

ADVANCE SUSTAINABLE DEVELOPMENT OF CHILDREN VIS-À-VIS PENDING BILLS IN INDIA

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Abstract: Sustainable development is a mode to preserve our earth for our children who are the future of any nation. Our actions of today will determine the future of our children tomorrow. But various problems such as poverty, lack of education, natural resources, malnourishment etc hinder our way of progress and development. There is a need to overcome these challenges irrespective of one's caste, race, gender, language, religion, origin, financial status, place of birth etc for sustainable development as investment in children today will bear fruitful results tomorrow. The obligation is cast not only on the State but also the people not to encroach upon the rights of the others.

In India, a total of fourteen Bills relating to the rights of the children are pending before the Parliament. Convention on the Rights of the Child was accessed by India on 11 December 1992 and it inter alia undertook to take measures to progressively implement the provisions of article 32 of the Convention, particularly paragraph 2 (a), in accordance with its national legislation and relevant international instruments to which it is a State Party. Article 32 specifically protects children from economic exploitation and prohibits their employment as it interferes with the child's education, or it can be harmful to his health or physical, mental, spiritual, moral or social development. It specifically deals with providing for a minimum age for admission to employment; appropriate regulation of the hours and conditions of employment and to provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

In relation to Article 32 of the convention the three main proposed Bills namely; Abolition of Child Labour Bill, 2013, The Child Welfare Bill, 2013 and The Child Labour (Prohibition And Regulation)

Amendment Bill, 2012 will be analysed in the paper along with their repercussions and suggestions.

The age factor of a child in India has been an ambiguous matter as there is disparity in the age of child under different enacted statutes and the pending bills. In certain legislations, a child is considered to be one who is below eighteen years whereas in others, it is below fifteen years, in some, below fourteen years. In the pending bills a further categorization has been made with respect to adolescents as well which further makes the proposed bills in contradiction with the already existing Indian enactments. The paper is an attempt to inter alia cover such anomalies of age and its consequences apart from lack of fund, scope of complete prohibition of employment for children and the extent of compliance with international standards.

The paper will also cover the comparative analysis of provisions of the Constitution of India and the other already existing relevant statutes relating to the rights of the children such as Indian Majority Act 1875, Indian Succession Act 1925, Mines Act 1952, Beedi and Cigar Workers Act 1966, Factories Act 1948, The Children (Pledging of Labour) Act, 1933, Merchant Shipping Act 1958, etc. The paper will also endeavour to cover the observations by the author in the form of repercussions and suggestions and the same will be supported by data gathered from the official websites and publications of the government of India, Journals of national and international repute, parliamentary debates, newspapers etc. The paper will also help the international fraternity in understanding the rights of children in India and their applicability through the prism of international standards set through various international conventions and documents.

Keywords: Age, Bills, Children, Sustainable and Parliament

INTRODUCTION

Sustainable development is a mode to preserve our earth for our children who are the future of any nation. Our actions of today will determine the future of our children tomorrow. But various problems such as poverty, lack of education, natural resources, malnourishment etc hinder our way of progress and development. There is a need to overcome these challenges irrespective of one's caste, race, gender, language, religion, origin, financial status, place of birth etc for sustainable development as investment in children today will bear fruitful results tomorrow. The obligation is cast not only on the State but also the people not to encroach upon the rights of the others. We must overcome the challenges to sustainable development not only for our children but also with our children. At the United Nations Special Session on Children, held in New York from 8 May to 10 May 2002, the global community endorsed a new agenda for young people; 'A World Fit for Children'. The document focuses on four key areas; promoting healthy lives, promoting quality education for all, protecting children from abuse, exploitation and violence, and combating HIV/AIDS.¹ Investment in children is an imperative way to prevent crises that are prevalent and advance sustainable development. 'Ensuring the rights and well-being of children is the key to sustained development in a country and to peace and security in the world'.² According to the dictionary³ meaning 'sustainable' means involving the use of natural products and energy in a way that does not harm the environment or that can continue or be continued for a long time.

Human rights set minimum entitlements and freedoms that should be respected by governments. They are founded on respect for the dignity and worth of each individual, regardless of race, colour, gender, language, religion, opinions, origins, wealth, birth status or ability and therefore apply to every

human being everywhere. With these rights comes the obligation on both governments and individuals not to infringe on the parallel rights of others. These standards are both interdependent and indivisible; we cannot ensure some rights without or at the expense of other rights. Convention on the Rights of the Child is the world's most widely embraced human rights treaty. In 1989, world leaders decided that children needed a special convention just for them because people under eighteen years old often need special care and protection that adults do not. The leaders also wanted to make sure that the world recognized that children too have human rights. The Convention sets out these rights in 54 articles and two Optional Protocols. It spells out the basic human rights that children everywhere have the right to survival; to develop to the fullest; protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. The four core principles of the Convention are: (a) Non-discrimination; (b) Devotion to the best interests of the child; (c) Right to life, survival and development; and (d) Respect for the views of the child.

Every right spelled out in the Convention is inherent to the human dignity and harmonious development of every child. The Convention protects children's rights by setting standards in health care; education; and legal, civil and social services. By agreeing to undertake the obligations of the Convention by ratifying or acceding to it, national governments have committed themselves to protecting and ensuring children's rights and they have agreed to hold themselves accountable for this commitment before the international community. States parties to the Convention are obliged to develop and undertake all actions and policies in the light of the best interests of the child.⁴

Precipitation of the issue in India

In India a total of fourteen Bills⁵ relating to the rights of the children that are pending before the Parliament are table 01.

¹ Accessed from <http://www.unicef.org/events/wssd/> on 27-10-2013

² Carol Bellamy, Executive Director of UNICEF accessed from <http://www.unicef.org/events/wssd/> on 27-10-2013

³ Oxford Advanced Learner's Dictionary, Oxford University Press, Seventh Edition

⁴ <http://www.unicef.org/crc/> accessed on 30-10-2013

⁵ http://164.100.47.4/newlsbios_search/NewAdvsearch.aspx accessed on 30-10-2013

Year	Bill No.	Short Title	Introduced in House	Type	Member	Date of Introduction	Status
2013	27	The Child Welfare Bill, 2013	Lok Sabha	Private Member	Bhola Singh	08/03/2013	Pending
2012	LVIII	The Financial Assistance to Girl Child Belonging to Parents Living Below Poverty Line Bill, 2012	Rajya Sabha	Private Member	T. Subbarami Reddy	08/03/2013	Pending
2011	89	The Destitute Children (Rehabilitation and Welfare) Bill, 2011	Lok Sabha	Private Member	Priya Sunil Dutt	08/03/2013	Pending
2013	4	The Abolition of Child Labour Bill, 2013	Lok Sabha	Private Member	Wakchaure Bhausahab Rajaram	22/02/2013	Pending
2012	100	The Special Educational Facilities (For Children of Parents Living Below Poverty Line) Bill, 2012	Lok Sabha	Private Member	S. S. Ramasubbu	07/12/2012	Pending
2012	LXIII	The Child Labour (Prohibition And Regulation) Amendment Bill, 2012	Rajya Sabha	Government		04/12/2012	Pending
2012	8	The Mentally Retarded Children (Welfare) Bill, 2012	Lok Sabha	Private Member	Hansraj Gangaram Ahir	27/04/2012	Pending
2012	7	The Women and Girl Child (Prevention of Atrocities) Bill, 2012	Lok Sabha	Private Member	Chauhan Mahendrasinh	27/04/2012	Pending
2011	36	The Special Educational Facilities (For Children of Parents Living Below Poverty Line) Bill, 2011	Lok Sabha	Private Member	Arjun Ram Meghwal Shri	19/08/2011	Pending
2010	L	The Girl Child (Free and Compulsory Education) Bill, 2010	Rajya Sabha	Private Member	T. Subbarami Reddy	19/08/2011	Pending
2011	XXII	The Prevention of Trafficking of Girl Child for Commercial Purposes Bill, 2011	Rajya Sabha	Private Member	Akhilesh Das Gupta	05/08/2011	Pending

Year	Bill No.	Short Title	Introduced in House	Type	Member	Date of Introduction	Status
2011	XVII	The Right of Children to Free and Compulsory Education (Amendment) Bill, 2011	Rajya Sabha	Private Member	P. Rajeeve	05/08/2011	Pending
2010	IX	The Free and Quality School Education to Economically Weak Children Bill, 2010	Rajya Sabha	Private Member	Prabhat Jha	03/05/2010	Pending
2010	I	The Two Child Norm Bill, 2010	Rajya Sabha	Private Member	T. Subbarami Reddy	03/05/2010	Pending

Table 01: In India a total of fourteen Bills⁶ relating to the rights of the children that are pending before the Parliament

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⁶ http://164.100.47.4/newsbios_search/NewAdvsearch.aspx accessed on 30-10-2013

India made the following declaration on 11 December 1992 while accessing the Convention on the Rights of the Child: 'While fully subscribing to the objectives and purposes of the Convention, realising that certain of the rights of child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international co-operation; recognising that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India - the Government of India undertakes to take measures to progressively implement the provisions of article 32, particularly paragraph 2 (a), in accordance with its national legislation and relevant international instruments to which it is a State Party'.

Article 32 of the convention states as follows: (1) States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. (2) States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment; (b) Provide for appropriate regulation of the hours and conditions of employment; (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

It means that the government should protect children from work that is dangerous or might harm their health or their education. While the Convention protects children from harmful and exploitative work, there is nothing in it that prohibits parents from expecting their children to help out at home in ways that are safe and appropriate to their age. If children help out in a family farm or business, the tasks they do be safe and suited to their level of development and comply with national labour laws. Children's

work should not jeopardize any of their other rights, including the right to education, or the right to relaxation and play.

Children are considered as future and foundation of a nation. If foundation is strong, the building is also expected to be strong. A child has rights, but due to age constraints, is unable to claim her/his rights. The rights of a child are exercised by proxy through the family, society and State.⁷ Children being the future of a country, bring development and prosperity to the country. But children are the most vulnerable part of the society and can be easily targeted. In India we have enacted many enactments and policies related to children in order to protect them and to give them a better and sound development. Unfortunately India has yet not ratified the Indian Labour Organisation's two major conventions on child labour; The Minimum Age Convention, 1973 and The Worst Forms of Child Labour Convention, 1992.⁸ On 18 May 2013 at New Delhi, the ILO Director-General Mr Guy Ryder in his statement to the 45th session of the Indian Labour Conference said, 'In this regard, permit me to say that the ILO looks forward eagerly – and with some impatience - to the day when we can celebrate India's ratification of Convention No. 138 on the minimum age for employment and Convention No. 182 on the worst forms of child labour. I hope that day is not far away....With those ratifications, India would join the group of our Members who have ratified all eight of our fundamental rights Conventions. That will be a great day'.⁹ The Worst Forms of Child Labour Convention, 1992 prohibits the employment of children altogether. However, the introduction of Child Welfare Bill, 2013 envisages complete prohibition on child labour. In *Lakshmi Kant Vs Union of India*¹⁰ the court while pointing to Articles- 15(3), 24 and 39(e) observed, 'the constitutional provisions reflect the great anxiety of the Constitution makers to protect and safeguard the interests and welfare of children in the country'.

⁷ Accessed from <http://www.childlineindia.org.in/pdf/Law-Manual.pdf> on 29-10-2013

⁸ Accessed from http://www.ilo.org/dyn/normlex/en/f?p=1000:10011:0::NO:10011:P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F on 28-10-2013

⁹ Accessed from http://www.ilo.org/global/about-the-ilo/who-we-are/ilo-director-general/statements-and-speeches/WCMS_213705/lang--en/index.htm on 28-10-2013

¹⁰ AIR 1984 SC 469

Moreover, Article 15(3) enables the State to make special provisions for children and Article 21 A provides compulsory and free education for children up to fourteen years. Apart from fundamental rights Article 39(e) of Directive Principles of State Policy prohibits the tender age of children from being abused. Article 39(f) ensures that children grow in a healthy manner and are protected from exploitation. Since the welfare of the entire nation depends largely upon the well being of its children, therefore the significance of rights of children cannot be ignored. 'A child is a national asset and therefore it is the duty of the State to look after the child with a view to ensure full development of its personality'¹¹. Article 45 directs the State to provide early childhood care and education for all children until the age of six years.

Article 23 and 24 of the Constitution of India assumed great significance and have become potent instruments in the hands of the courts to ameliorate the pitiable conditions of children in the country. A critical human and economic problem is that of child labour. Poor parents seek to augment their meagre income through employment of their children. Employers of children also gain financially. Article 24 puts only a partial restriction on employment of child labour. Article 24 prohibits the employment of a child below the age of fourteen years to work in any factory or mine or in any other hazardous employment. In *labourers Working on Salal Hydro Project Vs State of J & K*¹², the apex court observed, 'We are aware that the problem of child labour is a difficult problem... the possibility of augmenting their meagre earnings through employment of children is very often the reason why parents do not send their children to schools and there are large drop-outs from the schools. This is an economic problem and it cannot be solved merely by legislation. So long as there is poverty and destitution in this country, it will be difficult to eradicate child labour. But even so an attempt has to be made to reduce, if not eliminate, the incidence of child labour'.

The question of employment of child labour was brought to the attention of Supreme Court in several cases by way of Public Interest Litigations. In *M.C. Mehta Vs State of Tamil Nadu*,¹³ the court considered the constitutional perspectives of the abolition of the

child labour in the notorious Sivakshi Match industries. The court issued detailed directions to eradicate the practice of employing children below the age of fourteen years in this hazardous industry. The court insisted on must complying with the provisions of Child Labour (Prohibition and Regulation) Act by the employers. The court laid emphasis on the fact that abolition of child labour is definitely a matter of great public concern and significance.

The courts have shown great concern from time to time for the welfare of the children.¹⁴ Some of the important statutes dealing with the rights of children are; The Constitution of India, Indian Penal Code 1882, The Guardian and Wards Act, 1890, The Child Marriage Restraint Act 1929, Factories Act 1948, Plantation Labour Act 1951, Mines Act 1952, Women's and Children's (Licensing) Act 1956, Immoral Traffic (Prevention) Act 1956, The Young Persons (Harmful Publications) Act, 1956, Merchant Shipping Act 1958, Probation of Offenders Act 1958, Apprentices Act 1961, Motor Transport Works Act 1961, Beedi and Cigar Workers Act 1966, Criminal Procedure Code 1973, The Bonded Labour System (Abolition) Act 1976, Child Labour (Prohibition and Regulation) Act 1986, The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992, The Pre-Conception and Pre-natal Diagnostic Technique(Prohibition of Sex Selection) Act, 1994, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, Juvenile Justice (Care and Protection of Children) Act 2000, The Commissions for Protection of Child Rights Act, 2005, The Rights of Children to Free and Compulsory Education Act 2009, Protection of Children from Sexual Offences Act, 2012 etc.

Analysis of the pending Bills vis-à-vis Article 32 of the Convention on the Rights of the Child

Amongst the pending Bills, the following Bills endeavour to comply with Article 32 of the

¹¹ Sheela Barse Vs Union of India AIR 1986 SC 1773

¹² AIR 1984 SC 177

¹³ AIR 1997 SC 699

¹⁴ Vishal Jeet Vs Union of India AIR 1990 SC 1412: Malady of child prostitution was brought to the notice of the SC. *State of Rajasthan Vs Om Prakash* (2002) 5 SCC 745: Supreme Court referred to the 'special safeguard' provided for children under Article 39 to caution courts to have a sensitive approach when dealing with cases of child rape. *Gaurav Jain Vs Union of India* AIR 1999 SC 292: Supreme Court set up a committee to study the problem of rehabilitation of children of prostitutes in all its aspects.

Convention: (a) The Child Welfare Bill, 2013 (b) Abolition of Child Labour Bill, 2013 (c) The Child Labour (Prohibition And Regulation) Amendment Bill, 2012

The Child Welfare Bill 2013¹⁵ is a step towards the protection of rights of the children. The objective of the proposed Bill is to provide opportunities of all-round development to any child and also to provide protection against exploitation. The statement of objects and reasons of the Bill states as follows:¹⁶

'A large number of children are forced by their parents to do menial labour, in order to sustain their livelihood. Due to lack of proper diet and health care, these children become victims of a number of diseases. Some of them even succumb to premature death. Many of these children are highly talented. But due to lack of proper education and other opportunities, their talent goes waste. Children are the future of a country. It is, therefore, the responsibility of the Government to provide opportunities of all-round development to every child and also to provide protection against exploitation. Thus, it is proposed to bring in a legislation for the welfare and protection of children against exploitation'. Despite this objective, there are certain lacunae in the proposed Bill, which might operate as hurdles in the attainment of its goal of welfare of children.

Repercussions and Suggestions

Section 2 of the proposed Bill defines child as a person who has not completed the age of fifteen years. It means irrespective of the gender, a person is a child if he/she is below fifteen. However, in another pending Bill namely; Female Infanticide Bill introduced in the Lok Sabha in 2013 only, section 2(i) defines girl child as a girl up to the age of ten years. Hence there is a contradiction as to the age of a child. Moreover, it is also violative of right to equality under article 14 as there is no intelligible differentia for this classification. The Child Labour (Prohibition and Regulation) Act, 1986 defines 'child' as a person who has not completed his fourteenth year of age.¹⁷ The Plantation Labour Act 1951 has separate definitions for child, adolescent and adult. According to it, 'child' means a person

who has not completed his fourteenth year.¹⁸ 'Adolescent' means a person who has completed his fourteenth year but has not completed his eighteenth year¹⁹ where as 'adult' means a person who has completed his eighteenth year.²⁰ The Motor Transport Workers Act²¹ 1961 and the Beedi and Cigar Workers (Conditions of Employment) Act²² 1966, both define a child as a person who has not completed fourteen years of age. Matrimonial laws such as The Prohibition of Child Marriage Act, 2006 adds to the confusion. It states that a 'child' means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.²³ It means a male cannot attain majority until he is twenty-one years of age and female, eighteen. Due to lack of a clear cut definition, the unorganised nature of work and cases not being reported, it is easier for the employers to employ a large number of children without worrying about the consequences. Child Rights and You [CRY], a Non-Government Organisation working for underprivileged children, analysed data from the National Sample Survey 2009-10. According to CRY's analysis of thirteen states, twenty-five per cent of children in the 15-18 age groups are employed in some income earning activity. The situation is worse among Scheduled Tribe (36.1 per cent), Scheduled Caste (29.2 per cent) and Other Backward Caste (26.1 per cent) categories. States with the worst record in employing children in the adolescent age group are Gujarat, Karnataka and Andhra Pradesh. According to CRY CEO Puja Marwaha, 'The government should amend the law to ensure that all forms of child labour are prohibited for children up to eighteen years of age. CRY considers all those between 0 to 18 years of age to be children. And we urge the government to bring uniformity in law when it comes to the definition of a child'.²⁴ It is eighteen years according to Section 11 of Indian Contract Act, 1872. According to Section 3 of The Indian Majority Act 1875, every person domiciled in India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not

¹⁵ Bill No 27 of 2013

¹⁶ Accessed from <http://164.100.24.219/BillsTexts/LSBillTexts/asintroduced/4808LS.pdf> on 25-10-2013

¹⁷ Section 2 (ii)

¹⁸ Section 2 (c)

¹⁹ Section 2 (a)

²⁰ Section 2 (b)

²¹ Section 2 (c)

²² Section 2 (b)

²³ Section 2 (a)

²⁴ Accessed from <http://www.thehindu.com/news/national/who-is-a-child/article3528624.ece> on 29-10-2013

before. The Child Marriage Restraint Act, 1929 defines a 'child' as a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.²⁵ Hence there need to be some consistency on the definition of a child. With different Indian laws defining the age of 'a child' differently, the fight against child labour remains blunted. Such anomalies need to be removed. A common age is to be fixed for child so as to avoid any ambiguity and contradiction.

(1) Section 4 (1) of the proposed Bill directs the central government to establish adequate number of juvenile homes with all basic amenities for the welfare of children in every district of the country. The biggest flaw in this provision is the lack of fixation of time limit for such establishment. In the absence of any time limit, it may result in delaying the matter and the provision will thus remain only on papers without its implementation. Hence, the provision should also contain the time limit to speed up the establishment of juvenile homes.

(2) Section 4 (2) mandates that any child who is abandoned, orphaned, destitute, neglected or engaged in any job, occupation or begging shall be admitted to the juvenile home. But the provision does not deal with the punishment in case of failure to perform the mandatory duty by the officials nor does it specify any penal provision for the person for abandoning or neglecting the child or forcing him to beg.

(3) Section 5 of the proposed Bill provides for the following free of cost facilities to be provided to children in juvenile homes: (a) Accommodation, food and clothing (b) Education including higher education and (c) Such other facilities as are necessary for his all round development

However, no penal provision has been incorporated in case of failure on the part of the government officials in their duty of providing such facilities. Such an important issue cannot be left at the hands of the executive for framing rules there under in this regard. Since no specific penal provision is provided, it would be discretionary on the part of the executive to frame or not to frame the rules in this regard.

(4) Section 5 only deals with providing basic amenities to children. It does not specifically include providing monetary help to the children. Though the second clause of Section 5 may cover it indirectly by stating that every child be entitled to facilities necessary for his all round development but again it

depends upon the executive discretion to incorporate or not to specifically incorporate such a provision under the rules. Therefore a specific provision in the Bill itself is required. An account can be opened in the name of such children and a small amount of money can be periodically deposited in their accounts so that the other relevant needs of children can also be met since money is very important for the all round development of a child.

(5) A fund can be constituted in regard to the above in which money can be collected through donations for the welfare of the children.

(6) The establishment of juvenile homes with all basic amenities for children requires funds. Though the Bill involves expenditure from the Consolidated Fund of India²⁶, it should also have a provision for a separate fund to be constituted for this purpose only. Money can thus be collected through donations apart from the one provided by the central government.

(7) Non Governmental Organisations already working in this regard can be asked to join hands with the government so that with a better co-ordination, the desired goal of the Act can be achieved in a wider perspective.

(8) Section-3 of the Bill talks of prohibition of child employment by stating, 'Notwithstanding anything contained in any other law for the time being in force, no child shall be employed by any person for any work in any manner'. There is no provision in the Bill which deals with the punishment for employing children in any work in any manner. Hence, such ambiguities need to be removed.

(9) Section 6 of the proposed Bill casts an obligation on the central government to make provisions of reservation in posts and services under its control for children admitted to juvenile homes on attaining the age of eighteen years. But this provision may result in negative consequences as well. It may result in deliberately abandoning or neglecting the children so that the children can be given jobs. Hence reservation clause should be removed as it will bring communal inequalities rather than elevating the status of such children.

The Abolition of Child Labour Bill, 2013²⁷ aims to abolish child labour in the country. The statement of

²⁵ Section 2 (a)

²⁶ Financial Memorandum of the Bill accessed from <http://164.100.24.219/BillsTexts/LSBillTexts/asintroduced/4808LS.pdf> on 31-10-2013

²⁷ Bill No. 4 of 2013

objects and reasons of the proposed bill states that India has the largest number of child labour in the world. The official figure is thirteen million. But the actual number may be much higher. Indian children are the source of cheap labour because they can be paid less wages or can be abused without provoking retaliation. These children work in industries manufacturing crackers, diamond polishing, glass, brassware, carpet weaving, bangle making, lock making and mica cutting to name just a few. A large number of children also work as domestic servants. Poverty is cited as a major cause of child labour, but it is not the only determinant. Inadequate number of schools or even the expense of providing education leaves some of the children with practically no option but to work. The attitude of parents also contributes to child labour. Compulsory elementary education may help ameliorate this attitude. The problem of child labour cannot be eliminated in one stroke. Many countries have enacted laws providing for ban on buying products of industries where children are employed. Only multi-dimensional strategies including compulsory elementary education, eradication of poverty, eradicating parental illiteracy, making child labour illegal will help in achieving this objective. Stringent legal provisions, severe punishment for violation of laws, rehabilitation of children already engaged in work have to go along with abolition of child labour in the country. Therefore, a stringent law for abolition of child labour has been proposed. Child labour in any form in any establishment in the country has been proposed to be abolished²⁸ and failure to comply may result in punishment with simple imprisonment for a term which may extend to three years and with fine which may extend to rupees one lakh²⁹. Moreover, any parent or a lawful guardian of a child who coerces his child into employment is liable for punishment with simple imprisonment extendable to one year and with fine up to rupees fifty thousand³⁰. Any establishment employing children has been directed to remove such children from employment within six months from the date of coming into force of the proposed Bill and the failure to comply will result in closure of such establishment.³¹ This bill will have an overriding effect over all other existing acts. Besides, the bill also seeks to establish at least one Children Home in every district for rehabilitation of

children found employed in any establishment or collecting rags and waste or begging.³²

Repercussions and Suggestions

(1) Under the proposed bill child means a boy or a girl who has not attained the age of eighteen years.³³ This bill abolishes child labour in any form.³⁴ In the same session of the Indian Parliament different bills pertaining to the rights of the children have been introduced with contradictory provisions. If the Child Labour (Prohibition And Regulation) Amendment Bill, 2012 permits work by adolescents as legal then this bill will make it illegal.

(2) Moreover, any parent or a lawful guardian of a child, who coerces his child into employment, shall be punished with simple imprisonment for a term which may extend to one year and with fine which may extend to rupees fifty thousand.³⁵ But in the Child Labour (Prohibition And Regulation) Amendment Bill, 2012 parents are permitted to send their children for work where the child helps his family after his school hours or helps his family in fields, home-based work, forest gathering or attends technical institutions during vacations for the purpose of learning. Adolescents have been prohibited to work except in hazardous occupations under the Child Labour (Prohibition And Regulation) Amendment Bill, 2012. This may cause conflict of interests, hence contradictory provisions need to be rectified.

(3) Though this bill has been given an overriding effect³⁶ but mentioning of conflicting provisions in different bills does not serve any purpose except creating confusions.

The Child Labour (Prohibition And Regulation) Amendment Bill, 2012³⁷ aims at prohibiting the engagement of children in all occupations and prohibiting the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto.³⁸ Under this Bill a child means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is

²⁸ Section-3

²⁹ Section-4

³⁰ Section-5

³¹ Section -6

³² Section- 7(1)

³³ Section-2 (b)

³⁴ Section-3

³⁵ Section-5

³⁶ Section-8

³⁷ Bill No. LXIII of 2012

³⁸ Section-2

Sr No	Enactment	Provision Number	Age in years
1.	Indian Majority Act 1875	Section- 3	18
2.	Indian Succession Act 1925	Section- 2(e)	18
3.	Mines Act 1952	Section-2(1)(b)	18
4.	Bidi and Cigar Workers Act 1966	Section-2(b)	14
5.	Factories Act 1948	Section-2(c)	14
6.	Merchant Shipping Act 1958	Section-3(59)	18
7.	Motor Transport Workers Act 1961	Section-2(c)	15
8.	Plantation Labour Act 1951	Section-2(c)	15
9.	Juvenile Justice(Care and Protection of Children) Act 2000	Section-4(l)	18
10.	The Hindu Adoptions And Maintenance Act, 1956	Section-3(c)	18
11.	The Children (Pledging of Labour) Act, 1933	Section-2	15
12.	Right of Children to Free and Compulsory Education Act, 2009	Section-2(c)	6 to 14
13.	Indian Contract Act, 1872	Section-11	18
14.	The Child Marriage Restraint Act 1929	2(a)	18 (Female) 21 (Male)
15.	The Prohibition of Child Marriage Act, 2006	2(a)	18 (Female) 21 (Male)

Table 02: The age anomaly of child has been which depicts the difference in age of a child under different statutes

more³⁹. Though the proposed Bill aims at prohibiting child labour but has certain anomalies in it.

Repercussions and Suggestions

A child has been considered to be one who is below 14 years but it is in contradiction to the Indian civil and criminal justice system. The age anomaly of child has been shown Table 02 which depicts the difference in age of a child under different statutes.

The proposed Bill also defines adolescent as a person who has completed his fourteenth year of age but has not completed his eighteenth year⁴⁰. The Indian parliament is expected to maintain uniformity in the age of child and adolescent to avoid any conflict.

There is complete Prohibition of employment of children in any occupation and process⁴¹. However, certain exceptions have also been recognized in which prohibition is not applicable where the child helps his family after his school hours or helps his family in fields, home-based work, forest gathering or attends technical institutions during vacations for the purpose of learning. Adolescents have been prohibited to work except in hazardous occupations.⁴² This implies that child above 14 can be allowed to work as labour. The irony is that the Indian Criminal Justice system cannot give death penalty to an individual who is below eighteen years even if he/she has committed heinous offences like rape or murder but our civil law does make differences in age where it comes to determining the age of children.

Though the proposed Bill aims to prohibit employment of children in all occupations and processes to facilitate enrolment of children in schools in view of the Right of Children to Free and Compulsory Education Act, 2009 but the rights of the adolescents have been considered as secondary as they are allowed to work as labour. In a developing country like India, rights of all persons below eighteen should be on the same pattern as they are immature and their faculties need to be developed.

The proposed Bill only deals with the penal aspect where for employing children, employer is held liable but it does not talk about rehabilitation of such children who are thus retrieved from offending employers.

Article 21 A of the Constitution of India deals with the age of children from six to fourteen years only for the sake of their basic education and not for other matters. Hence a child should not be taken as a person below fourteen years but should be considered as a person below 18 years only for all matters. This will remove unnecessary ambiguities and conflicts.

Conclusion

Today, throughout the world, around 215 million children work, many full-time. They do not go to school and have little or no time to play. Many do not receive proper nutrition or care. They are denied the chance to be children. More than half of them are exposed to the worst forms of child labour such as work in hazardous environments, slavery, or other forms of forced labour, illicit activities including drug trafficking and prostitution, as well as involvement in armed conflict. Guided by the principles enshrined in the ILO's Minimum Age Convention No. 138 and the Worst Forms of Child Labour Convention No. 182, the ILO's International Programme on Child Labour (IPEC) works to achieve the effective abolition of child labour.⁴³ According to the ILO Declaration on Social Justice for a Fair Globalization adopted by International Labour Conference held on 10th June 2008 at Geneva on the occasion of its ninety-seventh session, it inter alia focused on the effective abolition of child labour⁴⁴. According to the World of Work Report 2013⁴⁵ prepared by International Labour Organisation, the female labour force participation declined by 8 percentage points between 2004 and 2005 (37%) and between 2009 and 10 (29%) in India. Though we have a Constitution but in order to have constitutionalism, it is pertinent that laws are followed in their true spirit and social justice prevails. There should be gradually increasing opportunities for children to participate in any aspiring democracy, and particularly in democratic nation like India. In

³⁹ Section-4(a)(ii)

⁴⁰ Section- 4(a)(ii)

⁴¹ Section-3

⁴² Section-3 A

⁴³ Accessed from <http://www.ilo.org/global/topics/child-labour/lang-en/index.htm#a1> on 01-11-2013

⁴⁴ Accessed from http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/genericdocument/wcms_099766.pdf on 01-11-2013

⁴⁵ Accessed from http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_214477.pdf on 01-11-2013

the wake of these proposed Bills, it is imperative that introducing a Bill in the Parliament should not only be a formality for the sake of performing parliamentary functions. It should rather be a responsible act of the parliamentarians showing sincere concern for its people who reposed faith in them by choosing them as their representatives. It is a good effort on the part of the Parliament for having

introduced such important Bills for which there had been long pending demands of the people. The international conventions and instruments should be truly followed and implemented by India. It is now to be seen and watched whether the anomalies in the Bills are removed, whether the Bills get transformed into Acts or not and how far they are implemented, if enacted.