

CHILD LABOUR IN INDIA AND JUDICIAL APPROACHES: AN OVERVIEW

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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.

MEANING & DEFINITION

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 carports, 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:

- Inside the family-Children are occupied with local family unit errands without pay.
- Inside the family however outside the home. Model rural workers, residential house keepers, transient workers and so on.

²available at www.childlineindia.org.in, (visited on April 12, 2018).

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

There are various legislations that regulate labour in India. A few legislations include provisions related to child labour. These provisions give us more insight on child labour. The age of the adolescent is the sole factor for determination as to who is a adolescent. In India there are several legislations relating to the age of adolescent which describe various age of the adolescent, but its maximum age limit is 18 years.

The important provisions are:

As laid down in the Constitution of India, no adolescent below the age of 14 is allowed to work in any factory or mine or engaged in any other hazardous employment⁴.

- In the Plantation Labour Act, 1951, prohibits adolescent and adolescent to work in plantations, subjected to a few restrictions⁵.
- The Factories Act, 1948 prohibits the employment of adolescent below the age of fourteen years of age in factories⁶.
- The Motor Transport Workers Act, 1961, prohibits any employment of a adolescent i.e. below the age of 14 years as defined under the Act⁷
- According to the Merchant Shipping Act, 1958, employing a person below the age of fourteen years of age with certain exceptions is an offence⁸.
- The Apprentice Act, 1961 prescribes the age requirement to work as an apprentice as fourteen years of age⁹.
- According to the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, employment of a person who has not completed fourteen years of age in the industrial premises is prohibited¹⁰.
- The Indian Mines Act, 1952, prohibits employment of a person below the age of eighteen years¹¹.
- The Child labour (Prohibition and Regulation) Act, 1986, prohibits the employment of adolescent in certain occupations and processes below the age of fourteen¹².
- This traditional concept of child labour is also endorsed by International Labour Organization (ILO). As the ILO states, it is —not concerned with adolescent helping in family farms or doing household chores'

³available at: <https://www.indiacelebrating.com/social-issues/child-labour-in-india/amp/> , (visited on: April 2, 2019) .

⁴ Article 24 The Constitution of India, 1950.

⁵ Section 26 of the Plantation Labour Act, 1951 (Act LXIX of 1951).

⁶ Section 67 of the Factories Act, 1948 (Act 63 of 1948).

⁷ Section 21 of the Motor Transport Workers Act, 1961(Act 4 of 1936).

⁸Section 109 of the Merchant Shipping Act, 1958(Act 44 of 1958).

⁹ Section 3 of the Apprentice Act, 1961(Act 52 of 1961).

¹⁰ Section 24 of the Beedi and Cigar Workers (Conditions of Employment) Act,1966 (Act 32 of 1966).

¹¹ Section 40 of the Indian Mines Act, 1952 (Act 35 of 1952).

¹² Section 3 of the Child Labour (Prohibition and Regulation) Act,1986 (Act 61 of 1986).

and defines child labour to include adolescent leading permanently adult lives, working long hours for low wages under conditions damaging to their health and physical and mental development, sometimes separated from their families, frequently deprived of meaningful educational and training opportunities that could open to them for a better future¹³.

ANALYSIS OF INDIAN LAWS

❖ CONSTITUTIONAL PROVISIONS

Children by virtue of their gentle age require special proper care and security. They have been provided with certain rights that have been accepted both at national as well as international level. The Constitution of India have identified the rights of child and included various articles that deals with child's liberty, livelihood, their development, compulsory and free education along with prohibiting their employment in factories, mines and other hazardous industries.

Fundamental rights

“**Article 15** provides for the State to make Special provision for children and women.”¹⁴

As a result of this, the legislature has enacted various laws for the betterment and welfare of children namely, The Child labour (Prohibition and Regulation) Act, 1986, Prohibition of Child Marriage Act, 2006 and many more.

Article 21

“Right to life provided under Article 21 is the comprehensive expression of all the rights that is required to be enforceable by the Courts due to the reason that such rights are necessary for living the dignified life.”¹⁵

Article 21-A: Right to Education

“Article 21-A of the Indian Constitution provides for the State to provide free and compulsory education to every Child between the age group of six to fourteen years in way as the State may determine.”¹⁶

The Hon'ble Supreme Court has interpreted the phrase “life and personal liberty” mentioned under Article 21 of the Constitution of India and held that the term liberty includes livelihood and to live with dignity, right to education and thereby right to education for child between the age group of 6 to 14 years is a fundamental right.

Article 23

It provides for prohibition of trafficking, beggar and forced labour and has made contravention of such provision a punishable offence.

¹³International Labour Organization, 1983.

¹⁴ Article 15 The Constitution of India, 1950.

¹⁵Article 21 The Constitution of India, 1950.

¹⁶ Article 21-A The Constitution of India, 1950.

“*Raj Bahadur v. Legal Remembrancer*”¹⁷, AIR 1953 Cal 522, the Court held that Human being trafficking includes dealing in men and women same as goods like selling or letting or dispose them. It also include child trafficking for immoral, commercial or other purposes.¹⁸

Article 24

“It prohibits employment of child below 14 years of age in factory or mine or any other hazardous employment.”¹⁹ In the case of “*M.C Mehta v. State of T.N*”²⁰, the petitioner observed the rampant growth of child labour in Sivakasi. Therefore, the petition was filed for issuing direction against the menace of Child Labour. The Court issued various directions for prohibiting employment of children below 14 years of age, for preparing for education of such children and also for giving employment to their parents or adults from their family so that children are not made to do jobs.²¹

The decision was further upheld by “*Bandhua Mukti Morcha v. Union of India*”²², wherein the concern was the employment of children in industry of carpet weaving”.

Directive Principles Of State Policy

The DPSP’s are important in the country’s governance and is therefore cannot be separated from the fundamental rights. The State is under constitutional directive to create circumstances under which FR’s is provided to individuals that is enjoyed by everyone.

Article 39(e)

“The State shall endeavour to direct its policy in protecting the tender age of children which shall not be abused and that no one shall be forced by economic necessity to get into such occupations that is unsuited to their age.”²³

Article 45

“It provides for the State shall make provisions for early childhood protection until the child attain the age of 14 years.”²⁴

The Article was replaced by the amendment Act by virtue of which Article 21-A that provides for the Right to Education for children of age group 6 to 14 years was introduced in the Indian Constitution.

¹⁷AIR 1953 Cal 522.

¹⁸Dr. R. Seyon , “Trafficked Child Victims: Challenges. And Responses” ,2,LM.

¹⁹ Article 24 The Constitution of India, 1950.

²⁰1996, available at: <https://indiankanoon.org/doc/212829/> (visited on: May 19, 2019).

²¹ (1996) 6 SCC 756.

²²AIR 1984 SC 802; 1984 available at: <https://www.globalhealthrights.org/asia/bandhua-mukti-morcha-v-union-of-india-and-others/> (visited on: May 19, 2019).

²³Article 39(e) The Constitution of India, 1950.

²⁴Article 45 The Constitution of India, 1950.

In “*Unni Krishnan v. state of A.P*”²⁵ and “*Mohini Jain v. State of Karnataka*”²⁶, the Court held that converting Article 45 into fundamental right will be an important aid to achieve the goal at a greater pace.

Fundamental Duties

“It has also become the fundamental duty of parents and guardians to educate their children provided under Art51-A (k) of the Constitution of India.”²⁷

LEGISLATIONS

Child labour became prevalent during the 20th century when report about the hazards occurring with children was prominent. The legislature therefore considering the need for legislation on the issue of child labour enacted the legislation that prohibits the employment of child labour.

The Statutes that condemns and prohibits the child labour are as follows:

- ❖ *Provisions Relating To Child Under Indian Penal Code, 1860*
- ❖ *Juvenile Justice Act, 1986*
- ❖ *The Code Criminal Procedure 1973*
- ❖ *The Guardians And Ward Act 1860*
- ❖ *The Factories Act 1948*
- ❖ *The Immoral Traffic Prevention Act 1956*
- ❖ *The Young Person (Harmful Publications) Act 1956*
- ❖ *The Bonded Labour System (Abolition) Act 1976*
- ❖ *The Child Labour (Prohibition And Regulation) Act 1986*
- ❖ *Children (Pledging Of Labour) Act, 1933*

CHILD LABOUR: IMPACT

❖ DENIAL OF CHILDHOOD

The children forced into labour are denied of the childhood. They miss on the social development. At the age where children play and dreams they are burdened with responsibilities.

²⁵(1993) 1 SCC 645.

²⁶ (1992) 3 SCC 666.

²⁷Article 51(A) (k) The Constitution of India, 1950.

❖ HINDRANCE TO SOCIAL AND ECONOMIC DEVELOPMENT

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.

❖ IMPACT ON HEALTH DUE TO HAZARDOUS CONDITIONS

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.

❖ IMPACT ON CHILD PROGRESS

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.

❖ NEGATIVE IMPACT OF CHILD LABOUR ON ADOLESCENTS AND SOCIETY

Mankind gives adolescents special attention, care and guarantees for the good of society. But by hiring adolescents as workers, we are depriving them of certain basic physiological, psychological, biological and social needs, which is a shame for humanity.

CHILD LABOUR WELFARE AND JUDICIAL ACTIVISM

The judiciary has taken a stand when there is no proper enactment for the welfare of the Child Labour and goes extent to look out the problems of them and some of these cases are there in which judiciary considers as poverty is the reason for the exploitation of children and other economic factor. In this situation we can leave the child in the condition of lurch and they have judgement which gives us good lesson to the society for the welfare of the children.

In "*Labourers Working on Salal Hydro Project v. State of Jammu and Kashmir and others*"²⁸, Justice Bhagwati observed that construction work is a hazardous employment and therefore under Article 24 of the Constitution, no

child below the age of 14 years can be employed in construction works by reason of the prohibition, enacted in Article 24 and this constitutional prohibition must be enforced by the Central Government.

In "*Lakshmi Kant Pandey v. Union of India*"²⁹, the court held that it is obvious in a civilized society, the importance of child welfare cannot be over emphasized, because the welfare of the entire community, its growth and development, depend on the health and well-being of its children. Children are a supremely important national asset and the future well-being of the nation depends on how its children grow and develop. The great poet Milton put it admirably when he said -Child show the man as morning the dayi and the Study Team on Social Welfare said much to the same effect when it observed that the physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages. The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow in their maturity, into fullness of physical and vital energy and the utmost breath, depth and height of its emotional intellectual and spiritual being; otherwise there cannot be a healthy growth of a nation. Now obviously children need special protection because of their tender age and physique, mental immaturity and incapacity to look after the usefulness.

CHILD LABOUR WELFARE AND RIGHT TO EDUCATION

The abolition of the child labour is preceded by the introduction of compulsory education; compulsory education and child labour are interlinked. Article 24 of the Constitution bars employments of child below the age of 14 years. Article 45 which is incorporated by the 86th amendment in 2002 which gives the direction to the state to provide education to the child below the age of six years. And the judiciary plays an important role in the making as education as a fundamental right and the Judiciary gives a good judgement in the cases like "*M.C. Mehta v. State of Tamil Nadu and others*"³⁰, "*Mohini Jain v. State of Karnataka*"³¹, "*Unni Krishnan v. State of Andhra Pradesh*"³².

In "*M.C. Mehta v. State of Tamil Nadu and others*"³³, the Honourable Supreme Court observed that working conditions in the match factories are such that they involve health hazards in normal course and apart from the special risk involved in the process of manufacturing, the adverse effect is a serious problem. Exposure of tender aged to these hazards requires special attention. We are of the view that employment of children in match factories directly connected with the manufacturing process like uplift of final production of match sticks or fireworks should not, at all, be permitted as Article 39 (f) prohibits it³⁴.

The judgment has five important components:

²⁹ 1984, 2 SCC 244.

³⁰ AIR 1991 SC 417.

³¹ AIR 1992 SC 767.

³² (1993)1 SCC 645.

³³ AIR 1991 SC 417.

³⁴ AIR 1991 SC 418.

- (i) In line with the Constitution's prohibition on the employment of children in hazardous employment, the Supreme Court said that children can, therefore, be employed in the process of packing but packing should be done in an area away from the place of manufacture to avoid exposure to accident³⁵. The Apex Court acknowledged that the Directive Principles of State Policy recommend that children should be in school until the age of fourteen, but economic necessity forces grown up children to seek employment³⁶.
- (ii) The Apex Court ordered that children be paid sixty per cent of prescribed minimum wage for an adult employee in the factories doing the same job³⁷. The judgement further stated that if the state feels that a higher wage is viable, this decision should not stand in the way³⁸.
- (iii) The Court believes that special education facilities (both formal and job training), recreation and specialization should be made to provide for the quality of life of working children. To pay for these facilities, match factories would be the Court ordered the creation of a welfare fund, to which registered made to contribute. Upon the recommendation of the counsel for the State of Tamil Nadu, the Court the fund.' Also ordered that the Government should make a matching grant to the fund.
- (iv) The Supreme Court ordered the State of Tamil Nadu to provide facilities for recreation and medical attention. These facilities were to include provision of a basic diet during the working period and care medical with a view to ensuring sound physical growth. It was recommended that the state will work with UNICEF in making these facilities available.
- (v) The Court ordered the creation of a compulsory insurance scheme for both adults and children employed in the Sivakasi match factories. All employees were to be insured for fifty thousand rupees, and the premiums were to be paid for by the employer³⁹. The Court concluded its decision by awarding Mehta three thousand rupees as costs⁴⁰.

The Court's decision was criticized on many accounts by number of human rights organizations. The judgments is not progressive and, in fact, incorrect at law. It is alleged that the Court again sought to balance the child's economic needs against his or her fundamental rights rather than prohibiting child labour. This decision, unlike the Court's previous order, directly targeted the problem of poverty. It involved the state, employers, families, and working children in a scheme to help reduce the causes of child labour. The Court determined that if poverty is eradicated, child labour will cease to exist. To this end, it hopes that state governments will replace child workers with adult workers.

³⁵ AIR 1991 SC 417.

³⁶ AIR 1991 SC 426.

³⁷ AIR 1991 SC 427.

³⁸ AIR 1991 SC 428.

³⁹ AIR 1991 SC 432.

⁴⁰ AIR 1991 SC 440.

CONCLUSION AND SUGGESTIONS:

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 the law with respect to the base age.”⁴¹ 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?

⁴¹Child Labour, available at: www.libguides.ilo.org/child-labour-en.

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.

