



CHILD LABOUR IN INDIA: A BRIEF STUDY OF LAW AND ITS IMPLEMENTATION

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Abstract: *Children throughout the world are engaged in a great number of activities classified as work. These ranges from fairly harmless, even laudable, activities like helping out in the home, to physically dangerous and morally objectionable ones. Child labour is a complex and a controversial issue. Unfortunately, it is a global phenomenon. In almost all societies, children work in some way, though the type of work they do and the forms of their involvement vary. But many millions of children work under abusive and exploitative conditions that are clearly dangerous to them. India is not an exception. As per report, India ranks among top nations where the percentage of labour force constituting 'Child Labour' is very high. Like others, India too, have formulated laws in order to reform and bring an end to all forms of child labour, right from its inception as a free nation, but the ground reality is still very dismal in nature. A brief study of the various Socio-legal legislatures formed by the Indian Government, and its implications at the ground level, projects clearly, the road to reform is still a long way ahead.*

Key Words: *Child Labour, ILO, Poverty, Welfare and Socio-legal Reforms.*

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“If we can't begin to agree on fundamentals, such as the elimination of the most abusive forms of child labor, then we really are not ready to march forward into the future”.

---Alexis Herman

Child Labour, actually viewed more as a social problem of a greater magnitude than other related problems connected with the development of human beings, is abnormally high in under-developed and developing countries of the world. There is no denying of the fact that children of today are the grown up citizens of tomorrow, of a country on whose shoulders its multifaceted development and growth wholly depends. It is infact, in this context that the growth of the children into matured persons with adequate skills and knowledge, gained through support from the state, society and family, necessitate the all round development and growth of both the personality of the child and that of the nation. The governments of all developed countries and many developing countries have showed considerable attention to the needs and vulnerabilities of all children and young people. The existing relationship between State and Children includes relationship in all spheres like socio-economic and political. Indeed, the provisions of domestic statute along with a range of international treaties, rules and conventions- impose obligation upon the state agencies not only to protect but also to promote their human rights. However, despite such official claims, historically-embedded, children's rights including their claims to care, protection, welfare and justice are often neglected, if not blatantly violated, especially in case of Child Labour. This holds true in India as well.

Though the definition and concept of child labour may vary widely depending mainly on social, economic, environmental or physical postulates, the child labour is that segment of the child population of a country which is found to have engaged themselves in paid or unpaid employment in a given situation. Here, an attempt has been made to analysis the problem of child labour in the context of those working below the age of 14 years in any gainful industrial and non-industrial occupation, which are viewed not only injurious to their physical, mental or moral development but also hamper their social progress in a big way. Some of the areas where one can find them being significant part of the labour force are in¹—agriculture fields, performing heavy work and exposed to many hazards associated with the introduction of modern machinery and chemicals; in dangerous industries and

¹ Asha Bajpai, “Child Rights in India: Law, Policy and Practice” (New Delhi: OUP, 2003), 148.



occupations such as, glass making, construction, mining and carpet weaving; in domestic service, carrying out arduous work under conditions of isolation, over excessively long hours and with physical and sexual abuse; in the streets, working as a rag pickers, vendors and child prostitutes often under the threat of violence from street gangs and the police and with exposure to life-threatening diseases; in small industrial workshops like fireworks and Crackers making small industries; at home, tendering domestic services; as bonded labourers in outcry slavery and in predominant exports industries, such as textiles, clothing, carpets and footwear making small units of production. Child labour included children prematurely leading adult lives, working long hours for low wages, under conditions damaging to their health and to their physical and mental development, sometimes separated from their families, frequently deprived of meaningful education and training opportunities that could open up for them a better future.² Child labour is therefore all work that places children at risk.³

MAGNITUDE OF THE CHILD LABOUR PROBLEM

The estimates on the magnitude of the problem of child labour vary due to multiplicity of definitions, different methods of computation and the collection of data at different points of time. Statistics on child labour are therefore not only elusive because of the special and practical difficulties involved in terms of design and implementations of child survey conducted to estimate the problem of child labour, but also because of differences in perception about what constitute a child, or child work, or child labour. According to a Report of the International Labour Organization, the number of working children in the 5-14 age groups in the developing countries is more than 250 million.⁴ Geographical break-up of these figures exhibit that, the magnitude of child labour is as high as 61 percent in Asian countries followed by 32 percent in African countries and a little over than 7 percent in Latin American countries.

CHILD LABOUR IN INDIA

In India the problem of child labour is quite alarming. It is said that roughly out of 5 children below the age of 14 years, one child is engaged in some kind of labourer work, which means

² The International Labour Organization, 1983.

³ Report of the Director General of the International Labour Organization, 1983.

⁴ Ibid.



20 percent children are labourer out of the total populations of the children in the country. In fact, there is not proper source of regular collection of statistics on child labour. The only authentic source of collection of data on child labour is the Census conducted every 10 years by the Government of India in the country. According to the Census 2001 figures there are 1.26 crore working children in the age group of 5-14 as compared to the total child population of 25.2 crore. There are approximately 12 lakhs children working in the hazardous occupations/processes which are covered under the Child Labour (Prohibition & Regulation) Act i.e. 18 occupations and 65 processes. As per survey conducted by National Sample Survey Organisation (NSSO) in 2004-05, the number of working children is estimated at 90.75 lakh. As per Census 2011, the number of working children in the age group of 5-14 years has further reduced to 43.53 lakh. It shows that the efforts of the Government have borne the desired fruits.⁵ But despite this, still a major section of child population continuous to work under the banner of child labour. A close analysis of the state-wise data further revealed that Andhra Pradesh, still continuous to hold the top rank in terms of maximum number of child labour employed in varied section of the formal and informal sectors of economy in the state, followed by other states like Uttar Pradesh, Madhya Pradesh and Maharashtra. Of all the states and UTs in India, Lakshadweep was found to have the smallest number of working children below the age group of 5-14.

CAUSES AND CONSEQUENCES OF CHILD LABOUR

Most writings on child labour often lack a theory or theoretical base for understanding the issue. Infact, it is difficult to find any theory that could explain the true dynamics of child labour issue. It is therefore; often assume that the nature and extent of poverty in a country determine the number of its child labour. Therefore the theory of poverty—which often is also reflected in a poverty of theory—is also applicable to child labour. Poverty under a capitalist model of development is a systemic feature involving or requiring cheap labour force. The distributive regime under the capitalist development process is systemically skewed towards owners and managers of capital and its knowledge workers – the middle class. Therefore, the outer peripheries of this distributive regime remain generally

⁵ Ministry of Labour and Employment, Government of India.



impoverished and economically deprived, becoming a haven for child labour.⁶ Studies that have been undertaken in various countries around the world do show that child labour and poverty are intimately linked. However, it is also clear that the specific circumstances of child labour are influenced by many other factors. No single factor cause can be isolated for the prevalence of child labour. It is a combination of several factors. It is inherent in the cycle of poverty, unemployment, underdevelopment and low wages caused by inequitable distribution of resources and economic policies. The state can intervene by filling the void caused by systemic failure, but such state-led alleviation cannot take us far unless the distributive regime is altered significantly. But again no cause can justify the existence of child labour. The costs of child labour cannot be overstated. There is a complete loss of their invaluable childhood. There is an impairment of both the physical and psychological health at a critical stage of life, often with permanent consequences. There is also the permanent damage to social development of the child. Lack of education condemns children to the worst employment prospects as adults and pushes them into the army of low wages earners. The causes that leads to child labour are:⁷

- Poverty
- Parental illiteracy and ignorance
- Tradition of making children learn the family skills
- Absence of universal compulsory primary education
- Non-availability of and non-accessibility to schools
- Irrelevant and non-attractive school curriculum
- Social and cultural environment
- In formalization of production
- Employment's preference to children for their cheap labour and inability to organize against exploitation
- Family work
- Level of technology
- Apathy of trade unions

⁶ Anil Kumar Vaddiraju, "Sisyphian Efforts? State Policy and Child Labour in Karnataka", (Newcastle: Cambridge Scholars Publication, 2013), 13.

⁷ Helen Sekar, "Ensuring Their Childhood", V.V.Giri National Labour Institute, New Delhi, 2001.



- Ineffective enforcement of the legal provisions pertaining to child labour.

Child labour often creates a vicious cycle of poverty, as a child coming from an impoverished family surviving harsh conditions becomes an unskilled, debilitated adult who is not employed even in the industry that exploited him/her earlier. They have no rights as workers and may not join trade unions. Child labour also depresses adult labour and keeps adults unemployed.

GIRL CHILD LABOUR

The girl child requires a special mention in the context of child labour in India. Although the labour of the young children of both sexes is exploited, the plight of the girl child labourers is worse off. She is a child, a girl and a labourer, and she faces worst discrimination on all counts, in almost all areas—rural and urban.⁸ There are many reports stating that girl child labour being allotted tasks that are more tedious or arduous, more damaging to education, less well paid and requiring a fairly longer working days than boys. The girl child labour is prevalent in areas like Household works, mostly in form of care takers of baby; Agriculture work; home-based piece-rate work; bonded labour and domestic labour. In all the spheres of works, they face rampant and systematic physical and sexual exploitation. Therefore the significant characteristics of the girl child labour are: Invisible work—not recognized as economic activity; no identifiable employer; long working hours and poor conditions that prevents them from attending any school; no skill formation; low pay and low status; physical abuse and sexual harassment.

LEGAL PROVISIONS AGAINST CHILD LABOUR

The Constitution of India⁹ has lay down that no child under the age of 14 years shall be employed in any mine or engaged in any hazardous employment (Article 24) and any contravention of this provision shall be an offence punishable in accordance with law. The directive principles of state policy in Article 39(e) provide that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 39 (f) directs that the Children are given opportunities and facilities to develop in a

⁸ Asha Bajpai, Recommendations given to The National Commission for Women, New Delhi, for amending the Child labour (Prohibition and Regulation) Act, 1986 (Unpublished).

⁹ See the Constitution of India, Part III and IV. The Fundamental Rights are embodied in Part III and Directive Principle of State Policy is embodied in Part IV.



healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and moral and material abandonment. It has been made the duty of the state to raise the level of nutrition and the standard of living and to improve public health.

Legislation to control and regulate child labour in India has existed for several decades. Notwithstanding these constitutional provisions, there are a number of enactments in the country which protect and safeguard the interest of child labour. The employment of children below 14 years of age has been prohibited under:

- The Children (Pledging Labour) Act, 1933.
- The Factories Act, 1948.
- The Mines Act, 1952.
- The Motor Transport Workers Act, 1961.
- The Bidi and Cigar Workers (Conditions of Employment) Act, 1966.
- The Plantation Labour Act, 1951.

However, it was in 1979, Government formed the first committee called Gurupadswamy Committee to study the issue of child labour and to suggest measures to tackle it. The Committee examined the problem in detail and made some far-reaching recommendations.¹⁰ It observed that as long as poverty continued, it would be difficult to totally eliminate child labour and hence, any attempt to abolish it through legal recourse would not be a practical proposition. The Committee felt that in the circumstances, the only alternative left was to ban child labour in hazardous areas and to regulate and ameliorate the conditions of work in other areas. It recommended that a multiple policy approach was required in dealing with the problems of working children. Based on the recommendations of Gurupadswamy Committee, the Child Labour (Prohibition & Regulation) Act was enacted in 1986. The Act prohibits employment of children in certain specified hazardous occupations and processes and regulates the working conditions in others. The list of hazardous occupations and processes is progressively being expanded on the recommendation of Child Labour Technical Advisory Committee constituted under the Act. The Child Labour (Prohibition and Regulation) Act, 1986, while allowing children to engage in the process of family based work or recognized school based activities, prohibits children

¹⁰ Ministry of Labour and Employment, Government of India.



to work in occupations concerned with passenger, goods mail transport by railway, carpet weaving, cinder picking, cleaning of ash-pits, cement manufacturing, building operation, construction, cloth printing, dyeing, weaving, manufacturing of matches, explosives and fireworks, catering establishments in railway premises or port limits, Bidi making, mica cutting and splitting, abattoirs, wool cleaning, cashew-nut and cashew nut descaling and processing, soldering processes in electronic industries and other "hazardous processes", "dangerous operations", "printing" (as defined in Factories Act, 1948, etc.)

In consonance with the above approach, a National Policy on Child Labour was formulated in 1987. The Policy seeks to adopt a gradual & sequential approach with a focus on rehabilitation of children working in hazardous occupations & processes in the first instance. The Action Plan outlined in the Policy for tackling this problem is as follows:

1. Legislative Action Plan for strict enforcement of Child Labour Act and other labour laws to ensure that children are not employed in hazardous employments, and that the working conditions of children working in non-hazardous areas are regulated in accordance with the provisions of the Child Labour Act. It also entails further identification of additional occupations and processes, which are detrimental to the health and safety of the children.
2. Focusing of General Developmental Programmes for Benefiting Child Labour - As poverty is the root cause of child labour; the action plan emphasizes the need to cover these children and their families also under various poverty alleviation and employment generation schemes of the Government.
3. Project Based Plan of Action envisages starting of projects in areas of high concentration of child labour. Pursuant to this, in 1988, the National Child Labour Project (NCLP) Scheme was launched in 9 districts of high child labour endemicity in the country. The Scheme envisages running of special schools for child labour withdrawn from work. In the special schools, these children are provided formal/non-formal education along with vocational training, a stipend of Rs.150 per month; supplementary nutrition and regular health checkups so as to prepare them to join regular mainstream schools. Under the Scheme, funds are given to the District Collectors for running special schools for child labour. Most of these schools are run by the NGOs in the district.



REHABILITATION MEASURE

For rehabilitation of child labour, Government of India had initiated the National Child Labour Project (NCLP) Scheme in 1988. The main focus area of this scheme was to rehabilitate working children in 12 child labour endemic districts of the country. Its coverage soon expanded to more than 200 districts within few years. Under the NCLP Scheme, children are withdrawn from work and put into special schools, where they are provided with bridging education, vocational training, mid-day meal, stipend, health-care facilities etc. and finally mainstreamed to the formal education system. The Ministry of Labour, Government of India, has also setup a National Resource Centre on Child Labour (NRCCL) at the V.V.Giri National Labour Institute, Noida in 1993, with the objective of creating a data bank of child labour and assisting the Central and State Government, to develop schemes and programmes for elimination child labour in the country. Other measures for bring labour reform and eliminating child labour, made by the Union Ministry of Labour was in the year 1994, by constituting the National Authority for Elimination of Child Labour (NAECL), with the sole objective to withdraw, through suitable working mechanism, child labour found engaged in hazardous occupation and rehabilitate them through special schools. According to the Annual Report of the Ministry of Labour (1999-2000), the objective of the NAECL is “to secure convergence of services for providing education, health and other inputs to children taken out of schools in cost effective manner by pooling the resources of various ministries.”¹¹

In its sincere endeavours to eliminate child labour in sequel to global programme introduced by the International Labour Organization (ILO) in December 1991, India was the first country to sign the Memorandum of Understanding, via, Ministry of Labour in the year 1992, and setup a National Steering Committee (of which the labour Secretary is the Chairmen) to implement the child labour projects connected with : 1) designing and evaluation of programmes for elimination of child labour; 2) identification of interventions at community and national levels; and 3) creation of awareness and social mobilization for securing elimination of child labour. During the 11th Plan Period, three Projects viz., INDUS Project, Andhra Pradesh Phase-II & Karnataka Project was implemented in the country under ILO-IPEC. Jointly funded by the Ministry of Labour, Government of India and the

¹¹ Annual Report on Child labour by Ministry of Labour, Government of India, 1999-2000.



Department of Labour, United States of America (USDOL), the INDUS Child Labour Project was implemented in ten hazardous sectors in 21 districts across five states viz. Delhi (NCT Delhi), Maharashtra (Districts of Amravati, Jalna, Aurangabad, Gondia and Mumbai Suburban), Madhya Pradesh (Districts of Damoh, Sagar, Jabalpur, Satna and Katni), Tamil Nadu (Districts of Kanchipuram, Thiruvannamalai, Tiruvallur, Nammakkal and Virudhunagar) and Uttar Pradesh (Districts of Moradabad, Allahabad, Kanpur Nagar, Aligarh and Ferozabad). The project adopted a participatory method to identify beneficiaries and enrolling child workers in schools, transitional education centres and vocational training centres was seen as a key strategy for rehabilitation of child and adolescent workers withdrawn from work. The project was instrumental in the operationalizing the public education component in the field.

However, despite such measures and institutional support, the condition of child labour in India is still in a dismal state of affair.

LIMITATION: REASON FOR FRAGMENTED IMPLEMENTATION OF LAWS

The most important factor has been the reason most often for its improper implementation has been paucity of funds. However, there are other sorts of evidence to show that the system suffered not so much due to lack of funds, but mostly due to frittering away of scarce resources or by adopting of more expensive measures with lesser outcomes like institutionalization prospects for rehabilitation.¹² There were other various reasons too, revealed by a close scrutiny of the pattern of development and implementation in the child labour reforms.

Prevailing Negative Attitude

The negative attitude of the general public towards children who works as child labour is one of the most important limitation. This is mainly because of its natal tie with the criminal justice system. The belief that, such children happens to have traits of the criminal behaviour — leads to difficult task of settling those children back into the society. Hence, at the end of the day, such prevailing attitude creates no less significant obstacles in proper implementation of the laws related to these children.

Lack of Organized Pressure

One of the main factor for the improper implementation of the child labour laws and reforms in India, has been the lack of organized pressure on the state either from the

¹² Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* (New Delhi: OUP, 2004), 305.



beneficiaries of the system or any other group involved in it to improve the policy or operations. While the beneficiaries of the system —the children's, mostly coming from low economic and social background, and also with no political voice, lacks the ability to organize themselves and lobby for protection of their interests in any articulated form. Their parents are also in no better position to do so. Moreover, various voluntary organizations and workers have been involved in the welfare of children, but have still not evolved any mechanism of co-operation and coordination among themselves or jointly raise their voice against the gross injustice done with these children, and a place of priority for them by the state. Individual instances of taking up the cause of these children have been visible more or less, but a joint and a continuous pressure on the government to brace itself seriously to ameliorate the conditions of these children is still missing. The malfunctioning of the state system and bureaucratic rigmarole have generated cynicism among the social workers and kept them away from the official machinery.

Unawareness and Untrained officials

Given the poor social, economic and educational background of the beneficiaries of the system, it is to be expected that they would be unaware of the rights, duties and obligations of the state vis-à-vis children. However, the existing study reveals that most of the law enforcer and officials are ignorant of the concept, philosophy, and even the law. In most of the narratives, complaints regarding beaten up by the authority in charge and forceful confession of the crime tends to be obvious. This complains also states that how officials deal with even minor mischief inmates with corporal by punishments. All these shows, how inadequate laws have been and how India being one of the signatory of International Convention, fails to ensure its conformity. A serious demand for having laws which are more stringently enforced and adequate training of the law enforcers.

Welfare Perception

Various studies show, all works and services are perceived as the welfare activity by the state, rather than an obligation on part of the state. The priority granted for fund allocation or implementation is bound to be low due to this perception. Moreover, despite the declaration by the state in the National Policy on Children in 1974 that a nation's Children are a supreme 'National Asset', children are still treated as the subject of welfare. Here in lies the problem. In the course of this study, it was found that there has been this shift from



'welfare' to 'right' approach, yet this shift have not produced any significant results. The only change one witnessed has been in the form of formulating more and more policies and Programmes without giving effective tooth. While this ministry deals with labour, fails to provide much of the required attentions to the issue of child labour.

CONCLUSION

The Government of all developed countries and many developing ones have removed children from the labour force and required that they attend school. They believe that employers should not be permitted to employ child labour, and parents, no matter how poor, should not be allowed to keep their children out of school. Though India has definitely made a marked progress in over all social development and implemented measures required necessary for the protection of the working children, there is still a need to expand the network of enforcement machinery required for enforcing various existing laws on child labour in the country. This if done, will certainly pave a long way of both the progress of the nation and saving and nourishing the future of millions of children working in both formal and informal labour force of India.

REFERENCES

1. Bajpai, Asha. *Child Rights in India: Law, Policy, and Practice*. New Delhi: Oxford University Press, 2003.
2. Burra, Neera "Child labour in rural areas with a special focus on migration, agriculture, mining and brick kilns" National Commission for Protection of Child Rights. [Last retrieved on 2009 Oct 19]. www.ncpcr.gov.in/report .
3. Cigno, A and Furio Carnillo Rosati (Eds), *The Economics of Child Labour*, New York, Oxford University Press, 2005.
4. Child Labour and Responses in South Asia International Labour Organization (ILO) 1996-2012.
5. Gurupadaswamy Committee, *Report of the Committee on Child Labour*, Ministry of Labour, Government of India, New Delhi, 1979.
6. ILO. Child Labor: How the challenge is being met, *International Labor Review*. 1997; 136:233–57.
7. Kerckhoff, R.K. and J.McPhee (Eds), "Receptivity to Child-Rights Legislation: A Survey", *Young Children*, Vo. 39. No.2 (January 1984), pp. 58-61.



8. Maurya, O.P. "Child labour in India", *Indian Journal of Industrial Relations*, Vol.36 No.4 (April 2001) pp.492-498.
9. Mishra, Lakshmidhar, *Child Labour in India*, New Delhi, Oxford University Press, 2000.
10. National Sample Survey Organisation, Report on 43rd Round Survey, Government.
11. Sharma, S.K. (1989), "Child and the Constitution: An Appraisal in Distributive Justice perspective," *Supreme Court Journal*, Vol. 2 (1), pp 9-10.
12. UNICEF (1989), *United National Convention on the Rights of the Child*, UNICEF, New York.
13. Weiner, Myron, *The Child and the State in India*. New Delhi: Oxford University Press, 1991.