

THE LEGAL FRAMEWORK FOR COMBATING CHILD LABOR IN PAKISTAN

by

Anees Jillani

Introduction

There is no denying the fact that child labor exists in Pakistan on an extensive scale. There is, however, controversy regarding its extent and magnitude mainly because there is little official documentation on child labor. The lack of reliable data is partly due to the general tendency of the employers and others to conceal information as the work performed by children in certain cases may be prohibited by law. And partly due to the fact that most children work in agricultural tasks in rural areas and in the informal service sector in urban areas which are difficult to cover statistically. Official estimates also usually exclude children under the age of ten years, and above the age of 14 years. Generally it is estimated that more than ten million children in the age-group of five to 14 years are working in Pakistan.

There is thus an acute need to do everything possible to eliminate the possibility of employing children as an available option. Laws to prohibit, and regulate, child labor are accordingly important.

What is the Government's excuse for permitting these children to work when they should ideally be in schools? The Government upon hearing the word child labor tries to tell the whole world, including its own citizens, that it is prohibited under its laws. This is only partly true as only a small segment of the total child labor activities are covered by the present laws.

Constitutional Ban

Article 11(3) of Pakistan's Constitution prohibits employment of children below the age of 14 years in any factory or mine or any other hazardous employment; incidentally this Article is a copy of Article 24 of the Indian Constitution. The terms "factory", and "mine" are not defined in the Constitution but are defined in

the general Acts governing these establishments. However "hazardous employment" is not defined under any law in Pakistan.

Ban in Factories

The colonial rulers way back in 1934 had also prohibited the employment of children below the age of 15 years in factories under the Factories Act .A "factory" is defined under this Act to mean "any premises, .. whereon ten or more workers are working,.. and in any part of which a manufacturing process is being carried on." Thus if an establishment employs less than ten workers then it would not be considered a "factory" for purposes of this Act; and it can employ children unless not covered by another law.

Ban in Mines

The British in 1923 enacted the Mines Act that defined the term `mines' and prohibited the employment of a child below the age of 12 years in a mine, or his or her presence in any part of a mine which is below ground. In 1935, the lawmakers realizing that the age was low raised it to 15 years.

Ban in Shops

General Yahya Khan's martial law regime was active in enacting labor laws. One of the laws that it passed in June 1969 and which is still in force is the Shops & Establishments Ordinance. This law prohibited employment of children below the age of 12 years in any establishment. In 1975 in the Province of the Punjab, and in 1977 the General Zia's martial law regime for the whole of Pakistan, raised this age to 14 years. The term `establishment' is defined under this law to mean a shop, commercial or industrial establishment, private dispensary, hotel, restaurant, cafe, cinema and such other places as are notified by the concerned Provincial Government. The latter have not bothered to add to this list.

The Employment of Children Act

Child labor in certain occupations, however, has remained prohibited in both India and Pakistan since 1938 when the Employment of Children Act was introduced by the British. Both countries have now

replaced this law by their own legislations but Pakistan has failed to expand the list contained in the 1938 law. As a result employment of children in sectors other than those mentioned in the schedules to these laws remains legal and legitimate in the country.

In April 1991 in Pakistan, the ECA (Employment of Children Act) was passed not at the behest of the Government but on the initiative of a Senator. This law brought about some good changes but it proved to be detrimental in one area in that the minimum age for admission to employment instead of being raised through this law, unprecedently in the world, was lowered from 15 to 14 years in the case of several sectors like mines, factories, and establishments. This anomaly is just another instance of children having no voice and thus laws being drafted to their detriment despite best intentions. This Act, incidentally and ironically, is a copy of the Indian Child Labor (Prohibition & Regulation) Act 1986.

The Government of Pakistan cites this law as its master piece in its attempts to curb child labor. This legislation, however, can at the most be regarded as a first step in the right direction but leaves much to be desired. Most important of all, it covers few relevant employment sectors. Particularly as a result of the latter point, this law, even if fully and completely enforced, will not impact a great deal in bringing about a change in the overall child labor situation in the country. Three areas that remain outside its purview, and require immediate action to be included, are children working in the agricultural sector - 65% percent of Pakistan's population lives in the rural areas, the domestic child workers, and the self-employed children.

ECA's section 2(iii) defines a `child' to mean "a person who has not completed his fourteenth year of age." Its section 3 then states that

No child shall be employed or permitted to work in any of the occupation set forth in Part I of the Schedule or in any workshop wherein any of the processes set forth in Part II of that Schedule is carried on:

Provided that nothing in this section shall apply to any establishment wherein such process is carried on by the occupier with the help of his family or to any school established, assisted or recognized by Government.

The occupations listed in Schedule's Part I are outdated; as a matter of fact, the list has been copied from the Employment of Children Act 1938 the law which the ECA repealed. Part I of the Schedule covers the following occupations:

- (1) Transport of passengers, goods or mails by railway.
- (2) Cinder picking, cleaning of an ash-pit or building operation in the railway premises.
- (3) Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train.
- (4) Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines.
- (5) A port authority within the limits of any port.
- (6) Work relating to selling of crackers and fire works in shops with temporary license.

Four of the above occupations relate to railways; one to ports and last one to explosives. This list must have been relevant in 1938 when the Employment of Children Act was passed by the British; and in fact may be the major reason that children are not employed in these areas anymore. However the list is now not significant because children are not employed in large numbers in these occupations.

PART II of the Schedule is again a reproduction of the repealed 1938 law but it is relevant in that it at least covers areas in which children are still employed in large numbers. It prohibits employment of children where the following processes are carried on:

- (1) Bidi-making.
- (2) Carpet-weaving.
- (3) Cement manufacture, including bagging of cement.
- (4) Cloth printing, dyeing and weaving.
- (5) Manufacture of matches, explosives and fire-works.
- (6) Mica-cutting and slotting.
- (7) Shellas manufacture.
- (8) Soap manufacture.
- (9) Tanning.
- (10) Wool-cleaning.
- (11) Building & construction industry.
- (12) Manufacture of slate pencils (including packing).
- (13) Manufacture of products from agate.
- (14) Manufacturing process using toxic metals and substances such as lead, mercury,

manganese, chromium, cadmium, benzene, pesticides and asbestos.

The important processes from the above listing that are relevant to the Pakistani society include areas such as carpet weaving, manufacture of explosives, tanning and building and construction industry; the last four processes are an addition to the 1938 law's listing as the others have been copied.

The Federal Government is empowered to add any occupation or process to the Schedule. However it has failed to do so thus far. Or perhaps it seriously and sincerely believes that there is no child labor problem in the country.

Children of Any Age Permitted to Work for Families & Government

The proviso cited in the above Section 3 is also exploited by employers as they can always use the defense that the child laborer is only assisting his family in the establishment. The fact that a school established, assisted or recognized by Government is exempted from ECA is also absurd as this gives an impression that children employed by the Government somehow are not children.

Regulating Child Labor

Under the ECA, establishments in which none of the occupations or processes referred to in ECA's Schedule are carried on are then covered by Part III of the ECA which regulates working childrens' hours and periods of work; weekly holidays; and health and safety. One of the major criticism of ECA, and for that matter, its counter part in India, the 1986 Child Labor (Prohibition & Regulation) Act, is for legitimizing child labor by regulating employment of children. Any Government basically has three options with regard to child labor. Either it ignores it, or it bans it altogether, or it regulates it like any other labor. The Government of Pakistan as well as the Provincial Governments till to date have basically been ignoring it but laws like the ECA at least exist on the statute books that give child labor a legitimacy which is non-existent in the developed world by attempting to regulate it in some ways.

Hours of Employment

The ECA's Part III gives the concerned Governments the authority to prescribe by rules the maximum hours a child below the age of 18 years can be required or permitted to work in any specific establishment. These hours are prescribed in the Rules that have been enacted in each of the four Provinces; the rules slightly differ from province to province but generally require that no child should be allowed to work for more than six hours a day in commercial establishments, such as shops, hotels and restaurants; and no child should be allowed to work for more than six hours in establishments, such as a factory, or farm. The hours for the age-group 14 to 18 years are fixed at six hours a day for all kinds of establishments, excluding an hour long interval for rest after three hours.

The ECA has also set a general maximum ceiling of hours for all establishments. Thus the total daily hours cannot exceed seven hours, inclusive of the interval for rest, and the time spent in waiting for work on any day. It is obligatory for all employers to give every child an interval of at least one hour for rest after he or she has worked for more than three hours. In addition such a child cannot work between 7 pm and 8 am; and cannot work overtime. He or she also cannot work in an establishment on a day on which he or she had already been working in another establishment.

Every under-14 working child is also required to be given a whole day of holiday every week. This requirement implies that if an establishment is not covered by another law requiring a similar holiday, then children above the age of 14 may be refused such a weekly day of rest as this ECA provision only covers children below the age of 14 years.

Report Child Labor

Every employer of an under- 14 working child is required within a period of 30 days of employing the child to furnish to the Child Labor Inspector appointed under ECA establishment's name and address; person's name in-charge of the establishment, and nature of process carried on at the establishment.

Every establishment is ordered to maintain a register in respect of the working children.

Penalty

If anyone employs a child in contravention of ECA, then he or she is punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees, or with both. A repeated offense is punishable with imprisonment for a term which shall not be less than six months but which may extend to two years. Penalties leviable under the ECA also apply to the Factories Act, the Mines Act and the Shops & Establishments Ordinance. Any person may file a complaint for contravention of ECA in a Court of first class magistrate. However ineffectiveness of this law can be assessed from the fact that few, if any, have been convicted under it.

Bonded Child Labor

Bonded labor also remains an acute problems in certain regions of Pakistan. However, no serious attempt has ever been made to ascertain the number of bonded laborers in Pakistan. It may partly be due to the large total population in the country and the magnitude of the problem itself.

However, considering the nature of the bonded labor problem in the country, it can be said that children are likely to be bonded wherever and whenever their parents are forced to labor. Nevertheless, it is difficult to give any number in this regard.

Bonded labor is rampant in the brick kiln industry and in the agricultural sector and it is thus nothing short of shocking that child labor by children below the age of 14 years has not been prohibited under the provisions of the ECA in the sectors where bonded labor is prevalent. The ECA's prohibitory clauses do not apply to establishments where the process is carried on by the occupier with the help of his or her family or to any school established, assisted or recognized by Government.

Child labor in occupations or processes not covered by ECA's schedules are permitted. However, the

Bonded Labor System (Abolition) Act 1992 terminated all obligations of a bonded laborer to repay any bonded debt. It also took away the jurisdiction of any court for the recovery of any bonded debt. The Act also lays down that every decree or order for the recovery of bonded debt, passed before the Act and not fully satisfied before such commencement, would be considered to have been fully satisfied. Any attachment for the recovery of any bonded debt made before the Act stood vacated.

Creditors under the Act have been prohibited from accepting payment against any bonded debt. Any custom or tradition or practice or any contract, agreement or other instrument, by virtue of which any person, or any member of his family, was required to do any work or render any service as a bonded laborer, also became inoperative.

All property vested in a bonded laborer which was, immediately before the Act, under any mortgage, charge, lien or other encumbrance in connection with any bonded debt, in so far as it is relatable to the bonded debt, stood freed and discharged from such obligation. Otherwise, the bonded laborer is given the right to claim mesne profits from the person who continues to have the possession.

Acceptance of any payment against any bonded debt by a creditor which is considered to have been fully satisfied by virtue of the provisions of this Act has been made punishable with imprisonment for a term extending up to three years, or with fine which cannot be less than 15,000 rupees, or with both. Additionally, the person concerned could also be ordered to deposit in court the amount so recovered from the bonded laborer.

Pakistan is a federal republic, and consists of four Provinces. The Bonded Labor Act was enacted by the Federal Government, but its implementation has been left to the Provincial Governments. The latter Governments in turn are empowered to confer such powers and impose such duties on a District Mayors (Nazims) as may be necessary to ensure that the law is properly enforced. The District Nazim can then designate an officer subordinate to him to exercise all or any of the powers, and perform all or any of the

duties, enjoyed by him under the law. These officials are expected to promote the welfare of the freed bonded laborer by securing and protecting their economic interests so that they may not have any occasion or reasons to contract any further bonded debt. Such officials are duty bound under section 10 of the Act to inquire as to whether after the commencement of this Act, any bonded labor system or any other form of forced labor is being practiced by any person resident within the local limits of his jurisdiction.

The concerned officials are to be advised by Vigilance Committees established at the District level under the provisions of section 15, read with Rule 6 of the 1995 Bonded Labor System (Abolition) Rules. These committees consist of elected representatives of the area, representatives of the District Administration, Bar Associations, press, recognized social services and Labor Departments of the Federal and Provincial Governments.

Existence of bonded labor is to be stopped by the officials, including the District *Nazims*. Additionally, any member of the vigilance committee, upon learning about the existence of bonded labor, must immediately report to the District *Nazim* for taking appropriate action.

Forcing bonded labor on any person, or enforcing any custom, tradition, or agreement, by virtue of which any person or any member of his family is required to render any service under the bonded labor system, is punishable with imprisonment for a term extending up to five years but it cannot be less than two years. A minimum of 50,000 rupees can also be imposed along with imprisonment.

Prior to the enactment of the Bonded Labor Act, the major law that can be said to cover the issue of bonded labor amongst children is perhaps the Children (Pledging of Labor) Act 1933 (No 11) that was enacted in 1933, and remains in force till to date; it extends to the whole of Pakistan. The Act was enacted following recommendation of a Royal Commission on Labor in India that condemned the system of bonding the labor of children as worse than the system of indentured labor.

The Act declares an agreement to pledge the labor of a child void. It defines 'an agreement to pledge the labor of a child' to mean:

an agreement, written or oral, express or implied, whereby the parent or guardian of a child, in return for any payment or benefit received or to be received by him, undertakes to cause or allow the services of the child to be utilized in any employment, provided that an agreement made without detriment to a child, and not made in consideration of any benefit other than reasonable wages to be paid for the child's services, and terminable at not more than a week's notice, is not an agreement within the meaning of this definition.

'Child' is defined to mean a person who is under the age of 15 years; while 'guardian' includes any person having legal custody of or control over a child.

Apart from the above laws, bonded labor is also a criminal offense under the criminal laws. The Pakistan Penal Code way back in 1860 made slavery a criminal offense. Its section 370 makes import, export, removal, buying, selling or disposing of any person as a slave, or accepting, receiving or detaining any person against his will as a slave, punishable with imprisonment extending up to seven years, or fine, or both. Section 371 supplements the section 370 provisions in that it states that

Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves shall be punished with imprisonment for life or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Section 374 in this regard goes on to say that

Whoever unlawfully compels any person to labor against the will of that person shall be punished with imprisonment of either description for a term which may extend to five years or with fine or with both.

Section 100 of the Code of Criminal Procedure 1898 deals with the practical side of the issue by empowering a First Class Magistrate or a Sub-Divisional Magistrate to issue a search warrant if he has reason to believe that any person is confined under conditions that may amount to an offense. Additionally,

section 491 gives any High Court, whenever it thinks fit, power to direct that a person illegally or improperly detained in public or private custody within the limits of its appellate criminal jurisdiction to be set at liberty.

There is a special provision for the recovery of unlawfully detained females and girls under the age of 16 years. Section 552 of the Criminal Procedure Code says that a District Magistrate could upon complaint made on oath may make an order for the immediate release of such women or child who have been abducted or unlawfully detained.

In June 2001, the Government of Pakistan announced the National Policy and Plan of Action for the Abolition of Bonded Labor and Rehabilitation of Freed Bonded Laborers. The announcement itself was ironic that despite having a law in the shape of Bonded Labor System (Abolition) Act on the statute books for more than nine years, the Governments both at the Federal and Provincial levels have failed to eradicate this exploitative practice. The Government also announced constitution of a fund with an initial amount of Rs 100 million. Additionally, the Plan of Action talked about activating the Vigilance Committees and asked them to be convened at least once in two months and report their performance to the coordinating cell at the Provincial Home Departments. The Plan also expects the committees to visit suspected work places periodically and when complaints are received.

It remains to be seen if this new Policy and Plan of Action is just another rhetorical gimmick or an actual step sincerely meant to change the plight of the millions of bonded laborers toiling day and night in various parts of the country.

Ban in Merchant Shipping Industry

The Merchant Shipping Act 1923 states that no child below 14 years of age be engaged or carried to sea to work in any capacity in any ship registered in Pakistan; or in any foreign ship except in a school, or training ship; or in a ship in which all persons employed are members of one family; or in a home-trade ship

of a burden not exceeding 300 tons; or where the child is employed on nominal wages and is in the charge of his father or other adult near male relative. As can be seen from the provisions of this Act, there are several loopholes in this Act that can enable an employer to employ child labor.

Ban in Road Transport

Probably the only law in Pakistan that presently prohibits employment of children below the age of 18 years is the Road Transport Workers Ordinance 1961 which governs the conditions of employment of road transport workers. For employment of drivers, the minimum age is fixed at 21 years.

International Conventions

Pakistan has ratified the United Nations Convention on the Rights of the Child. This Convention defines a child as a human being below the age of 18 years. And it requires States to take legislative, administrative, social and educational measures to ensure protection of children from economic exploitation and from performing any work that is likely to be hazardous or which interferes with the child's education or which is harmful to the child's health or physical, mental, spiritual, moral or social development. It in this regard suggests to take cue from other international instruments on the subject in relation to issues regarding minimum age for admission to employment and regulation of hours and conditions of employment; and provision of appropriate penalties or other sanctions to ensure the effective enforcement of laws prohibiting child labor. One such instrument is ILO Convention concerning Minimum Age for Admission to Employment (No 138) which unfortunately Pakistan has yet to sign and ratify; another is the ILO Convention on the Worst Forms of Child Labor (No 182) that Pakistan signed and ratified in August 2001 but no measures whatsoever have so far been taken to enforce it domestically.

Conclusion

The state of Pakistani laws thus in relation to problem of child labor is not satisfactory, to say the least. All labor laws, and the Constitution, fixes the minimum age for admission to employment at 14 which conflicts with Convention on the Rights of the Child, and the ILO Convention 182, with customary

international law and other international instruments, and the age generally accepted internationally for permitting child labor.

Ideally child labor should not be permitted below the age of 18 years. However due to causes partly beyond the control of a government, this age may have to be lowered. It should nonetheless be not less than 16 years by which age a child should at least complete his or her secondary education. In no event, this age should be lower in mines, and work involving hazardous occupations and processes. The raising of age in these sectors is necessary due to the involvement of health hazards and the risks of personal injury. There should be no exceptions in such hazardous occupations like the ones existing presently under law which provide that a child can indulge in these hazardous occupations and processes if he or she is carrying it on with the help of his family or in a government school. This present exception in the ECA is absurd as these occupations and processes remain hazardous for children regardless of whether a child is working for a stranger, his or her family or government. In addition, if this exception remains then employers can continue to take the defense that children are only working for their families.

Lastly we must all remember that regardless of causes, child labor cannot be eradicated without banning it or at least making it prohibitively expensive and uncomfortable for the employers to employ children, for parents to send children to work instead of schools, and for children to work. Another weapon to control it is to use education as a weapon against child labor. Child labor laws must be accompanied by establishment of a broadly based education system that makes education mandatory.

The author is an advocate of the Supreme Court of Pakistan, and a member of the Washington, DC Bar. He is actively associated with SPARC (Society for the Protection of the Rights of the Child) in Pakistan.

Email: sparc@comsats.net.pk