



A CRITICAL ANALYSIS ON CHILD LABOUR IN INDIA

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INTRODUCTION

Human capital (education, health and motivation) of the economy has always been an utmost important determinant of personal and social progress, but is even more important in an increasingly competitive and knowledge-intensive global economy. Thus, from this point of view, the rate of economic growth depends significantly on the stock of human capital in a country. A low level of human capital development has long been recognized as a major barrier to economic growth and the elimination of poverty in developing countries and therefore give rise to other socio-economic problems. In this context, low level of human capital development directly or indirectly affects the future of children as children are an asset to a nation, thus it is the responsibility of the nation to enable them to nurture them through various stages of their development to realize their full human potential. However, every child who is out of school or participating in labour force to support the family, struggles directly or indirectly due to its natural growth and education which prevents him/her from attaining proper adulthood and training. So, if we take the view point of human capital or human capability perspectives then the incidence of working children in any society leads to reduce human capital and human capability which means enormous loss to the economy.

Today, the era of globalization has a strong focus on many social concerns wherein the issue of child labour has roofed up at the surface. Child Labour have always been the subject of little talk or discussion in Indian society. In every society, children are always considered the greatest gift to humanity. Childhood is an important stage of human development because it has the potential for future development of any society. Child labour is still common in many parts of the world and it is one of the oldest problems of our society and still continues. It refers to the employment of children in any work that deprives children of their childhood, which constitute the most deprived section of population forced to earn a pittance or to contribute to family work sacrificing personal development of prime age for want of opportunity and interferes with their ability to attend regular school, which is mentally, physically, socially or morally dangerous and harmful. Children were exploited in different ways during different times. This problem was common in poor and developing countries. In the 1800s, child labour was part of economic life and industrial development. Children under 14 worked as agricultural, factories, mining and street vendors. Children from poor families were expected to participate in family income, and sometimes worked with hazardous substance in dangerous conditions in 12-hour shifts. Most of the child labour is found in informal economy which is the product of poverty and it may vary in nature in different societies. In developing countries this is very much due to lack of family wellbeing and strong awareness about child education. Similarly, from this point of view, it states that in an economy with a low level of human capital, the worst form of child labour emerges, the incidence of child labour



in the economy is high and the level of schooling is low. On the other hand, in an economy with a sufficient high level of human capital, the worst form of child labour disappears, the incidence of child labour is low and level of education is high.

BACKGROUND OF THE STUDY

Actually, the prevalence of child labour is not a recent phenomenon, it is an old problem well rooted in human history. Even in ancient times other manual workers of agriculture and service conditions formed bulk of the population everywhere and their children were put to hard labour in houses and in field at a young age and there was no social taboo against children working along with their parents. The reason why these children work, the work they most commonly do and under the conditions which they work differ regionally, especially between industrial and developing countries. According to the International Labour Organization, in the world, 211 million children are laborers, 73 million under the age of 10, 12 million children work in the worst forms of child labour, and more than 8 million children are kept as slaves for domestic work, in trafficking, armed conflict, prostitution and pornography and more than 20,000 children die yearly due to work-related accidents. Countries like India have made efforts to deal with the worst forms of child labour and despite this, 56.4% of children in the age group of 5–14 work in agriculture and 33.1% in industry. Indian children are forced to pay the debts of the family. They sometimes work in dangerous environments, commercial sexual exploitation, human trafficking or are forcibly recruited or kidnapped to become part of terrorist groups. Between 2000 and 2008 the number of child workers worldwide

declined by about 30 million (ILO, 2013). According to the United Nations Children's Fund (UNICEF), one of the estimated 158 million children in the worldwide are involved in child labour (UNICEF, 2008).

DEFINING CHILD AND CHILD LABOUR

The concept of child states leads to ambiguity, as it is guided by personal thoughts. Therefore, a standard must be accepted to determine age limit for defining a child. The term child labour, defined by the International Labour Organization (ILO), is defined as the best work that deprives children of their childhood, their ability and their dignity, and is harmful to their physical and mental development. So according to the ILO "Child means a person who has not completed his or her 15 years of age", therefore, in this regard, under Article 2 (3) of International Labour Organization (ILO), minimum age for entry into employment or work in any profession "shall not necessarily be below the age of completion of compulsory Schooling and, in any case, shall not be less than 15 years of age". The ILO states that child labour can be defined in different ways, and different definitions suggest different estimates of child labour. On the other hand, UNICEF definition of child labour is different. It considers a child as, A child is a person under the age of 18-years based on UN Convention on the Rights of the Child in 1989, including the Right to avoid economic exploitation". Thus, according to the definition of Child, UNICEF defined child labour as in terms of minimum age as "Child Labour traditionally referred to children working before they reached the lawful minimum age for employment in their



country is often the same as the cut-off age for compulsory attendance at school".

Similarly, ILO explains child labour not only with the perspective of minimum age but also considered child's overall development which can be damaged due to work. Therefore, according to the ILO, a child is a person who is under 15 years of age, engaged in any work or activity which deprives them from basic education, fickle activities and their childhood is defined as child labour. In the context of child and child labour rights in India, a child may be defined as one who is in the age group between 0-14 years. Different constitutional acts and institutions have, however, defined child and child labour in their own ways.

In case of child definitions, In India, The Child Labour (Prohibition & Regulation) Act, 1986 has defined the child as anyone who is "a person who has not completed his fourteenth year of age" and The Factories Act, 1948 specifies that "A person below the age of 15 years is to be regarded as a child". Similarly, the Central Children Act has defined a child as "a boy who has not attained the age of 16 or a girl who has not attained the age of 18" and according to the Juvenile Justice Act, 2000, a "Juvenile" or "Child" means "a person who has not completed the age of eighteen years". After considering these definitions related to the child, it is realized that there is no uniformity exists regarding the age limit of child. It differs from act to act. As far as the matter of child labour, age limit also varies in different occupation. In case of child definitions in India, The Child Labour (Prohibition & Regulation) Act, 1986 has defined the child as anyone who is "a person who has not completed the age of 14 years" and The Factories Act, 1948 specifies that "A person

below the age of 15 years is to be regarded as a child". But according to the Government norms, the minimum age for the employment of child should be above fourteen years. According to the Constitution of India, "No child below the age of fourteen years shall be employed to work in a factory or mine or to work in any other hazardous employment". On the other hand, some definitions deal directly with the negative impact of child labour and are concerned with the development and growth of child which can be damaged due to hazardous work. Similarly, Government of India stated that "Child labour can be defined as employment of children in beneficial occupations that are harmful to their health and deprive them the chances of development". Thus, child labour assumes that the character of a social problem is that it imbeds arrest and distorts the natural growth process and prevents the total personality development of the child.

DIFFERENT FORMS OF CHILD LABOUR

Child labour has been categorized into different forms. However, all forms of child labour are unacceptable, regardless of where and how children work. Child labour is a term that needs to be unpacked, it cannot be used in a broad way but it does include a range of situations and circumstances in which children work. Child labourers are involved in the different forms of works and some of the major and important forms of child labour are given below:

- 1) **Hazardous Form of Child Labour:** According to the Article 3(d) of ILO convention 182, hazardous work is referred to as "the work which is done by its nature or the circumstances in which it is carried out, is



likely to damages the health, safety and morality of the children”. This is the worst form of child labour where children perform heavy work in utmost unhygienic, uncongenial working conditions. Such work includes working in the mines; fireworks industry, heavy metal industry, glass industry etc. This form includes enslaving children, forcible recruitment, prostitution, trafficking and engaging in illegal activities. In addition, many children work as domestic servants and scavengers. Although domestic services are not considered as the hazardous form of labour but as they have to work for long hours under abusive conditions, they are not able to obtain the education necessary to improve their lives. Furthermore, their health is often severely damaged throughout the years and years of exposure to hazardous material and substances.

2) **Non-Hazardous Form of Child Labour:**

This form of child labour involves mild-tempered chores that do not affect the child. Actually, all forms of child labour are no longer considered as bad for children. Some help to build up the character by teaching punctuality, discipline and rigour which are socially valuable qualities, for example – Newspaper delivery, baby sitting and farm work etc. This set of facts has acknowledged that child labour should be tolerated in poor countries, at least in its non-hazardous forms.

3) **Debt Bondage:** Forced and bonded labour, which are considered to be the most exploitative and egregious form of child labour. As a matter of fact, there are no specific international standards on “forced child labour” but the ILO convention 29 defined forced labour as “all work or service which is exacted from any person under the threat of any punishment and for which they said that the person has not voluntarily presented himself”. So, in the case of debt

bondage, children become an object in this process. Parents have absolute power over their children, from which the children can be pledged to pay the debts. A combination of low wages and reckless interest rates make it impossible to repay the initial debt. Thus, these children are usually forced to work beyond their physical capacity and under conditions or circumstances that seriously threaten their health, safety and development.

4) **Child Trafficking or Children used for sexual exploitation:**

According to UNICEF definitions child trafficking means “any act or transaction whereby a child is transferred to another by a person or group of persons for remuneration or any other consideration”. It is an extended form of bonded labour. Thus, it is clear that children must be regarded as being trafficked, even if they have consented to it, as soon as they are admitted or transported with a view to their exploitation. The trafficking victims are forced to work in various illegal activities such as beggary, robbery, prostitution etc. However, this is illegal but is carried out in large numbers in developing and underdeveloped economies. Many thousands of young girls and boys serve the sexual appetites of men from all the social and economic backgrounds. The Direct connections between the commercial sexual exploitation of children and other forms of exploitative child labour are numerous. Factories, workshops, street corners, railway stations, bus stops and homes are main area of aspects where children work are common sites of sexual exploitation. Children are especially powerless to resist abuse by employers, either as perpetrators or arbitrators. The physical and psychosocial damage inflicted by the commercial sexual exploitation makes it one of the most dangerous forms of child labour.



REASONS FOR THE EXISTENCE OF CHILD LABOUR IN INDIA

Child labour is a universal problem, which is more common in developing countries. Child labour is generally considered as a socio-economic problem and several factors are expected to cause children's participation in economic activities such as poverty, adult unemployment, large size of the family, neighbourhood effects etc. On the other hand, due to technological backwardness and labour oriented technology in these countries, there is a search for cheap labour, which is compensated by the child labour. An ILO study shows that:

- About 85 percent of the total child labourers in India are forced to work to supplement the income of their families.
- About 75 percent of the parents allow their children to work from the economic point of view.
- About 50 percent of parents feel that the income earned by their children is necessary for the maintenance of their families.
- About 44 per cent of the families have their own cultural and traditional beliefs in order to maintain and continue their family business.
- About 70 per cent of child workers want to continue their present job even if they are given the option to leave them.

Basically, these factors are interlinked and have a direct or indirect impact on the work participation of children. The problem has two aspects; the supply side and the demand side. Actually, the demand side is exploring the problem from the point of view of the users of the child labour while the supply side is an expression of frustration from families and households which is forcing them to send

their children for labour. Here, are some causes that explains both the demand and supply side and the socio-economic factors that causes child labour-

Supply Side: what pushes children into work?

- 1) **Poverty as root cause:** Among various other factors, poverty is accepted as the root cause of child labour. Different circumstances affect the child labor. Studies have shown that the most notable reason is poverty. Poverty supports the argument that children need to work in order to prevent their families from suffering due to hunger and starvation. There is a reason for the existence of child labour that poor households tend to send their children to work in order to supplement family income, which is uncertain due to natural calamity, prolonged illness, among other factors. Furthermore, it has been observed that generally households are particularly concerned with the lower economic strata of the society that they cannot survive unless the children in the family also work. The poverty has two aspects which are mainly: the absolute poverty and the relative poverty. In case of absolute poverty, the level of income of the people of a country is too low that they cannot even meet their basic minimum requirements, it is called the absolute type of poverty. On the basis of this definition, about 27 crores of people which constitutes about 29 per cent of the total population falls below this line in India. Relative poverty means, when we compare the incomes of different people then we find that some people are poorer than others. This is called relative poverty. According to this definition, a recent survey on poverty shows that there are 37 crores of people who are living below the poverty line. This is the most visible,



speculative and major reason for the existence of the problem like child labour. But, the relationship between poverty and child labour may not be as simple as it defines. Issues like this such as income distribution, fertility, education, malnutrition, the structure and framework of the economy along with the status of women can all affect the likely incidence of child labour.

- 2) **Lack of educational facilities:** Lack of educational facilities is another factor that contribute to high incidence of supplying child labour. In developing countries, a significant proportion of children are deprived of their education due to the inadequacy and the inaccessibility of schooling facilities. In case of India, although the education is free and compulsory for all children up to age 14, not all enrolled students graduate from primary schools. One of the many reasons for the high school dropout in India is a poor quality of education. For households rationally because of maximizing their welfare, low demand for schooling might arise because of low quality or excessive costs. The Inaccessibility or poor quality of schools can thus motivate parents to engage their children in more immediate and profitable activities. The Government itself admits that in most of the places, the school presents a drab and dismal picture and holds little attraction for the child development and education. The quality of education provided by the schooling system was so frightening that even those children who went to school did not learn anything. In this situation compulsion would only lead to harassment of the poor and the weak. On the other hand, the cost of schooling increases the supply of child labour. The Cost of education for schooling both direct (e.g. User fees, uniforms, transport) and indirect (e.g.

Child work-related), are among the factors that influence parent's decision about child education. Moreover, one more thing which affects the parent's decision about child education is the proximity of school because if a school is close to child's home, the likelihood of enrolment is higher for both girls and boys. With an increase in physical distance, especially girls' participation in schooling is low because of logistical problems and associated safety risks. So, indeed, good quality of primary education adversely influences the occurrence of child labour.

- 3) **Large Family Size:** Another factor that motivated the children to work is the large family size. Many studies show that children are more likely to work as family size increases. In fact, the involvement of children in large poor households is usually higher rather than smaller households which demonstrates that the family size have an effect on child labour. Parents oblige their children for work because they are not able to manage the demands of a large size family. There are also gender differences among household size that who all will work. Not everyone in the family and not of all age are working as child labour, which depends on the child's age and gender, for example boys are more likely to attended to school than girls.

- 4) **Rural-urban migration and urbanization:** Rapid rural-urban migration and urbanization can also be the reason for increasing rate of child labour in urban areas of developing countries. Many families migrate in urban areas due to rural push and urban pull factors. Due to frequent migration of the parents, the children often remain unregistered in the schools and initially occasional, then prolonged absence from the schools ultimately lead to their dropout which pushes



them to labour market. Child migrants looking for economic opportunities that often do not exist in contributing to the large increase in number of child laborer's in the menial jobs in the cities of developing countries. Although rural urban migration reduces population pressure in rural areas but the socio-economic problems could not be minimized due to shifting of the problems from rural to urban areas because after migration mostly migrant children are employed in hazardous occupations.

Demand Side: why employers want children?

Child labour also persists because of their high demand. Employers prefer children in comparison of adults for various reasons. There is a common justification for the use of child labour is that children provide irreplaceable skills. Some employers claim that children with small fingers have the ability to make fine hand-knotted carpets, pick delicate jasmine flowers, or scramble through narrow tunnels. So, the justification for child labour used here, there is that industries which require children's nimble fingers will disappear if child labour is eliminated, and with the demise of such industries will lead to loss of adult jobs and income as well as possible loss of foreign exchange and tax revenue.

The demand for child labour is also very high due to labour shortage. In regard to agricultural activities it is characterized by two seasons viz. busy season and off season. During busy season, there is a shortage of labour in the agriculture labour market, because the demand of labour is more than its supply. Thus, seasonality in agriculture causes seasonal disparity between demand and supply which is supported by the children

and the women. Accordingly, seasonal variations in child labour are the result of labour shortages during the busy season. So, to fulfill the demand of labour during busy season employers entertain children to work and the poor households, in an effort to restore the economic balance of the family, they send their children to work for small pittance. Moreover, employing child labour in the informal sector where companies work under stiff competition has more advantages than adults. Children are better suited to fluctuating in demand of labour because they can be laid off when business is slack as they do not have rights as workers.

One of the major reasons for businesses in the informal sector to hire children is because they are cheaper than adults. Firms are motivated to hire child labourer's if the marginal product of child labour is higher than that of adult workers. Actually, In the face of strong competition to earn at least the minimum level of profit and thus to survive in the industry, they have to cut down cost by any means. When they are not able to adopt modern and sophisticated technology that requires long term investment, the only option open to them is to employ cheap labour for reducing cost which is often done through employing a child labour which costs more or less one third of the salary of an adult labour. Moreover, employers prefer children for work because they perform the same work on less wages than adults, apart from being more obedient, honest and disciplined in the work place. They can easily force children to do any work even risky ones, such as working with chemicals, because they have no power to challenge and even, they may not join trade unions. It also explains that the children can sit in same posture for hours at a time and, all they have very little bargaining power. They can be easily punished for the mistakes done



by them through beating or wage cut. On the other hand, children have not developed much ego and status consciousness and do any demeaning jobs.

CONSTITUTIONAL SAFEGUARDS FOR INDIAN CHILDREN

The Constitution of India contains arrangements for the upliftment, development and protection of children; these are mainly included in Part III and Part IV of the Constitution, namely, fundamental rights and directive principles of state policy. Indian Constitution manages the government assistance of the youngster and preclusion of practices like child work. Thus, the concern for children in general and child labour as workers in particular is reflected through the Articles of the Constitution of India and the relevant articles which deals with it are given below:

Article 15(3)-It states that nothing in this article prevents the State from making any special provision for women and children. Thus, the article empowers the State to make special provisions for the children.

Article 21A-It states that the State shall provide free and compulsory education to all children of the age 6-14 years in such manner as the State may, by law determine.

Article 23-It deals with the Prohibition of traffic in human beings and beggar and other similar forms of forced labour.

Article 24-It states that No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. This is very important constitutional provision which

prohibits the child labour in hazardous employment.

Article 39(f)-It connects the State to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity so that the childhood and youth are protected against exploitation, moral and against material abandonment.

Article 39(e) and (f)-It protects the State and secure that the tender age of children is not abused and to ensure that they are not forced by economic necessity to enter avocations unsuited in their age or strength. Those children are given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity so that the childhood and youth are protected.

Article 45-It states that the State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.

Article 51A(k)-It states that it is a fundamental duty of the parent or Guardian to provide opportunities for education to the child or ward between the age of 6 and 14 years.

Thus, it is clear that the makers of our Constitution were wise and adamant to provide that children should receive distributive justice in free India.

LEGISLATIONS AND POLICIES REGARDING CHILD LABOUR IN INDIA

Legislation to control and regulate the child labour in India has existed for several decades. The main concern of these legislations was to determine the minimum



age limit for employment of children and guidelines of working hours for children and to ensure the health and safety of the child labourer's by prohibiting the employment of children in hazardous work or working hours. There are number of youngster work enactments restricting the work of children under 14 years and 15 years old in certain predefined businesses.. However, contrary to our international commitment and all declarations in the country's Constitution, and despite all the legislative measures, child labour is a harsh reality. The percentage of child labour in the absolute labour force of the country has kept on increasing over the years due to lack of political will and in absence of realistic measures to tackle the problem. The important laws relating to child labour are as follows:

1. The Children (Pledging of Labour) Act, 1933
2. The Employment of Children Act, 1938
3. Factories Act, 1948
4. The Minimum Wages Act, 1948
5. The Plantation of Labour Act, 1951
6. The Mines Act, 1952
7. The Merchant Shipping Act, 1958
8. The Motor Transport Workers Act, 1961
9. Beedi and Cigar Workers (Conditions of Employment) Act, 1966
10. Contract Labour (Regulations and Abolition) Act, 1970
11. Shops and Commercial Establishment Act, 1969
12. Radiation Protection Rules, 1971
13. The Child Labour (Prohibition and Regulation) Act, 1986

Large numbers of legislations were enacted since 1881 which provides the legal protection to the working children who was

into child labour. The Children's Employment Act, 1938 was the first statutory act to deal with child labor after the Children (Pledge of Labor) Act, 1933, which was repealed by the Child Labor Act, 1986. The Child Labour (Prohibition and Regulation) Act, 1986, is a result of various recommendations made by a series of Commissions. This legislation was implemented to reform the legal measure, as the policy of both Prohibition and Regulation.

JUDICIAL VIEW ON CHILD LABOUR

With regard to the child labour in India, the former Chief Justice of India, Justice Subba Rao rightly remarked that; "Social justice must begin with the child development. Unless a soft plant is properly maintained, it has a pocket chance of multiply into a strong and useful tree. Therefore, the first preference in the plate of justice should be stated to the well-being of children. The Courts of India have proved themselves to be the torchbearer of progressive approach towards Child Labour. Courts acted as Harbinger for this issue. Some of the landmark cases on this issue are as follows:

1. In the case of **Roshan Gupta V. The State of Bihar & Ors**¹, on 20 March 2012, "the writ petition has been filed challenging the orders contained in Annexures 1 and 2 by which a fine of Rs.20,000 has been imposed by the petitioner. The main submission on behalf of the petitioner is that without giving him an opportunity to explain the circumstances under which Ravi Kumar was working in the shop, the fine has been

¹ Section 3 in the Child Labour (Prohibition and Regulation) Act, 1986



imposed on the ground that the petitioner had employed a child as labour in his shop. In the meantime, operation of the order contained in Annexure 1 and 2 shall remain unchanged. The writ petition is disposed of with the aforesaid observation of the facts and direction”.

2. In the case of **Jayakumar Nat & Anr vs State Of NCT Of Delhi & Anr**², on 4 September, 2015, “The Delhi High Court directed the Government of NCT of Delhi to come out with a proper scheme to address the issue of rehabilitation of these rescued children by providing them with some kind of economic help so that the parents or guardians do not force them to work as child labourers again to meet their basic needs and to supplement their income for their basic survival”.
3. On 11 November 2016, **In Court On Its Own Motion vs The State Of Jharkhand**³, “the Petitioner said that nothing has been done with regard to settlement of the child labour and further the State has also not disclosed anything as to how they will come up with this horrifying situation of child labour, where the Jharkhand High Court directs to file an affidavit about the stage of investigation which will also indicate that how many schemes have been implemented by the Department of Child Welfare in the state of Jharkhand for dealing with child labor and rehabilitation”.

CONCLUSION

Child labour is an international evil therefore a cumulative effort is required to wipe it out. The government of India on this front has also taken some steps. But the major determinants of child labour is socio-

economic conditions prevailing in the country like poverty. Another determinant is access to education. In some areas, education is not affordable, or inadequate. With no other options, children spend their time in working. Therefore, there is a need to effectively implement the laws relating to child in India. However, from the analysis of the relevant statutory provisions of the Indian laws relating to child labour, it has become abundantly clear that the statutes vary in regard to the age limit of a child employed or allowed to work in various occupations. There is no law in respect of fixing the minimum age for the employment of children in agriculture. The Factories Act, 1948, sets the minimum age of 14 years whereas the International Labour Organization (ILO) Convention prescribes the minimum age for any employment to be 15 years. In the case of plantation, the age of employment has been set at 12 years but in the case of non-industrial employment the minimum age varies from 12 to 14 years. Thus, Indian Laws relating to child labour are lower than the international standards as laid down by the ILO. However, 179 countries have ratified the International Labour Organization (ILO) convention to deal with the worst forms of child labour. Unfortunately, India has not yet ratified this convention and besides this, India has also not ratified the convention on the minimum age of admission to employment and work.

Despite the amendments of legislative enactments and the pro-active role played by various agencies, child labour continues to be a major problem. A large number of children are exploited and deprived of what is because of them. It can be said that the carelessness on the part of the relevant enforcement

² The Children Act, 1960

³ Section 39 in The Children Act, 1960



machinery under specific laws is the major issue to be address and cured. However, fortunately, the Indian Judiciary played a very important role in promoting child welfare. It has taken the lead to protect the child from exploitation and improve their conditions. The Judicial mandate clearly shows that the right to education is essential for the proper flowering of the children and their personality. The judiciary has even directed the states that it is their duty to create an environment where the child workers can have the opportunities to grow and develop in a healthy manner with full dignity in accord with the mandate of our Constitution.

It is the need of the hour to expand the machinery to enforce various laws on child labour and set free the young ones from the evil of child labour. These children should be free from child labour and should be entitled for rehabilitation benefits under government schemes. There are plenty of child labour preventive laws but nothing can eradicate child labour unless there is awareness between parents and children, which will go in a long way to save the future of millions of working children in India. Thus, this is possible only when the government and the society would own it that this is our responsibility to abolish child labour in all its forms.
