

Child Labour in India: A Critical Legal Study

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ABSTRACT

Child labour has been prevalent across the world since ages and is a growing concern for the development around the globe. Much is taken away in the name of labour: childhood. Child labour is the denial of the childhood of the children, their freedom and their future and their being as human being. Childhood is the foundation of a human being and hence is the foundation of future. No wonder why it should be eliminated from the roots of the society of any country. But still it has its root since ages and couldn't have been eradicated and is prevalent especially in the developing country. It has been a longstanding practice in India, particularly in provincial territories where all individuals from a family traditionally worked since their early age. Other factors like poverty, over-population, unemployment, social backwardness, illiteracy, lack of education facilities and poor compliance of law has been fuelling this evil in the Indian society. Notwithstanding a few enactment and legal decisions the children works proceeds without restriction in India. This in result has intruded with the privileges of the children specifically ideal to training; physical wellbeing; mental good and social advancement. This in an ultimate has brought about the obstacle in the improvement of the country. There is a need therefore to determine the reasons for child labour so as to prepare towards the absolute disallowance of the equivalent from the nation.

KEYWORDS

Child labour; Childhood; Children; Age; people; Society; Mentally and Physically; Social; Family; Poverty

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1. A BRIEF

“There can be no keener revelation of a society’s soul than the way in which it treats its children.”

Aptly quoted by...Nelson Mandela

Child labour has been prevalent in our society and across the world since ages and is a growing concern for the development around the globe. Much is taken away in the name of labour: childhood. Childhood is the foundation of a human being and hence is the foundation of future. Childhood is the time where the best possible development and advancement of the kids in all viewpoints like rationally, physically, socially and mentally is possible by learning from their parents and environment. These children are not even able to attain that certain age where one can think of their education and they are burdened with the mundaneness of the hunger prevailing due to poverty or other reasons which has dragged them to the class of labour. In the long run child labour does not only affect the social growth but also hampers the economic development of the country. This has been a major issue especially in the developing nations and one among them is India. It is saddening that even after 72 years of independence the country census shows more than 10.2 million “economically active” children in the age group of five to fourteen years – (5.6 million boys and 4.5 million girls). “In the current decades India has thought of the scope of laws and projects to overcome the issue of child labour. The Indian government alongside the UNICEF is attempting to guarantee that the children are shielded from the work and abuse which is wounding to their improvement.”¹ But it is not quite simple as India's legal framework is drastically overpowered and seriously accumulated, and the cases of child labour can undoubtedly get lost in an outright flood.

2. WHAT IS CHILD LABOUR?

Child labour is any work done by children that is dangerous, hampers their education and is harmful to their health and development.

“The Child Labour (Prohibition and Regulation) Act, 1986, defines a child as any person who has not completed his fourteenth year of age. Part II of the Act denies kids from working in any occupation recorded in Part A of the Schedule; for instance: Catering at railroad foundations, development chip away at the rail route or any place nears the tracks, plastics production lines, car carpports, and so on. The Act additionally forbids kids from working in spots where certain procedures are being attempted, as recorded in Part B of the Schedule; for instance: beedi making, tanning, cleanser fabricate, block furnaces and rooftop tiles units, and so forth. These arrangements don't have any significant bearing to a workshop where the occupier is working with the assistance of his family or in a legislature perceived or supported school.”²

UNICEF has categorized child work into three categories:

“1. Inside the family-Children are occupied with local family unit errands without pay.

2. Inside the family however outside the home. Model rural workers, residential house keepers, transient workers and so on.

¹ Available at www.unicef.in/whatwedo/childlabour

² Available at www.childlineindia.org.in

3. Outside the family. Model business shops in restaurants and occupations, prostitution and so on.”³

3. FACTORS LEADING TO CHILD LABOUR IN INDIA AND ITS CONSEQUENCES

Child labour has been an abiding practice in India, particularly in provincial territories where all individuals from a family traditionally worked since their early age. This form of labour is popularly called bonded labour system. It is based on a long term contact between the employer and the worker which is usually hardened through social commitments and is governed through class or caste system. The contract is based on loan which the worker has taken from the employer and due to the debt generations of the workers work for the employer to get rid of that loan. Most of the children who are working today in child labour belong to the low caste in the Indian caste driven society. So the social-cultural factor is a major factor. Most of them belong to the traditional backward class and tribes and minority communities. And the children of these families are forced to work for their upper class. With the progression of time, new elements of suppression have sneaked in under various names. The framework is considerably more mind perplexing than trivial financial or labour relations; it mirrors the stratified social structure where at least one social groups work without thought of least wages or other right based work models only for regarding social custom or for dread of conceivable response in the event of non-similarity, which as a general rule are portrayed by physical violence and so forth.

Another imperative social factor that causes kid work in India is the profoundly instilled social qualities that have existed for quite a long time. Regularly young girls are let alone for measurements in regards to child labour in light of the fact that occasionally they don't work in the formal areas of child labour, for example, industrial facilities; rather they partake in domestic sector.

Illiteracy has its paw on the prevailing system in India. The parents being illiterate deny the importance of education in the life of children. They pressurise them to rather hold a sickle instead of a pencil as they themselves have been fed by the earnings of the former. And if the government policies manage to reach a few of them then also the lack of thorough education system is pushing children out of the classrooms and into the cotton fields or agricultural sector or industries as they trust that work is a superior alternative to sustain their future.

The relationship between status as a developing nation and rates of child labour is no coincidence. There are numerous explanations behind this; we'll begin with some monetary components. The change into a mechanical economy concentrated on worldwide markets isn't actually a simple one, and the outcome in numerous countries has been far reaching destitution and joblessness. In countries where monetary open doors are low, numerous families have come to depend on the pay earned by their children. For these families, sending children to work might involve survival. Some portion of this issue originates from the all-out expenses of industrializing and going into worldwide markets. The legislatures of creating countries don't generally have settled jobs in the universal economy, which implies they don't have a ton of additional cash. Most creating countries can just industrialize and modernize with the assistance of broad credits from outside governments or private enterprises. This implies even after the country has developed their new economy, they are profoundly in the red. As opposed to placing cash into their own economy to invigorate occupations or into social welfare projects to battle the neediness that promotes children's work, all the country's assets need to go toward satisfying their obligation.

³ <https://www.indiacelebrating.com/social-issues/child-labour-in-india/amp/>

While talking of many causes which are leading to the firmness of child labour in the society we cannot ignore the prevailing poverty in India. Poverty is the supreme cause of all. A country where there are issues like unemployment and over population, poverty will give birth to these inhuman issues. But it is also an eternal truth that it is not poverty which is barring children from school, our society is poor because our children are not going to school. Education makes us a better us by teaching about the good and bad and making us aware of the notions of our surrounding and the world we live in. The long working hours of the labourers hinders their education and so much is left to touch those minds who could be genius. The imparting of education makes a human being aware of their skills and helps them utilize in a better way and in the right direction which ultimately contributes to the development of the country. The educated people make better decisions and a lot better society. On the other hand the nation whose children who are deprived of the same leads to the opposite that is downfall of the society.

The working children in the short run appears to make money for satisfying their hunger, accomplishing the needs of their family and contributing to the nation's economy but in the long run the picture is entirely different. In the long run the child labour results to poverty. When they grow old they earn less. Also, lack of education leads to bad decision making which enrol them in evil practices such as stealing, pick-pocketing etc.

Children forced into labour are vulnerable to malnourishment, degraded health and sometimes even loss of their lives. The unskilled labour could not be an investment for the long run as the hazardous work leads to physical as well as mental degradation. The hazardous works which are performed in mines and factories sometimes leads to temporary or even permanent disability due to accidents. The children also suffer from hearing loss, effect on eyesight, malnutrition, skin diseases, speech problem, asthma, enuresis, HIV/AIDS etc.

Child labour can never be a escape to the capitalization of the country. In the long run it only has a detrimental effect be it on the person, his family or the society and the country. It initially gives results to satisfaction of hunger and other basic needs but perpetuates household poverty by lower capital income. It affects the health of the child both mentally and physically and it affects them socially. So child labour has a very bad and long lasting impression on the face of society which deprives it of the development.

4. SCHEMES, LAWS AND ROLE OF JUDICIARY

The Constitution of India by 86th Amendment included another Article 21 A and made instruction for all children of the age six to fourteen years a fundamental right. It provides "The state shall provide free and compulsory education to all children of the age of six to fourteen years in such manners as the state may, by law, determine".

Article 23 of the Constitution prohibits traffic in human being and Beggar and other similar forms of forced labour. Article 23 prohibits the system of bonded labour because it is a form of forced labour within the meaning of this Article. This Article protects the individual not only against the state but also private citizens. It imposes a positive obligation on the state to take steps to abolish evils of "traffic in human beings" and beggar and other similar forms of forced labour wherever they are found.

Article 24 of the Constitution prohibits employment of children below fourteen years of age in factories and hazardous employment. This provision is in the interest of public health and safety of the children.

Children are the resources of the country. That is why Article 39 of the Constitution imposes upon the state an obligation to ensure that the health and strength of the workers, men and women, and the tender age of the children are not abused and that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

There are other several schemes which the government is running to eradicate child labour. For instance, Grant in Aid on Child Labour. “Funds under Grants-in-Aid Scheme are sanctioned directly to NGO for elimination of Child Labour in districts not covered by NCLP Scheme. Under the scheme voluntary agencies are given financial assistance by the Ministry of Labour on the recommendation of the State Government to the extent of 75% of the project cost for the rehabilitation of working children. Voluntary organizations have been receiving funds under the scheme since 1979-80. Currently, about 70 voluntary agencies are being assisted.”⁴

In case of *MC Mehta V. State of Tamil Nadu*, the honourable Supreme Court of India gave some directions to eradicate child labour. The major guidelines directed by the court are as follows:

1. There should be a survey for identification of the working children
2. The children should be withdrawn from hazardous industries and they must be ensured of thorough education in appropriate institution.
3. The offending employer of child labour should pay rupees twenty thousand per child to the welfare fund which is established for this cause.
4. Employment should be given to one adult member of the employed child who is withdrawn or if this is not done then rupees five thousand be given to the welfare fund made by the state government.
5. There should be Regulation of the working hours of children employed in non-hazardous work so that the working hours don't exceed six hours and they should be ensured education of two hours. All the expenses must be borne by the employer of the child.

5. CRITICAL ANALYSIS ON LAWS IN INDIA ON CHILD LABOUR

In 1989, the United Nations adopted the convention on the rights of the child. This is an international agreement, recognizing the special rights of all children to be treated fairly, equally and with dignity. It recognizes that all actions concerning the children should be in the best interest of the child. It should promote their development and should give them the right to say about the matters affecting them. It gives all the children the right to food, clean water, shelter, and health care. It gives the children right to feel safe and secure as children are especially vulnerable to abuse and neglect. It provides right to development for all children in terms of their education, time to play and to grow and develop in all aspects of community life. All children have the right to participate in all the decisions that affect them. This helps to protect them from abuse and exploitation. Child labour infringes on all of these rights.

“India signed the Universal Declaration of Human Rights in 1948 and the United Nations Convention on the Rights of the Child in 1989. Be that as it may, the Indian government has not approved Convention 138 on Minimum Age and Convention 182 on the Worst Forms of Child Labour which to the ILO is viewed as dynamic with respect to the law against child labour. The Indian government keeps up because of their decentralized style of government; just the individual states in India have the established capacity to change

⁴ <https://labour.gov.in/schemes/grant-aid-child-labour-and-women-labour>

the law with respect to the base age.”⁵ Authoritatively, each territory of India (India has 29 states) is in charge of authorizing child labour inside its very own borders, yet many face issues of subsidizing and organization. As a result, millions of Indian children are working illegally.

In July 2016, our government passed an amendment to the Child Labour (Prohibition and Regulation) Act of 1986. The amendment proposed three major changes:

1. Amendment of section 2. The “definition of the child” has been changed from below the age of 18 to below the age of 14 years. Changing the age limit and reducing it to 14 years clearly is a sign that one only wants to avoid all kinds of accountabilities. Are we just accepting that this is the way children above 14 are going to be? And is this the story that we have made for them?

2. A child below 14 will not be allowed to work in any industry except when it is a family enterprise. In family enterprises, they have written ‘any businesses. Any business could mean anything. So for instance if some family is running a liquor business in their home then this becomes a family enterprise. So will we allow children to work in that?

3. The list of industries that are considered harmful for an individual aged 14 to 18 have been brought down from 83 to 3. The numbers of hazardous industries have reduced which is a huge problem. As we look to the history, in the act of 1986, each time a new industries were added it was done with a lot of rationale. And now the numbers are only limited to a few hazardous industries like mining and few others. In our entire country, if we see most of the working children are working in the agricultural sector.

4. Amendment of section 14. There is no rigorous punishment for the employer to stop the employment at the first place only. This section also states that there is no punishment for the parents for employing their children unless it is for the commercial purpose. So is there enough fear in the eyes of the employer before they put hands on the children?

The government passes every amendment from its side. But they might not be rid of the loopholes. Child Labour Act has been present for so many years. Even then in today’s time child labour exists in every corner in India. One of the reasons being we could go fight saying the law gave us claws basically, to fight. And now those are gone. Secondly, passing an amendment and its implementation, that is two different things. The effects of the amendment should reach the children. The benefit should reach the children.

6. CONCLUSION AND SUGGESTIONS

In conclusion, all can agree that something must be done to stop this heinous act of crime. Child labour regress society. Taking away childhood from children and making them work for personal benefits is ungrateful. It is essential for everyone to understand the factors that are discussed above which causes child labour. In India, a cast driven society, most backward caste children are encouraged or forced to work in their family business which is to serve upper caste members of the society. They are sent to work hoping to earn more for their family sustainability. This bonded labour system in a society must end. It is also important to understand the caste system in India and how is it abusing Indian society. People should live united without any discrimination. The privileged people should understand the struggles of backward

⁵ Available at www.libguides.ilo.org/child-labour-en

society, and must help them overcome it. They can help poor people financially to send their children to schools and get education or play sports or become an athlete. The children should be given all the help to pursue their own dreams. It is common that when a certain habit is practiced since many years, it becomes a tradition. After it becomes a tradition, everyone starts thinking that since their ancestors have been doing it, they should follow the footpath. But, the time has come to critically think of the outcome. Sati system had also become a tradition in Indian society, but at some point of time someone realized that it suppressed the society. Therefore, it had to be abolished. Similarly, the new generation of India should be enlightened with the disadvantages child labour provides in the society and thus, must act against it. Children are considered to be the future of a nation, and so it's everyone's right to save the future of the nation.

The authoritative body should make strict rules since these bodies inspire people. The legislative, executive and judiciary must act together to bring change in the mentality of the people. There should be strict rules made to abolish this crime and punish people who commit the crime. There should also be policies regarding checking and establishing a surveillance cell for implementation of the existing policies. The challenge is that if we start punishing backward class people, who lack education and awareness, it would be a wrong message in a society. Therefore, it should be expected from leaders to change people's minds against child labour. The importance of education in a society should be conveyed to its citizens. More awareness programs should be initiated to provide education to children. The people who send their children to work hoping they would earn more money for their families' sustainability should be given incentives so that they stop sending their children to school instead of work. The families' parents should be given proper jobs so that they make enough money to send their children to school and provide them with good education. The government must act to make school fees as lower as possible so that it becomes easy for common people to afford them. The government must act to make policies so that education is free and feasible for everyone.

In the end, we must understand that children should not become a source of income, but they should be family's liabilities. Parents must provide them with education. They have a right to it according to our constitution, and they also deserve it. There have been various steps being taken from international bodies like the UN to curb this crime as discussed earlier. We should try to strictly adhere to those rules and policies enacted by the body. This will bring a progress in the society. When more and more children start going to school, there will be even brighter minds in the society. The society will have more development in all aspects when it is educated. There will be economic development, development in the infrastructure, development in the field of science and technology and others. And as a responsible citizen we should ourselves that when was the last time we took a step to stop child labour. Because ultimately they alone are not the sufferers, the whole nation is. So we should all step together to say no to child labour.