDAYS AND LEAVE :**

Every child worker is allowed a weekly holiday under the Factories Act,<sup>xxv</sup> Weekly Holidays Act,<sup>xxvi</sup> Mines Act, Motor Transport Workers Act,<sup>xxvii</sup> and Beedi Workers (Conditions of Employment) Act.<sup>xxviii</sup>

Most of the labour legislations provide for annual leave with wages for children. Under the Factories Act, 1948,<sup>xxix</sup> Plantation Labour Act, 1951,<sup>xxx</sup> the Motor Transport Workers' Act, 1961<sup>xxxi</sup> and the Beedi & Cigar Workers (Conditions of Employment) Act, 1966,<sup>xxxii</sup> a child worker who works for more than 240 days or more during a calendar year is entitled during the subsequent calendar year for leave with wages at the rate of one day for every fifteen days of work performed by him during the previous calendar year. The Shops and Commercial Establishments Act of various provinces also provide for different periods of earned leave in different States. The Mines Act does not make separate provisions for annual leave with wages for children. The reason is obvious. Only adolescents are allowed to work in mines and for the purpose of the Act they are deemed to be adults for which annual leave with wages have been provided in the Act.

### **6.7. HEALTH, SAFETY AND WELFARE:**

The Factories Act disallows the young person to clean, lubricate or adjust any "part of a prime-mover or of any transmission machinery while the prime-mover or transmission machinery is in motion or to clean, lubricate or adjust any part of any machine if it is likely to expose her or him to risk or injury from the part".<sup>xxxiii</sup> The Act further prohibits the employment of children in any part of a factory for pressing cotton where the cotton opener is at work. But, if the feed end of the cotton opener is in a room separated from the delivery and by a partition extending to the roof or to such a height as the inspector may in any particular case specify in writing, children may be employed on the side of the partition where feed end is situated.<sup>xxxiv</sup>

### **7. CONCLUSIONS & SUGGESTIONS:**

The problem of migrant child labour can hardly be solved by implementing the provision of The Convention of Child Rights and the Kerala State has to concentrate more on the incorporation of existing laws by raising the minimum age of child to 15 as suggested by Committee on Child Welfare. It is submitted that unless basic human needs are provided to all people which includes food, shelter, clothing, educational facilities, the root evil cannot be eradicated only by prohibiting employment of children raising minimum age of employment.

There is no uniformity in the labour legislation in regard to minimum age, working hours, holidays, leave and health, safety and welfare to child labour. They vary from Act to Act. Further, small industries do not have any provision to regulate working conditions and welfare of child labour. Furthermore, the definition of "Child" and "Young Person" is also not uniform in different legislations. Moreover, barring some provisions in Plantation Labour Act and the Minimum Wages Act, agricultural and unorganised sectors are without

any protection. Further, there is no labour legislation which seeks to regulate working hours or prohibition of work during night in domestic services, unorganised sectors and to casual labourers. In such employments working children must be prevented from exploitation, unregulated working hours and hazardous conditions of work. Under the circumstances it is suggested that there should be a comprehensive legislation including legislation for child labour employed in rural and unorganised sectors. However, in making such legislation it is necessary to keep in mind the practical difficulties and problems of enforcement.

Access to education and training is not only a basic human right, recognised in international instruments but is also a key factor for social progress .and in reducing a gap, between socio-economic groups. Denial of opportunity to the children which may be due to economic difficulties is of serious concern, and a way has to be found to. give the child the necessary education in his more receptive years.<sup>xxxv</sup> It is, therefore, necessary to implement the recommendations of the National Commission on Labour, namely, (i) that hours of work of child labour be fixed in a manner so as to enable them to attend to schooling<sup>xxxvi</sup> and (ii) where the number of children is adequate, the employers, with the assistance of State Governments, should make arrangements to combine work with education.<sup>xxxvii</sup>

The scope and coverage of the Factories Act is limited. It is, therefore, suggested that the Act should be amended to extend the provisions of the Factories. Act in all manufacturing processes which is incidental to or connected with a factory irrespective of the number of persons employed in regard to the employment of child labour.

The Mines Act unlike the Factories Act does not specifically provide for certificate of fitness in case of employment on the surface or above the ground for adolescent, i.e. person who has completed his 15 years. Thus, it impliedly permits employment of child, on the, surface of the mine, who has completed his fifteen but not, completed sixteen years without any medical certificate of fitness. It is suggested that Section 44 of the Mines Act should be amended so that adolescent is not employed unless he has been certified fit as an adult by certifying surgeon and carries a token to that effect while at work. Further, the scope of the Act should be widened.

The present penal provision in labour legislation relating to the violation of the provision of the Act including those relating to child is insufficient to deter the employer. In order to create a deterrent effect, it is desirable to prescribe severe penalties under the Factories Act, 1948, Plantation Labour Act, 1951 and Shops and Commercial Establishment Acts. Furthermore, deterrent punishment should be prescribed when the commission of the same offence is repeated.

Steps should be taken to strengthen the welfare measures, at least in organized sectors. There is a wide gap in the field of child welfare which has not been covered by legislative and administrative action. Welfare provisions for children should specifically be provided under labour legislation permitting the employment of children.

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- <sup>xvii</sup> S. 67
- <sup>xviii</sup> “Child” means a person who has not completed fifteen years.
- <sup>xix</sup> S. 45
- <sup>xx</sup> See Jain. S.N.: “Child Labour”, *JILI 1 et. Seq.* (1981)
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- <sup>xxii</sup> *Ibid*
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- <sup>xxiv</sup> The prohibition in factories is from 10-00 p.m. to 6 a.m. for child between 14 & 17 years of age, in mines from 6 p.m. to 6 a.m. both for adolescent. i.e. 15 years of age and also for persons between 16 and 18 years of age; in plantations between 6 p.m. to 7 a.m. for a person who has not completed 14 years, under the *Employment of Children Act*, from 10 p.m. to 7 a.m. for persons between 15 and 17 years; under the *Motor Transport Act*, between 10 p.m. and 6 a.m. for persons who have completed 15 years but not 18 years; under *Reedi and Cigars Workers (Conditions of Employment) Act* from 7 p.m. to 6 a.m. to persons between 14 and 18 years and in *States Shops and Commercial Establishment* varying from 6 p.m. to 8 a.m.
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