

CHILD LABOUR¹

INTRODUCTION

Child labour is a problem that is prevalent worldwide but more so in developing countries. India is sadly the home to the largest number of child labourers in the world. Children are future citizens of the Nation and their adequate development is utmost priority of the Country. Unfortunately, child labour engulfs children across the world.

As per Census 2011, the total child population in India in the age group (5-14) years is 259.6 million. Of these, 10.1 million are working, either as 'main worker' or as 'marginal worker'. In addition, more than 42.7 million children in India are out of school. However, the good news is that the incidence of child labour has decreased in India by 2.6 million between 2001 and 2011. However, the decline was more visible in rural areas, while the number of child workers has increased in urban areas, indicating the growing demand for child workers in menial jobs. According to a 2017 report by the International Labour Organization (ILO), the number of child labourers around the world fell from 246 million in 2000 to around 152 million in 2016.

The study conducted by Ministry of Women and Child development² analysed the breakup of children at work in various sectors, which showed that 23.16% were in domestic work, and 11.21% were working in roadside restaurants, tea stalls and dhabas. Almost half of the children surveyed (48.23%) were in other occupations like construction work, car cleaning, vending, garbage collecting, selling newspaper, agricultural labourers etc. 9.58% children worked as shop assistants and 7.83% were in beedi rolling. This, the percentage of children working in illegal/hazardous occupations (domestic work, roadside restaurants and dhabas, construction work, beedi rolling, lock making, embroidery etc.) was 56.38%.

The study sample also examined the number of days on which children went out for work, which revealed that more than half (50.2%) of the children worked seven days a week, more than one third (36.5%) worked six days a week and the rest (13.3%) worked five days or less every week. The fact that 50 percent of working children worked seven days a week is a shocking revelation. Also the fact that they work with no time for play, is detrimental to their growth and development.

¹ M. Sumi Arnica, The Tamil Nadu Dr. Ambedkar Law University, Chennai.

² Study on Child Abuse in India 2007, Ministry of Women and Child Development, Government of India, New Delhi.

CAUSES OF CHILD LABOUR

Overpopulation, illiteracy, poverty, debt trap are some of the common causes which are instrumental in this issue. Despite the recent economic boom in India, more than a third of all Indians still live below the poverty line. Even after so many years of our country's independence, there are instances where children are deprived of their fundamental right to education. Socially and economic backwardness is also main reason for the child labour. Socially backward parents do not send their children to receive education. Consequently, their children are trapped in Child Labour. Parents want their children to fire for themselves as early as possible, much better, if they become a source of income to the family³. Often children are also bonded to labour due to a family indebtedness. Out of school children or those children at risk of dropping out can easily be drawn into work and a more vulnerable to exploitation. Girls, especially those from socially disadvantaged groups, tend to be at a higher risk of being forced into work. In every country there was an enrolment of children in a large number of factories, who were paid very low wages, were subjected to excessive hours of work, and were made to work in terrible conditions. Child labour exists not because children are more capable workers but because they can be hire for less money. Thus, the preference for child labour by many employers is mainly due to the fact that it is cheap, safe and without any problem⁴.

Children are exposed too much harassment while doing household activities such as collection of fuels, fruits and vegetables from the forests, cow dung, etc. It is quite evident that by doing indispensable household tasks children indirectly contribute substantially to the earning activity of the household by shouldering responsibility of their mother and father so as to enable them to earn more by doing extra work at the lace of their employment. In rural areas the children are engaged by their parents in all kinds of agrarian production such as farming dairy work of craftsman and artisans. In many cottage industries children are engaged by their parents in hereditary crafts work done by them from generation to generation⁵.

The wage structure of the adult workman has a direct bearing on the occurrence of child labour. The report of International Labour Organisation has also revealed that the problem of child labour is no problem by itself. In reality, the problem is that of maintenance of the child which

³ Bhatia, S.C. (edited), (1990), "Children in India", Indian University Association for continuing education, University of Delhi, P.14.

⁴ Chandra, Suman (1998), "Problems and Issues of Child Labour", Social Action, Vol 48, P.27.

⁵ Varandani, G. (1994), 'Child labour and Women Workers', Ashish Publishing House, New Delhi, P. 72.

is directly connected with the question of the ensuring a living wage to the adult wage earner so that he may be able to maintain his family at an adequate standards⁶.

CONSEQUENCES OF CHILD LABOUR

Children who work fail to get necessary education. Children who work, instead of going to school, will remain illiterate which limits their ability to contribute to their own wellbeing as well as to community they live in. The harsh working condition create a number of problems such as premature ageing, malnutrition, depression, drug dependency. Uneducated children who work in society sometimes get influenced by the criminal activities and commit crime at low age. Some cases of juvenile criminals have been reported in India and its increase is also observed in India.

In certain cases, child labour also endangers a child's dignity and morals, especially when sexual exploitation is involved, such as prostitution and child pornography. According to a study by Indian Government released in 2007 about 20% of children in as labour have faced sexual abuse. Most of the cases of sexual cases occurs with the girls below 15.

Mental wellbeing is less frequently researched in child labour⁷. A retrospective cohort study in morocco randomly examined 200 children working in the handicraft sector and found a high prevalence of respiratory, digestive and skin conditions, as well as mental health presentation such as migraines, insomnia, irritability, enuresis and asthenia.

Agriculture sector has the maximum (70%) involvement of child labour. Handling dangerous tools and machines, using pesticides can cause physical causality and as well as many disease to the children.

CONSTITUTIONAL PROTECTION

1. Right to free and compulsory education for all children in the 6-14 year age group (Article 21 A)

Indian civilization recognises education as one of the pious obligation of the human society. Looking at the economic front, even after six decades of achieving independence, 30 percent of the population is living below poverty line and the bulk of the remaining population is struggling for existence under poverty condition,⁸ In

⁶ Chandra, Suman (1998) 'Problem and issue of child Labour', Social Action, Vol 46, p. 27.

⁷ Khan H, Hameed A, Afridi AK. Study on child labour in automobile workshops of Peshawar, Pakistan.2007; 13: 1497-502.

⁸ Mohini Jain v. State of Karnataka, AIR 1992 SC 1858.

the case *Avinash Mehrotra v. Union of India*⁹, it was held that the right to education includes right to safe education. Article 21 A of the constitution would cover primary as well as secondary education¹⁰

2. Right to be protected from any hazardous employment till the age of 14 years (Article 24).

Article 24 is constitutional prohibition which even if not followed up by appropriate legislation must operate proprio vigore¹¹. In the case *labourers working on salal hydro project v. State of Jammu and Kashmir*¹², it was held that the child below the age of 14 years cannot be allowed to be employed in hazardous employment.

3. Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength (Article 39(e)).

In the case *M.C. Mehta v. State of Tamil Nadu*¹³, the Supreme Court has issued directions to the state to see that an adult member of the family whose child is in employment in a factory, mine or hazardous employment gets employment anywhere, in lieu of the child. The Children of the Prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any pre-stigma attached on them¹⁴. Provision of Article 39(e), 39(f), 41 and 47 can be pressed into service to make suitable provisions regarding Child Labour. Under Article 39(f) the state is under duty to ensure that children are given opportunities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

4. Right to early childhood care and education to all children until they complete the age if six years (Article 45).

THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

The Child Labour (Prohibition and Regulation) Act, 1986 repealed the Employment of Children Act 1938. The main and the most important point was that this Act aimed at

⁹ (2009) 6 SCC 398.

¹⁰ *State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya*, (2006) 9 SCC 1.

¹¹ *People's Union of Democratic Rights v. Union of India*, 1982 SC 1473.

¹² AIR 1984 SC 177.

¹³ AIR 1997 SC 699.

¹⁴ *Gaurav Jain v. Union of India* (1997) 8 SCC 114.

identifying more hazardous processes and industries with a view to banning child labour in these industries and regulating conditions for children in non-hazardous occupations.

The Act prohibits the employment of children in certain employment and regulates the conditions of work of children in certain employment and regulates the conditions of work of children in certain other employments.

The Act concentrates mainly on four basic issues,

1. Minimum age for employment of children;
2. Maximum period of work per day and prohibiting work at night;
3. Prohibiting certain types of work for children;
4. Medical examination of all working children.

But the implementation of the Act is very slow and it does not absolutely prohibit child labour.

UNIVERSAL DECLARATION OF HUMAN RIGHTS

UDHR states that Motherhood and Childhood are entitled to special care and assistance. All children whether born in or out of wedlock shall enjoy the same social protection. Right to education for all, and deals both with access and the aims of education. Thus the education is to be free, atleast in the elementary and fundamental stages, elementary education is to be compulsory.

INTERNATIONAL COVENANT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The preamble of the ICESCR insofar as it recognizes the indivisibility of human rights is applicable to children rights as well.

1. The widest possible protection and assistance should be accorded to the family, particularly for its establishment and while it is responsible for the education and care of dependent children (Article 10).
2. Rights of all to enjoyment of the highest attainable standard of physical and mental health (Article 12).
3. Right of everyone to education (Article 13(1)).
4. Primary education shall be compulsory and available free to all (Article 13(2a)).

WORLD HEALTH ORGANISATION

WHO is making efforts to promote appropriate infant and young child nutrition¹⁵. It has urged Members states to give appropriate priority to the health needs of youth and identify and provide support to meet the requirements of those groups of young people who were particularly vulnerable disadvantaged or had special needs¹⁶.

ROLE OF NON GOVERNMENTAL ORGANIZATION

NGO, sometime called as a fifth unofficial organ of the Government, may play a very vital and significant role in the task of elimination of child labour. NGOs may initiate certain measures of creating awareness among the employers and parents regarding the evils of child labour. The universe of NGOs and network currently working on the issue of child labour is both large and diverse, and the NGOs work at all levels such as globally, regionally, nationally, and locally. The existing penal provisions of child labour laws may be highlighted among the erring employers. NGOs may add to the efforts of the Government staff must seek the involvement of NGOs at all stages. Thus NGOs must be encouraged to become partners in elimination of child labour along with Government¹⁷.

NGOs have been working to find a solution to the problem of child labour. Many NGOs have grown in size and capabilities conducting research and training while developing effective and innovative programmes to shift children from work to school. The work of NGOs in the field of primary education, microfinancing and alternative income generation programmes have also made an important contribution in the effort to eradicate child labour in both urban and rural India. NGOs make significant improvement in their performance in promoting sustainable development and livelihood for the poor¹⁸.

Thus, the NGOs play a vital and significant role in the task of elimination of child labour. The role of NGOs in rescuing, rehabilitation and mainstreaming the child labourers is highly commendable. Child Helpline across the nation have played very crucial role in protecting the rights of the children and rescuing child labourers.

¹⁵ World Health Assembly Resolution WHA 41.11 adopted on May 1981.

¹⁶ World Health Assembly Resolution WHA 42.41 adopted on May 1989.

¹⁷ Study material on successful prosecution of child labour cases, Department of labour, Govt. of Karnataka, 2011, pp.18-19.

¹⁸ Dr. Nanjunda, D.C., "Child labour and Human Rights", Delhi: kalpaz Publication, 2008, pp.82-83.

ILO's INTERNATIONAL PROGRAMME FOR THE ELIMINATION OF THE CHILD LABOUR (IPEC)

The international programme for the elimination of the child labour is global programme launched by the ILO in December 1991. India was a first country to join it in 1992 when it signed a Memorandum of Understanding with the ILO. The long term objective of IPEC is to contribute to the effective abolition of child labour. Its immediate objectives are¹⁹:

1. Elimination of the capability of ILO constituents and Non-Governmental Organisations to design, implement and evaluate programmes for Child Labour Elimination;
2. To identify interventions at community and national levels which could serve as models for replication; and
3. Creation of awareness and social mobilization for securing elimination of child abuse.

The IPEC is the technical cooperation programme on child labour in the world. In more than 70 countries ILO/IPEC inspires, guides and supports national initiatives to eliminate child labour. The aim of IPEC is to work towards progressive elimination of child labour by strengthen national capacities and policies to address the child labour problems and creating worldwide movement to combat it.

Priority target groups for IPEC are:

1. Bonded child labourers;
2. Children in hazardous working conditions and occupations; and
3. Children who are particularly vulnerable.

NATIONAL POLICY ON CHILD LABOUR

The National Policy on Child Labour²⁰ is a landmark endeavour in the progressive elimination of child Labour in India. A National Policy on Child Labour has been formulated in conjunction with the legal measures to address the socio economic issues having a bearing in child labour and to provide a framework for a concrete programme of action. The policy attempts to deal with the situation where the children work, or are compelled to work, on a regular or a continuous basis to earn wages for themselves and/or their families, and where their conditions of work result in their being severely disadvantaged and exploited, and where abuses connected

¹⁹ Helen R. Sekhar, "Child Labour- Situation and Strategies for Elimination", Noida: V.V. Giri National Labour Institute, 2007, pp. 101.

²⁰ National policy on Child Labour 1987, Government of India.

with such factors impacting on wage employed children need to be given close attention by the state for rectification, amelioration, and regulation through specific legal and administrative instruments and measures. The policy encompasses action in the fields of education, health, nutrition, integrated child development, and employment.²¹

NATIONAL CHILD LABOUR PROJECT SCHEME

The Central Government has initiated the “National Child Labour Project Scheme” to rehabilitate child labour in the country. The main objectives of the NCLP Scheme is to eliminate all forms of child labour, to identify and withdraw of all child and adolescent workers in the project area from child Labour, to create awareness amongst stakeholders, target communities, the orientation of NCLP and other functionaries on the issues of child labour, to create monitoring, tracking and reporting system in child labour.

WORLD DAY AGAINST CHILD LABOUR

Each year on 12th June, the World Day against Child Labour brings together governments, employers and workers organizations as well as millions of people from around the world to highlight the plight of child labourers and what can be done to help them.

World Day against Child Labour 2019: ILO’s 2019 theme is ‘Children shouldn’t work in fields, but on dreams’. This year, the International Labour Organization celebrated 100 years of advancing social justice and promoting decent work. The day looks towards the UN Sustainable Development Goal Target 8.7 set by the international community calling for an end to child labour in all its forms by 2025.

LAWS AND ENFORCEMENT ARE OFTEN INADEQUATE

Child labour laws around the world are often not enforced or include exemptions that allow for child labour to persist in certain sectors, such as agriculture or domestic work. Even when there is any laws or code of conduct exist, they are often violated.

CONCLUSION

The phenomenon of child labour is multi-dimension complex problem and deep rooted in the socio economic fabric of the society. Several socio economic and political factors are responsible for the existence and perpetuation of child work. Although poverty and inequality

²¹ Ashok Narayan, Child Labour Policies and Programme: The Indian Experiment Government of India, Ministry of Labour, New Delhi, 1988.

are the main factors influencing the number of child workers, they are not the only causes. Child labour is not purely an economic question and we have to opt for a model that will continuously generate employment, but poverty can no longer be an excuse for child labour. Poverty has not prevented governments of other developing countries from expanding mass education or making primary education compulsory.

In our country law has a crucial role to play in social transformation. It is evident that legislation is one of the main weapons and the process is still incomplete. Child labour is a complex issue. It needs a multi sectoral, integrated approach. Government has been taking various pro-active measures to tackle this problem. However considering the magnitude and extent of the problem inextricably linked to poverty and illiteracy it requires concerted efforts from all society to make a dent in the problem.

The present title of Child Labour (Prohibition and Regulation) Act, 1986 should be amended as Child Labour (Prohibition and Rehabilitation) Act, so that more focus should be given to rehabilitation rather than regulation. A separate and independent body should be constituted under Labour Ministry at Centre, State and District level for monitoring the affairs of Child Labourers after 14 years who were rehabilitated and mainstreamed. Laws on child labour and Education should be implemented in a mutually supportive way. It is suggested to give more focus on implementation of child labour laws and other laws meant for the protection of the children.