

LEGAL STUDY OF WORKING INCONSISTENT WITH THE HEALTH, SAFETY OR MORALITY OF CHILDREN AND YOUNG PERSONS IN LIGHT OF INTERNATIONAL INSTRUMENTS AND CONDITIONS PREVAILING IN SOME COUNTRIES

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ABSTRACT

One of the most important human problems from the past to the present is the anomalous phenomenon of child labor, which various efforts were made to eliminate it including ratification of the Convention number 182 on the worst forms of child labor in 1999. The third Article of the convention refers to several instances of the “worst forms of child labor”; one of the instances introduces jobs inconsistent with the health, safety or morality of children and young persons. Due to the importance and necessity of further investigations, this study focuses on the subject and analyzes the relevant international instruments. Then, it examines the current situation in some African countries (Tanzania, Egypt), Asian countries (India, Thailand) and American countries (United States of America). Finally, it shows that the unpleasant aspects of child labor are not limited to certain areas of the world.

KEYWORDS: child labor, contradictions of labor law, International instruments, labor laws, rules of countries.

INTRODUCTION

The worst forms of child labor are jobs having detrimental effects on the health or existence of a child or a young person; the jobs not only expose them in danger but also can threaten their physical, psychological, emotional, social and moral health. This could include working in hazardous environments such as mines in which children and adolescents are exposing to the risk of death or injury due to mine collapse, explosion or the crumbling of rocks and stones. In the industrial sectors, the exposure to hazardous chemicals, combustion and serious injuries are common examples of worst forms of child labor. As well, poisoning with toxic substances such as mercury and lead and subsequently the dangerous infectious diseases such as silicosis (a respiratory disease) is expected. Working in the agricultural environment has many risks, especially when the child, or adolescent, is forced to work with dangerous tools or to work with chemicals such as pesticides and insecticides. Further, operational tools used by children and adolescents are designed for adults, not for them; therefore, the tools are not suitable, safe and protective.

In addition, working for a long time, sitting and bending in one place and position or crawling in a small space cause malformations, deformities, spinal injuries and walking problems. In this regard, on can name activities like sewing soccer balls and clothes, picking up a brick, breaking rocks and stones for road construction, match making, entering the narrow roads of mines, constructing bricks, etc. as well as continuous bending and lifting very heavy loads. Moreover, exposure to hazardous weather conditions such as burning sun or harsh rain without wearing adequate shoes or clothing cause severe colds and getting pneumonia or other diseases (ILO, 2011).

Working at unhygienic environments with inadequate ventilation or light is too dangerous; when adding by lack of sanitary and clean drinking water and health services, especially in remote areas, incidence of problems for children and young people will be common because they are exposed to a variety of diseases. It is clear that the above-mentioned jobs provide neither enough time nor enough power for attending school; the absence of education and training would result in fatal harmful impacts on the social and moral health of children. Apart from all above items, it should be noted that while working, children and adolescents are also subject to a number of injuries and stress, which as instance is abuse by employers. Meanwhile, poor work environments such as clubs, casinos, bars, centers of prostitution and corruption as well as physical and mental health and morality puts them at serious risk.

Therefore, dimensions of hard, dangerous, and works inconsistent with safety and morality are so widespread that it was discussed here only very briefly.

MATERIALS AND METHODS

International and regional instruments

The first document in this regard is Declaration of the Rights of the Child Proclaimed by General Assembly Resolution in 1959; the ninth Article of the declaration prohibits all children's activities inconsistent with their health and impair their physical, intellectual or moral growth. It says, "The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development." European Social Charter adopted in 1961 in Turin has confirmed the subject in its seventh Article, "to ensuring the effective exercise of the right of children and young persons to protection" (European Social Charter, 1996). In addition, in paragraph 1 of Article 7 the Contracting Parties undertake "that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morality or education."

The second paragraph of the same Article orders the parties "to provide that a higher minimum age of admission to employment shall be fixed with respect to prescribed occupations regarded as dangerous or unhealthy." Beyond, the tenth paragraph insists on the necessity to prevent children from being exposed to physical and spiritual hazards of occupations, it says that the Contracting Parties must try "to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work." It should be noted that the Charter was revised in 1996. Part of paragraph 3 of Article 10 of the International Covenant on Economic, Social and Cultural Rights has also stated that children employment in work harmful to their morality or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Convention 138 adopted in 1973 to make sure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. Paragraph 1 of Article 3 in the convention states, "The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morality of young persons shall not be less than 18 years." Article 3 of the convention also stipulates that "national laws or regulations or the competent authority may, after consultation with the organizations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morality of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity." Further, the third paragraph of Article 5 of the same convention claims that the provisions of the convention shall be applicable as a "minimum" in the following works: "mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers."

Article 7 presents that national laws or regulations may let the employment or work of persons 13 to 15 years of age on light works that are not likely to be harmful to their health or development. Recommendation concerning Minimum Age for Admission to Employment, adopted in 1973, pays special attention on the job hazard. Paragraphs 9 to 11 of Part III of this document draw attentions to countries where the minimum age for admission to types of employment or work, which are likely to jeopardise the health, safety or morality of young persons, is still below 18 years. It insists that in determining the types of employment or work, full account should be taken of relevant international labour standards, such as those concerning dangerous substances, agents or processes (including ionising radiations), the lifting of heavy weights and underground work. It comments that the list of the types of employment or work in question should be re-examined periodically and revised as necessary, particularly in the light of advancing scientific and technological knowledge. In this regard, a minimum age is not immediately fixed for certain branches of economic activity or types of undertakings, appropriate minimum age provisions should be made applicable therein to types of employment or work presenting hazards for young persons. In addition to these rules, the fourth part concentrates on keeping health and security standards, provisions, and appropriate supervision. It seems that using the word "young persons" in the convention and its recommendation is due to efforts to eliminate child labour in this convention and

other related documents. Paragraph 1 of Article 32 of Convention on the Rights of the Child has stated “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.” However, the European Social Charter had opened for revision and revised in Strasbourg on 3 May 1996. In paragraph 7 of the first part, it states, “Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.” (The European Social Charter, 2012). Likewise, With a view to ensuring the effective exercise of the right of children and young persons to protection, Article 7 obliges countries to “(1) provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morality or education. (2) Provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy [...] (10) ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.” However, considering that the European Social Charter opened for signature in Turin on 18 October 1961; the Turin version of the charter did not explicitly mention the minimum age of working at dangerous place, which in the mentioned charter it is determined as 18. The former charter had determined the least age for employment in legal and safe occupations. It seems that legislators eliminated the former text to avoid future misunderstandings and added the present text.

Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor adopted on Jun 17, 1999 regards “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morality of children” as the worst forms of child labor (Anker, 2000). Besides, Article 4 of convention 182 obliges the competent authorities to determine the types of work referred to under Article 3(d) by national laws or regulations or by the competent authority. They shall do this after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labor Recommendation, 1999. Additionally, the competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist and the list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

Recommendation 190 concerning the prohibition and immediate action for the elimination of the worst forms of child labor was adopted in 1999. The second section of Recommendation 190 is dedicated to dangerous activities and tries to introduce these practices as much as possible the complete forms in this context; these activities, which are named in paragraph 3 and 4, are:

“ 3. In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to:

- (a) work which exposes children to physical, psychological or sexual abuse;
- (b) work underground, under water, at dangerous heights or in confined spaces;
- (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
- (e) Work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

4. For the types of work referred to under Article 3(d) of the Convention and Paragraph 3 above, national laws or regulations or the competent authority could, after consultation with the workers' and employers' organizations concerned, authorize employment or work as from the age of 16 on condition that the health, safety and morality of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity” (Deakin & Wilkinson, 2005).

It is observed that all international rules, both regional and global, try to eliminate such practices and to avoid of it by children and young persons; but unfortunately the situation is going on in another way and the mentioned documents are ignoring by many countries. The following section investigates some of the countries.

RESULTS

Legal Study of Child Labor in some of the Countries

As it was mentioned, dimensions of hard, dangerous, and works inconsistent with safety and morality of children are so widespread; to complete the discussion, this paper briefly discusses the situation in some countries. In Tanzania, some boys undertake digging in the mine shafts to get the tanzanite that also involves going underground to take working tools and explosives to the shaft as deep as 300 meters. Girls in this country, girls must fetch drinking water and food to work sites, and collecting firewood carried heavy loads on their heads weighing 20 - 25 litres of each pail of water and 15 - 20 kilogram's (kgs.) of each bundle of firewood 3 to 4 times a day. The boys are exposed to chemicals when they sieve sand (silicosis) and may contract pneumonia and other respiratory complications and girls are at risk of contracting STDs, and HIV/AIDS due to sexual harassment at work place. Boys are stressed by working long hours in the pit without proper equipment and attire to protect them from heat or cold. They are mostly injured by explosives that explode because of poor handling. They may also die because of lack of air due to the sinking of the shaft soil and rocks that cover them underground. The girls are mostly subjected to stress and psychosocial problems such as gender based violence in homes and work sites, sexual abuse and exploitation, increased work burdens due to many hours they devote to working per day and week. They suffer from all results of their limited participation in training and education, and decision making positions outside their homes and work places (ILO/IPEC, 2006).

Accordingly, such activities are dangerous for both boys and girls, and the hazards put them at risk of health, safety and moral threats. Moreover, girls often face with more problems than boys because of gender and discrimination. The problems, which endanger them, are the result of intentionally or unintentionally sexual activities, sexual abuse, lack of education and often the lack of educational opportunities for them. In addition, the low average of age and physical and mental immaturity in children and adolescents behave as an important factor in their ignorance of the risks. With all these lines, Tanzania has joined the Convention on the Rights of the Child in 1991, the Convention 182 in 2001 and Convention 138 in 1998; therefore, the country should be obligated and bound to the provisions and contents of the documents, it seems that this country has to come a long way in advance.

In Beedi cigarette wrapping industry, Indian children and young workers suffer from fatal pains in the back and the waist because they have to sit on their feet all day. Long-term activities in the abnormal conditions are effective in their natural growth and bring physical abnormalities of organs for workers who have spent their childhood in these activities. Extreme pain in the hands, asthma and lung disorders are other complications of these activities (Tucker, 1997). Obviously, constantly working and living in a place with such a dangerous circumstances overshadows all the physical and mental aspects of young children.

Also, one can discuss injuries caused by working with metals and the tools in metal-cutting, fire and heat used in welding and acidic materials used in illuminating objects. Children often suffer from cutting and burning their fingers, hands, arms and feet in silversmith industry. These pains are added to eyestrain and headaches, lung disease and physical abnormalities, especially low back pain (Tucker, 1997). However, these physical and psychological complications are not something unique to cigarette wrapping industry and silversmith industry, but numerous risks could threaten Indian children in carpet weaving.

Spending a lot of time in tight spaces hurt a child's back and legs, which may be the cause of back pain. Many children suffer from scabies, itching, skin ulcers and other cutaneous diseases in carpet weaving industry. Lung disease and eye disorders are common, and gastrointestinal and intestinal disorders are evident. They are barely fed, work on only few hours of sleep, and sometimes have their hands burned with irons so that they do not bleed on the carpets (Lal & Khare, 2009). Therefore, these inhuman behaviors cause irreversible physical and especially mental disorders in children and young persons, and they have become a tired and frail generation; the impacts of them on society are undeniable. However, India joined Child Rights Convention, which in 1992; but unfortunately, it has not joined Conventions No. 138 and 182. However, approval of such documents shall not exempt India from the obligation to adhere to the provisions in the documents.

In Egypt, the children's charge for the cooperatives is to aid in controlling cotton leaf worm infestations by manually removing and destroying infected portions of leaves. The work mostly performed during the summer recess from school-plays an important part in protecting Egypt's major cash crop from one of the two main pests that perennially threaten it, and significantly reduces the volume of pesticides used to control infestations.

It is clear that working with chemicals and pesticides is dangerous for children and young persons and the physical and psychological effects are undeniable because this group is more susceptible to pesticide intoxication, due to physiological differences from adults that facilitate pesticide absorption and retention, as well as their greater sensitivity to specific toxic chemicals at given concentrations. It is noteworthy to mention that Egypt has joined Child Rights Convention in 1990, the Convention number 182 in 2002 and the convention number 138 in 1999.

In the United States of America, injuries to youngsters in the services and retail sectors include 26 percent of deaths among workers aged 17 and below from 1998 to 2002.¹ Children in the country engage in works like cashier, salesman, cook, bartender, waiter, food, transportation, removing trash and waste removal, care of children and adults, drive a boat, drive a car, transportation, warehouse shelving, work with a variety of devices and supplies, animal care, repairing and so on (Runyan *et al.*, 2007). It is known that such activities endanger young person's so that the mentioned death statistic will be proved.

In Thailand, prostitution and sexual abuse of children, as an activity inconsistent with the safety, health and morality of children and young persons, is quite prominent so that the country must be considered as one the main centers of prostitution. 81 % of Thai prostitutes are at risk of serious threats and physical attacks, 63% of repeated rape, 43% at risk of psychological damages for making pornographic films and photographs. These people sometimes have daily sex up to 20 people to satisfy the employers.

Clearly, regardless of the cause of promoting lewdness and prostitution in Thailand, the practice brings intolerable forms of damage and violence for children and young persons. In addition to health problems and spread of various sexually transmitted diseases such as HIV, the above risks are associated with psychological and mental problems for many people in this age group that their consequences could remain for many years and jeopardize the health of the community. Unfortunately, despite joining Child Rights Convention in 1992 and the Convention 182 in 2001, no sign of adherence to international instruments is found in Thailand.

CONCLUSIONS

Examination and investigation of the current cases and situations indicate that many professional fields, ranging from agriculture and industry to service sectors include precarious working conditions and environments that cause numerous physical and psychological injuries to in children and young persons. They are exposed to a variety of chemical and non-chemical pollutions and there is no promise for their health and safety; perhaps even they lose their lives due to the risks. Performing repetitive motions for long periods in unfavorable environments, working with tools that are designed for adults, intensive fatigue and inability to participate in educational and training environments, being infected with various mental and physical illnesses, being exposed employer abuse and being forced into prostitution and corruption would make them a weak, sick, poorly educated, sometimes illiterate and uninformed generation that would eventually corrupt the future of a community.

In order to fight such activities, the International Labour Organization tries to explain the dimensions of the subject through conventions and recommendations, along with various documents. It moves toward prohibition of such activities by determining the minimum age for the activities and criminalizing the violences; it also insists on sufficient supervision and punishment. The organization has emphasized the importance of issue by considering these practices as "the worst forms of child labor" in the Convention 182 and stating its instances in the Recommendation 190, which are accepted by most of the countries. Nevertheless, despite all this attention, disastrous dimensions of committing these practices either voluntary or otherwise are observable. Examples of such practices are working in deep water, carrying heavy loads, working with chemicals, sexual abuse, abnormal conditions of work environment and lack of educational facilities in Tanzania, long-term repetitive tasks, working with dangerous tools, exposure to various contaminants in India, working in extremely hot environments and with pesticides in Egypt, performing risky services in the United States and lewdness and prostitution, sexually transmitted diseases, mental disorders in Thailand. Despite the incorporation of international rules, these practices continue in many countries of Asia, Africa or America. It seems that the practices are the consequences of poverty, lack of parental awareness, discriminatory class structures, economic

crisis, cultural shortages, natural and malicious events etc. In each of the countries, the rates of performing such activities increase suddenly due to occurrence of one or more of these factors. Here, it is necessary to begin efforts to eradicate poverty, increase public education, promote awareness of people and families particularly parents, modify the class structure of society, endeavor to eliminate discrimination, cope with disasters and economic crises and legislate proper laws and provisions along with appropriate supervision, inspection and effective guarantees.

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