



CHILDREN SHOULDN'T WORK IN FIELDS BUT ON DREAMS: CHILD LABOUR

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ABSTRACT

The children are delicate and precious flowers of life. They are the most beautiful creatures made by the god and it is undisputed that they are the potential embodiment of our ideal, aspirations, dreams and hopes. Nelson Mandela famously quoted "There can be no keener revelation of society's soul than the way in which it treats its children." With these beautiful words, it prompts us to consider our global society and reflects on the changes that we actually need to see to live in a world where the health and happiness of our society is prioritized ahead of profit or economic gain. So, this paper aims to analyse the root cause of child labour in our society and highlights the recent change in types of child labour. A major concern is that the actual number of child labourers goes undetected. There are Laws which are meant for the protection of children from hazardous employment but they are not properly implemented. To eradicate this social issue even the international bodies like ILO and UNICEF has been working to reduce and eliminate the child labour by reforming the existing legislations. India has done well in enacting suitable legislations and policies to combat child labour. Nonetheless, its implementation at grassroot level is very much lacking.

KEY WORDS:- Child Labour, Employed Children, Working child, NCLP

HISTORICAL ASPECTS OF CHILD LABOUR

Children in India and elsewhere in world have not been given proper attention and exploited by the people for the accomplishment of their selfish ends. The employment of children in India, in the form of slavery, was mentioned since from in Kautilya's Arthshastra of 3th century B.C. it describes the existence of domestic slavery, in many prosperous households, where slaves were normally from low cast child slaves of less than eight years of age were known working in noble household works.

In medieval period, children were normally employed as trainees under artisans and craftsman. The tradition is still prevalent in providing employment to large number of children in carpet weaving or cotton or silk weaving even today in our country. After industrial revolution, in 18th Century the large numbers of children are appointed initially by the mill owners and later by the factory owners. The term child labour is at times used as synonym for 'employed child' or 'working child', in this sense it is co extensive with any kind of work done by a child for economic gain. Laws against child labour were passed under Employment of Children Act of 1938. These attempts of legislation failed as they failed to address the root cause of child labour that is poverty.

WHAT IS CHILD LABOUR?

Child labour is the practice of getting children engaged in economic activity, on part or full-time basis. It takes place when children are forced to work at an age when they are supposed to study and enjoy their



phase of innocence. It directly effects the childhood that leads to exploitation of children not only physical but also as mental, social, sexual and so on. The combination of Poverty and lack of social security network form the basis of harsher type of child labour. The increasing gap between the rich and the poor, privatization of basis services and the neo-liberal economic policies are causes major sections of the population out of employment and without basic needs. This adversely children more than any other group.¹

The *International Labour Organisation* defines child labour as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to works that is mentally, physically, socially or morally harmful to children or work whose schedule interferes with their ability to attend regular school, or work that affects in any manner their ability to focus during school or experience healthy childhood.²

UNICEF defines child labour differently. A child is considered to be involved in child labour activities if children between 5 to 11 years of age did at least one hour of economic activity or at least 28 hours of domestic work, and children between 12 to 14 years of age did at least 14 hours of economic activity or at least 42 hours of economic activity and domestic work combined per week.³

There is no reliable data on the exact number of children being exploited at work. The

¹ <https://blog.scit.edu/2013/08/05/child-labour-a-serious-social-issue/>[Accessed 7 Aug. 2019].

² <https://www.ilo.org/ipec/facts/lang--en/index.htm>[Accessed 6 Aug. 2019].

estimate ranges from 20 to 100 millions. They are engaged in a variety of industries or vocations-matches and fireworks, carpet making, glass bangle making, incense stick production, plastics and rope weaving, salt extraction, etc.⁴

CAUSES OF CHILD LABOUR

The main causes are Poverty, social inequality and lack of proper education. According to a **UNICEF** report, in rural and impoverished parts of the world, children have no adequate school facilities, even the availability and quality of schools is very low. Most children in child labour are unpaid family workers on family farm and in family enterprises. Basically, these families depend on the additional income that their children's work generates.

FORMS OF CHILD LABOUR: A RECENT CHANGE

According to a study by the **ILO**, the majority of the child labour of the world (around 71 percent) are engaged in the agriculture sector, including cotton production and rice fields. Approx 17 percent of children are serving as service staff, mainly as domestic workers or in restaurants, and rest 12 percent of child labour have been spread across are employed in dangerous activities in factory or mine or engaged in any hazardous employment.

Many child labourers in India are working in textile factories, helping with the processing of carpets, or doing back breaking work in brick making factories and quarries for very

³ https://www.unicef.org/infobycountry/stats_popup9.html[Accessed 8 Aug. 2019].

⁴ Justice Rajinder Sacher, *Human Rights Perspectives and Challenges*, p 28-29 (2004).



low wages. Other child labourers work selling cigarettes, on the street for the tobacco industry. Children are also used for cheap labour in industries such as steel extraction gem polishing and carpet manufacturing.⁵

An astonishing number of girls are victims of child trafficking in India, whether through traditional bondage or through organized crime. Around 1.2 million children in India are involved in prostitution and the worst forms of child labour are the commercial sexual exploitation of children. The recent changes in forms of child labour are due to enforcement of legislation, awareness amongst buyers about child exploitation, and international pressure. Child labour is now more invisible because the location of the work has changed from the more formal setting of factories, to business owner's homes. There has also been an increasing involvement of children in the home-based and informal sectors.⁶

CONSTITUTIONAL PROVISIONS REGARDING CHILD LABOUR

Under Constitution of India there are several articles which deals with protection and provisions of child labour.

Article 21A (Right to Education)

The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

Article 23(1)

Traffic in human beings and beggar and other similar forms of forced

labour are prohibited and any contravention of this prohibition shall be an offence punishable in accordance with law.

Article 24

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any hazardous employment.

Article 39 (e)

The State shall, in particular, direct its policy towards securing that the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength.

Article 45

The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

Article 51(k)

It shall be the duty of every citizen of India, who is parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

LEGISLATIVE PROVISIONS TO PREVENT CHILD LABOUR IN INDIA

The Child Labour (Prohibition and Regulation) Amendment Rules, 2017

⁵ <https://www.soschildrensvillages.ca/news/child-labour-in-india-588>[Accessed 9 Aug. 2019].

⁶ <http://unicef.in/whatwedo/21/child-labour>[Accessed 10 Aug. 2019].

⁷ The Constitution of India, 1950.



The Rules provide specific and board framework for prevention, prohibition, rescue and rehabilitation of child and adolescent workers. It makes clear on issue related to help in family and family enterprises and definition of family with respect to child, specific provisions have been incorporated in rules.

Further, it also provides rules for specific provisions incorporating duties and responsibilities of enforcement agencies in order to ensure effective implementation and compliance of the provisions of the Act.

The Child Labour (Prohibition and Regulation) Amendment Act, 2016

The Amendments prohibits the employment of adolescents in the age group of 14 to 18 years in hazardous occupations and processes and regulates their working conditions where they are not prohibited. The amendments also provide stricter punishments for employers for violation of the Act making the offence as cognizable. Further, the State Action Plan has been circulated to all States/UTs for ensuring effective implementation of the Act.

The Child Labour (Prohibition and Regulation) Act, 1986

The Act prohibits the employment of children below the age of 14 years in 16 occupations and 65 processes that are hazardous to the children's lives and health.

The Factories Act, 1948

The Act prohibits the employment of children below the age of 14 years. An adolescent ages between 15 and 18 years can be employed in a factory only if he obtains the certificate of fitness from an authorized medical doctor. The Act also limits the

working hours only for four and a half hours of work per day and prohibits the working during night hours.

The Mines Act, 1952

The Act prohibits the employments of children below 18 years of age in a mine. Further, it states that apprentices above 16 years may be allowed to work under proper supervision in a mine.

The Minimum Wages Act, 1948

It prescribes minimum wages for all employees in all establishments or to those working at home in certain sectors specified in the schedule of the Act. Central and State Governments can revise minimum wages specified in the schedule.

The Juvenile Justice (Care and Protection) of Children Act, 2000

This Act under Section 26 states that whoever procures a juvenile or the child for the purpose of any hazardous employment and keeps him in bondage and withholds his earnings or uses such earnings for his own personal gains shall be punishable with imprisonment for a term which may extend to three years and shall also be liable for fine.

The Rights of Children to Free and Compulsory Education Act, 2009

This Act provides free and compulsory education to all children aged between 6 to 14 years. It also provides Redressal of grievances under section 32 of the said act.

NATIONAL POLICIES AND PROGRAMMES FOR THE ERADICATION OF CHILD LABOUR

The National Policy on Child Labour, 1987

The National Policy on Child Labour declared in August, 1987, contains the action plan for tackling the problem of Child



Labour. It envisages a legislative action plan, focusing and convergence of general development programmes for benefiting children wherever possible, and project-based action plan for launching of projects for the welfare of working children in areas of high concentration plan. The NCLP Scheme was started in 1988 to rehabilitate child labour. The Schemes seeks to focus on rehabilitation of children working in hazardous occupations and processes in the first instance. Under the Scheme, after a survey of child labour in hazardous employment are withdrawn from these occupations and processes and then put into special schools in order to enable them to be mainstreamed into formal schooling system.⁸

INTERNATIONAL INITIATIVES ON CHILD LABOUR

ILO (International Labour Organisation)

ILO sets labour standards, develop policies and devise programmes promoting decent work for all women and men. The enactment of the Child Labour Amendment (Prohibition and Regulation) Act, 2016 and The Right to Education Act 2009 have paved the way for ratification of ILO'S two core conventions:-

1. **Convention No. 138** basically states that the minimum age at which children can start work should not be below the age of compulsory schooling and in any case not less than 15 years; with a possible exception for developing countries.
2. **Convention No. 182** prohibits hazardous work which is likely to jeopardize children's physical, mental or moral health. It aims at immediate elimination of the

worst forms of child labour for children below 18 years.⁹

UNICEF (United Nations International Children's Emergency Fund)

UNICEF acknowledges the need to seriously address child labour as key component of the organization policy. It has long experience in working in India against child labour. Most programmes highlights the specific types of work, such as cotton production in the states of Gujarat, Rajasthan, Maharashtra, Tamil Nadu, Karnataka and Andhra Pradesh, metal and carpets works in Uttar Pradesh and tea gardens in Assam. These programmes helps thousands of children and their families in areas with high numbers of child labour.

UNICEF has been working to reduce and eliminate child labour by reforming the existing legislations, for example setting a minimum age for child labour, Expanding education access, improving quality and relevance of education, Awareness- raising and mobilization of families and communities against the exploitation of children. Working towards convergence between government departments to prevent child labour and rehabilitate existing child labourers.¹⁰

LANDMARK JUDGMENTS REGARDING CHILD LABOUR

In *M.C Mehta v. State of Tamil Nadu and others*,¹¹ where the Supreme Court observed that despite the constitutional mandates, the stark reality is that in our country like many others, children are an exploited a lot. Child labour is big issue and remain intractable, even after about 63 years of our having

⁸ <https://labour.gov.in/childlabour/child-labour-policies>[Accessed 10 Aug.2019].

⁹ ilo.org/india; www.ilo.org/sacl[Accessed 11 Aug.2019].

¹⁰ <http://unicef.in/whatwedo/21/child-labour>[Accessed 11 Aug.2019].

¹¹ (1993) 1 SCC 645.



become independent, despite various legislative enactments prohibiting employment of a child in a number of occupations and avocations. In our country, Sivakasi was once taken as the worst offender in the matter of violating prohibition of employment child labour. As the situation there had become intolerable, the public – spirited lawyer, M.C Mehta, thought it necessary to invoke this Court’s power under Article 32, as after all the fundamental rights of the children guaranteed by Article 24 was being grossly violated. He, therefore, filed this petition. The Court then noted that the manufacturing process of matches and fireworks is hazardous, giving rise to accidents that can be of fatal in nature. So, keeping in view the provisions contained in Article 39(f) and 45 of the Constitution, it gave certain directions as to how the quality of life of children employed in the factories could be improved. The Apex Court also constituted a committee to inspect the directions.

In *Public Union for Civil Liberties v. State of Tamil Nadu*,¹² the Supreme Court while giving directions to all concerned observed that large numbers of children are working as domestic help in the urban, town and rural areas with no chances to go to schools even though the education from Standards I to VIII is compulsory under the Right of Children to Free and Compulsory Education Act, 2009. The Local Authorities should recognized such children and ensure that they get proper education.

In *Bandhua Mukti Morcha v. Union of India*,¹³ as this case basically dealt with the child labour, the Court held as under:

This right to live with human dignity enshrined in Article 21 derives its life breath from the Directives Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in condition of freedom and dignity, education facilities, just and humane conditions of work. These are the minimum standards that must exist in order to make a person to live with human dignity and neither the Central Government nor any State Government – has the right to take any action which will deprive a person of the enjoyment of these basic essential.

In *Sheela Barse v. Secretary, Children Aid Society and Others*,¹⁴ the Supreme Court held,

“If there will be no proper growth of children of today, the future of the country will be dark. It is the obligation of every generation to bring up children who will be citizens of tomorrow in a proper way.”

CONCLUSION

India has done well in enacting suitable legislations and policies to combat child labour. Nonetheless, its implementation at grassroot level is very much lacking. The laws related to child labour today does not eliminate it but only makes it shifts geographically to other places, to other

¹² (2013) 1 SCC (L & S) 215.

¹³ AIR 1984 SC 802.

¹⁴ 1987 SCR (1) 870.



occupations like agriculture which may be less paying or it might be still continued stealthy. The lack of specialized enforcement officer leads to lesser attention being given to child labour legislations. Moreover, many of the programmes related to child labour are very less funded.

Child labour is a complex problem which cannot be eliminated without first attacking it at the roots. Thus, poverty, unemployment, lack of proper social security, illiteracy and the attitude of society need to be tackled first before any progress can be made. The aim of government should not only be to make child labour abandoned but also to make it “socially and culturally unacceptable”. The government and collective efforts on the part of society are needed to put an end to this evil practice of child labour. The government should also make efforts to increase the incomes of parents by launching various development schemes. Efforts should be made towards poverty eradication as it is major cause of child labour and also efforts should be taken for educational reforms to provide free or affordable access to quality education. Child labour can only be eliminated by 2020 by its all forms when comprehensive steps, are taken by the Government.

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