

COMMUNITY HEALTH CELL
47/A, (First Floor) St. Marks Road
BANGALORE - 560 061

15-6
CH 4-6

Paper presented by Sat. Indira Rao at the Workshop held by the Karnataka State Council for Child Welfare on 25.2.1979

EMPLOYMENT LEGISLATION AND CHILD LABOUR

We have been talking about children as the future citizens and wealth of the nation. But, what is exactly the picture of the child that is before us, whether it is in the urban slums or rural areas or in the Tribal areas? Majority of the children live in utter poverty with hardly a square meal a day, with not enough clothing to cover their bodies, with bulging stomachs, with weak hands and legs, half naked and playing in the dust. This is the country's status of children. It is perhaps more accurate than a thousand statistics.

It is said numerically that the child population in the age group of 0 to 14 years is around 230 millions. Out of the 21 million babies born annually, 9% will die in the first year of life and 65% of deaths will occur in children under 5 years. Several mal-nutrition remains the single biggest killer of all and over 60% of our children suffer the retarding effects of nutritional anaemia. Only 1 in 3 will receive some sort of education and 4% will take up jobs, giving India the biggest child labour force in the World. So, we can only say that India's children are her most neglected assets.

No doubt, constitutional provisions have been made to safeguard the rights of the child. Articles 15 (3) of the fundamental rights says "The state may make any special provision for (Women and) children in regard to prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 24 under the fundamental rights, again says "Prohibition of the employment of children in factories, Mines and hazardous employment below the age of 14 years"

Under the Directive principles again Article 39 (e) and (f) says "The State must direct its policy towards securing inter alia that the children are not forced by economic necessity to enter vocations unsuited to their age and strength and that childhood and youth are protected against exploitation and against moral punishment.

Article 45 says, "The State must endeavour to provide free and compulsory education for all children until they complete 14 years of age". No doubt, these are provisions made in the Constitution for the protection of the children, but, unfortunately, most of these provisions still remain as a written work in the Constitution. * within 10 yrs!! but no state has compulsory ed. Karnataka - 6-10 yrs

Primarily, this is due to the fact, because of the helplessness of children who have no lobby of their own and are inherently unequal to the rest of the society, and therefore, are open to easy exploitation. Everything that can be done to prevent abuse, violation and cruelty against children needs to be actively and widely pursued through appropriate legislation, through education, creation of awareness in the status and life of the child and by promoting schemes which will facilitate normal, healthy, happy child. More than 10 million of our children work for a living, some because they are orphans some to supplement their parents' meagre earnings. Many are exploited by unscrupulous adults and forced to beg or take part in criminal activities like bootlegging, pick-pocketing, smuggling and pimping. Their happy carefree childhood has been nipped in the bud by the cruel circumstances. Though there are several laws to protect these child workers, there is no adequate machinery to enforce them.

In the field of employment, we are not lacking in the number of legislations that have been enacted. The main lacuna is in the enforcement machinery and also in creating public awareness and a lobby for the children.

The various employment legislations like the Mysore Shops and Commercial Est Act 1961, The Mysore Children's and Act 1964, The Factories Act 1948, The Motor Transport Workers Act 1961, the last but not least, the Karnataka Prohibition and Beggary Act 1975 are all there with exclusive provisions to safeguard the interest of children.

The first and foremost thing that one confronts with these various legislations is the very definition of the child. The Mysore Children's Act 1964 says that "Child means a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years". The Mysore

shops and Commercial Establishments Act 1961 says "Child means a person who has not completed his 12th year". The Motor Transport Workers Act 1961 says that "Child means a person who has not completed 15th year" and the Factories Act 1948 also says the same thing. The Karnataka Prohibition of Beggery Act 1975 says "Child means a boy who has not attained the age of 18 years".

The second point I would like to high-light in respect of the various legislations mentioned above, is with regard to the provisions made for children in these Acts. Rule 24 of the Mysore Shops and Commercial Establishment Act 1961 says "Prohibition of employment of children - No child shall be required or allowed to work in any establishment". Rule 25 says "Prohibition of employment of Women and young persons during night - No Woman or any person between the age 12 and 15 years shall be required or allowed to work whether as an employee or otherwise in any establishment during night". The Factories Act 1948, Rule 67, says "Prohibition of employment of young children - No Child who has not completed his 14th year shall be required or allowed to work in any factory" and prescribes a 4² hour day. Rule 68 of the same act also says that "A child who has not completed his 14th year or an adolescent shall not be required or allowed to work in any factory unless :-

- a) certificate of fitness granted with reference to him under section 56 is in the custody of the Manager of the Factory and,
- b) such child or adolescent carries while he is at work a legal certificate giving reference to such a certificate"

Again Article 73 of the above Factories Act says "The Manager of every Factory in which children are employed shall make a register of child workers, to be available to the Inspector at all time during working hours, or when any work is being carried on in a factory, showing:

- 1) the name of each child worker in the factory
- 2) the nature of his work
- 3) the group id any, in which he is included
- 4) where his group works on shifts, the relay to which he is allotted and the number of certificate of fitness granted under Section 69.

The Motor Transport Workers Act 1961, under rule 21 says "Prohibition of employment of children - No children shall be required or allowed to work in any capacity under any Motor Transport undertaking". The Karnataka Prohibition of Beggery Act 1975 under Rule (3) says "Beggery prohibited - No person shall beg in the areas in which this act is enforced".

The Employment of children Act, first passed in 1938 (1938) and amended subsequently, lays down a minimum age of 15 in the Railways and in ports, and 14 in workshops connected with Bidi-making and carpet-weaving etc.

Having mentioned the various provisions made in the various legislations, pertaining to employment of children, I would like to bring to the kind notice of the delegates regarding the various notifications of the Govt. fixing wages, for the various type of employment in the Beedi Industry, Agarbathi Industry, Tobacco Industry, Plantation Industry and in the construction works, maintenance of roads, building operations etc., and also for the various operations in Agriculture.

As could be seen from these various notifications issued by Govt. in the Labour Department from time to time, except in the plantation area, no specific wages have been fixed for children in any other field of employment. Only in the Notification No. SEL 95/LB/75 dated 20/11/76, a specific mention had been made for the wages to be paid to the children in coffee, tea, cardamon and rubber estates.

This again shows how children are neglected by not enacting the minimum wages to be paid to the children who are particularly employed in the rural areas and in the various agricultural operations. So it would be in the fitness of things for the workshop to discuss the areas where

the children have been employed and also for insisting upon the minimum wages to be paid to the children as in the case fixed for adults (men and women).

This apart, friends, I would like to emphasise the working conditions of the children who are employed in the various establishments particularly the Hotel Industry, the various Mechanical Shops, Petrol Bunks, the Beedi and Agarbathi Industries, the various factories like Silk Industry, the Textile Industry, etc., in the urban areas and in the various agricultural operations in rural areas. One important factor that I would like to highlight is also the use of children as domestic help in the urban areas, and the total exploitation of these children by the so called educated, sophisticated society ladies.

It is a sad factor that though we have a large number of research organisations, management institutions, and Social Welfare organisations, very little has been done in this area of child labour. The Big Industries where large number of labourers are employed have not only their rights. Unfortunately this area of child labour, which covers nearly 4% of the total work force in our country has not received any consideration or attention from the above mentioned organisations and institutions. We read from papers that the so called research organisations and management institutions conduct surveys regarding traffic, autorickshaws, and so on and so forth. But, it is a matter of regret to note that this important sector of child labour has not made any dent into these research institutions. So, friends, it is for you to rise up to the occasion and see that this neglected field of child labour receives the top priority in this International Year of child and a beginning is made to organise them and redress their exploitation.

The fact remains that the total eradication of child labour is neither possible nor desirable in view of the present level of economic condition of the country. So, the only other alternative which sounds more sensible and pragmatic is to eliminate, minimise the impact of adverse and undesirable conditions attendant to child labour and to promote healthy working conditions. So within this perspective, the following are the suggestions made for the consideration of the delegate.

1. A separate cell should be set in the Labour Department primarily for the effective enforcement of the various legislations. In other words, legal enactments and statutory provisions safeguarding the interest of the child labour should be matched by adequate enforcement and inspecting machinery. It can be re-enforced by creating a cadre of voluntary inspect who can assist the enforcement staff in visiting work spots, bring cases of violation to their notices and take all such steps as are needed to ameliorate the lot of child labour. The implementation lapses on the part of employers of children should be properly investigated, reported, deterrently penalised and widely publicised so as to build strong public opinion against the defaulters.

2. Multiplicity of acts and lack of uniformity in legal provisions also hinder the process of enforcement. Hence, efforts should be made for evolving a National Children's Code incorporating provisions of the children's act with model rules, uniform standards and norms governing employment of children in various sectors of avocations.

3. The age of child which has been defined uniformly in different legislations, as pointed out earlier should be overcome if possible by having a uniformity of age in particular fields and for specific purposes such as plantation, shops and commercial establishments etc.

4. What is essentially required is that children who need to work are guided by Special Employment Bureau and vocational centres to go into part-time jobs. Thus one of the first step to help the working child should be the identification and classification of jobs as desirable, hazardous and criminal and a channelling of child workers into the desirable jobs earmarked for him.

5. In the rural areas, particularly, children from the Lower Income group are deprived of schooling because the fact that they have to work in the

fields during agricultural seasons. So, it is very essential that school hours should be adjusted to suit the local conditions of such children so that they can attend school and also work.

6. The child workers should be assured of safe, healthy, working conditions and it should be made obligatory on all employees to provide them certain amenities like medical benefits, housing, insurance, recreational and educational facilities. The existing enactments and statutory provisions should be amended to incorporate the above mentioned items.

Perhaps, there is also a great need to educate the employers as well as the public about the legal provisions made to protect the interest of the children. However, it is the parents who must be motivated through education, propaganda, and publicity to see education as a postponement of their child's earning today in order to earn more tomorrow. Employers too have to be educated and pressured to avoid recruiting very young children for the sake of cheap labour and to provide for their education if they do employ them. Here the voluntary social welfare agencies can do a lot of useful work.

One good way to begin would be have a seminar, not of the intellectuals dealing with child welfare, but the people concerned themselves - namely the employers of child labour, the parents of working children and perhaps some intelligent, articulate working children themselves. Such a session may throw more light on the practical aspects of the problem and the difficulties likely to be encountered in the implementation of any programme of reform.

The bulk of the Child Labour is in the un-organised sector in both rural and urban areas. Hence, it is for the voluntary organisations like Mahila Mandals, Mohalla Committees and Welfare Organisations to rise up to the occasion and organise this child labour before a Trade Union Leader comes to the field and starts exploiting the children who are already exploited by the employers. So, Friends, let us rise up to the occasion, atleast during this International Year of the Child and make a sincere attempt to organise the child labour and give them all the assistance and help that is required so that they can be real asset to the Nation.

Thank you,