

Critical Analysis of Child Labour in India

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Abstract: The issue of child labour remains a significant challenge in India, despite judicial interventions and legislative efforts. This abstract examines key Supreme Court cases, including *M. C. Mehta Vs. State of Tamil Nadu*, *P. U. D. R. Vs. Union of India*, *Salal Hydro Project Vs. State of J & K*, and *Bandhua Mukti Morcha Vs. Union of India*, highlighting the judiciary's role in safeguarding child welfare and promoting education. However, the persistence of child labour underscores the need for more robust mechanisms. This paper recommends stringent implementation of child labour laws, the application of compulsory education policies, specialized social development programs, awareness campaigns, amendments to social security legislation, population control measures, equal pay mandates, and enhanced healthcare services for children. Additionally, providing education and training opportunities for child workers during their free time is essential for breaking the cycle of exploitation. Ultimately, addressing child labour demands collaborative efforts between governmental agencies, NGOs, and society at large.

Keywords: Child Labour, Supreme Court of India, Judicial Response, Child Welfare, Compulsory Education, Social Development Programs, Legislative Amendments, Population Control, Equal Pay, Healthcare Services, Training Opportunities.

INTRODUCTION

We can easily recognize the importance of the Child. The above statement has wide scope for interpretation. Children are the greatest gift to humanity and Childhood is an important and impressionable stage of human development as it holds the potential to the future development of any society. Children who are brought up in an environment, which is conducive to their intellectual, physical and social health, grow up to be responsible and productive members of society. Every nation links its future with the present status of

its children. The development of the Nation is exclusively based on the status of the Child.

It is also true that this is one of the vulnerable groups in the society. By performing work when they are too young for the task, children unduly reduce their present welfare or their future income earning capabilities, either by shrinking their future external choice sets or by reducing their own future individual productive capabilities. Under extreme economic distress, children are forced to forego educational opportunities and take up jobs which are conditions.

We can also further add that Children are the Assets of the Nation. Children play a very significant role in the Nation building. All these make obligatory on everyone to protect and provide various safeguards to the children. It is our prime duty to provide care and protection towards children as they are innocent. Further progress of the community at large we need to pay attention towards education of children.

In reality there are various social evils with children; one of them is Child Labor. The Child Labor system is in existence in developing and underdeveloped countries. As per the information available, India is one of the Countries where in large number of children below the age of 14 years working in various organizations. If there is no proper distribution of work among the member of the society then children automatically forced to do work for their survival. Unemployment of adult members of the particular family results into Child Labor.

In any Country protection of children and young people is of prime importance. So the responsibility to provide healthy atmosphere to the children to their fullest physical and mental development rests on all the civilized society¹.

Every human being is a social animal. As we are a part of the society the responsibility to take reasonable care of the children and young people is on the shoulder of all members of the society. Finally, it can be said that

¹ILO Conventions on Development of Children And Young persons, by Mrs. Jayashree V.

Doddawadmath, Legal News and Views, October 2010, Vol 24, No.10

society at large morally responsible to maintain healthy atmosphere.

Child Labour

Any discussion of child labor must begin with a precise description of what the term means. The phrase "child labour" conjures images of children chained into factories, sold as slaves, or forced into prostitution. Fortunately, while many children work in the developing world, few experience such atrocities. Most of these working children labeled "child laborers" are helping their family at home, on the family farm, or in the family business. Child labor is a concrete manifestation of violations of a range of rights of children and is recognized as a serious and enormously complex social problem in India. Working children are denied their right to survival and development, education, leisure and play, and adequate standard of living, opportunity for developing personality, talents, mental and physical abilities, and protection from abuse and neglect.

United Nations Secretary General Kofi Annan quoted, "Child Labour has serious consequences that stay with the individual and with society for far longer than the years of childhood."² The issues relating to Child Labour has given significance at national and international level. The main prime purpose behind this is to provide effective safeguards to the children all over the globe.

The term Child Labour is used for employment of children below a certain age, which is considered illegal by law and custom³. The stipulated age varies from country to country and government to government. Child Labour is a world phenomenon which is considered exploitative and inhuman by many International Organizations. There is a huge amount of heterogeneity that prevails amongst scholars when it comes to defining child labour. We will look at some of the more widely accepted definitions.

International Labour Organization

Child Labour, as defined by the International Labour Organization, refers to work that leads to the deprivation of one's childhood and education

opportunities. Effects include loss of potential and dignity in self, which is harmful to a child's physical and mental development⁴. The term Child Labour is defined as work that deprives children of their childhood, their potential and their dignity and that is harmful to their physical and mental development⁵. It refers to work that:

- Is mentally, physically, socially or morally dangerous and harmful to children; and
- Interferes with their schooling by:
- Depriving them of the opportunity to attend school;
- Obliging them to leave school prematurely; or
- Requiring them to attempt to combine school attendance with excessively long and heavy work.

United Nations International Children's Emergency

Child Labour, as defined by the UNICEF defines child labour as work that exceeds a minimum number of hours, depending on the age of a child and on the type of work. Such work is considered harmful to the child and should therefore be eliminated. It refers to work that:

- Ages 5-11: At least one hour of economic work or 28 hours of domestic work per week.
- Ages 12-14: At least 14 hours of economic work or 28 hours of domestic work per week.
- Ages 15-17: At least 43 hours of economic or domestic work per week.

Government of India

India sought to prohibit child labor under THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986⁶. The Government of India realized that complete abolition of child labour was not possible and hence drew up a list of occupations considered hazardous under Annexure A of the aforementioned Act. Some of these prohibited occupations are: Any work related to mines, plastic units, handlooms, foundries etc.

Child Labor is conventionally defined as a working child between age of 5-14 who are doing labour or engaged in economic activity either paid or unpaid. The definition of child as given under Child Labour

² Justice P.S. Narayana & Anita Gogia, The Laws Relating to Children In India, Gogia law Agency, Hyderabad, 1st Edition, 200

³<http://www.childlabour.in/child-labour-in-india.htm>

⁴<http://www.ilo.org>

⁵http://en.wikipedia.org/wiki/Child_labour_in_India

⁶ ibid

(Prohibition and Regulation) Act of 1986 defines child means a person who has not completed his fourteen years of age so by this definition the question of Child Labour is solved⁷.

National Commission for protection of Child Rights
The definition of child labour must encompass children working for the families in their own homes, children in agriculture work, work rendered by girl children and all other forms of work that deprives them of their right to education in a full-time, formal school. In other words, the definition of child labour must be inclusive and it should recognize all forms of child labour⁸ as prohibitive. Finally child labour must include children up to 18 years of age. The NCPCR calls for consonance between child labour law and the 86th amendment to the constitution of India which guarantees education as a fundamental right to all children in the 6-14 age groups⁹.”

MAGNITUDE OF CHILD LABOUR IN INDIA

Child Population In India

As per 2001 Population Census, children in the age group of 0-14 constituted about 360 million and accounted for 35.3 percent of total population. Children in the 5-14 age group constituted about 251 million and accounted for 24.6 percent of the population. Though there is an increase in the absolute number of children, the proportion of children in the total population is declining between 1991 and 2001. By Census of India projections, the proportion of children (0 to 14) has further come down to 32.1 percent during 2006. Elementary school age children (5 to 14) in the total population constituted 241.7 million accounting for 21.7 percent of the total population. The reduction in the proportion of children is attributed to drastic reduction in the Total Fertility Rate (TFR) in many of the major states, especially in Kerala, Andhra Pradesh, and Tamil Nadu,

Maharashtra and Gujarat. On the other hand TFR remains high in some of the major states like Uttar Pradesh, Bihar, Rajasthan and Madhya Pradesh. Thus the segment of child population varies across states depending on the TFR. It is seen that the Proportion of children in the population has implications for the incidence of child labour. Number of empirical studies on child labour has associated large family size with high incidence of child labour (VVG NLI, 1999)¹⁰. The demographic approach to child work has provoked a lively debate on the causal relationship between high fertility and the utility of children for the rural household¹¹. Fertility behavior is also related to various social and cultural factors. The results of these debates have so far been inconclusive. In India for example, the States that have experienced rapid decline in TFR have witnessed decline in the intensity of child labour. In contrast to this the states in Northern India where the trends in fertility decline have been rather slow the incidence of child labour has in fact increased between 1991 and 2001. Within India, Kerala State, where the fertility rate is lowest, has achieved highest literacy rates in the country and the incidence of child labour is negligible. Thus, the changes in the demographic structure in many states provide a positive ground towards elimination of child labour.

Child Labour as an Economic Practice

Two assumptions have broadly influenced Government's policies in respect of Child Labour. The first is that, Child Labour is a 'harsh reality' and one can only mitigate some of the harshness of the exploitative aspects of Child Labour. The 'harsh reality' of Child Labour arises out of the fact that in the present state of development in the country many parents, on account of poverty, have to send their children to work in order to supplement their income and the income derived from the Child Labour, however to do work is essential to sustain the family.

⁷Child Labour problems and perspective, Lawz, September, 2011, pp. 16-18

⁸ ibid

⁹ www.ncpcr.com

¹⁰ VV Giri National Labour Institute, 2000, "Child Labour in Home Based Industries in the Wake of Legislation" (reports of Child Labour in nine different hazardous industries in India).

¹¹ For example Vlassoff Michael, 1991 and Dyson Tim, 1997. The debate on linkage between fertility behaviour and child labour is summarised in Grootaert and Kanbur, 1995. Christian GROOTAERT and Ravi KANBUR, "CHILD LABOUR: AN ECONOMIC PERSPECTIVE", International Labour Review, Vol.134, 1995, No.2

This is the 'poverty argument of Child Labour'¹². Further it can be said that Child Labour as an economic practice signifies employment of children in gainful economic occupation with a view to adding to the income of the family.

Child Labor as a Social Evil

The second assumption is that there is a distinction between Child Labour and exploitation of the Child Labour. It has been accepted that a certain amount of Child Labour will persist under the family environment which is non-exploitative. This is not only inevitable but also desirable. At the same time, there are other forms of child work such as in hazardous occupations, factories and other organized establishments which are reprehensible and should not be allowed to continue¹³. Adding to this its true to say employment of children below notified age by the legislation providing rules regarding prohibition and regulation of Child Labour in dangerous, hazardous industries and engagement depriving of opportunities of their development.

Child Labour is not Child work. Child work can be beneficial and can enhance a child's physical, mental, spiritual, moral or social development without interfering with Schooling, recreation and rest. Helping parents in their household activities and business after school in their free time also contributes positively to the development of the child. When such work is truly part of the socialization process and a means of transmitting skills from parents to child, it is not Child Labour. Through such work children can increase their status as family members, citizens, gain confidence, and self-esteem. Child Labour, however, is the opposite of child work. Child Labour hampers the normal physical, intellectual, emotional and moral development of a child. Children who are in the growing process can permanently distort or disable their bodies when they carry heavy loads or forced to adopt unnatural positions at work for long hours. Children are less resistant to diseases and suffer more readily from chemical hazards and radiation than adults. UNICEF classifies the hazards of Child Labour

into three categories, namely-Physical; Cognitive; Emotional, Social and Moral. There are number of legislations prohibiting employment of children below 14 and 15 years in certain specified employments. However, no procedure is laid down in any law for deciding in which employments, occupations, or the processes the employment of children is banned. But there is no law to regulate the working conditions of children in those employments where children are not prohibited from working and working under exploitative conditions¹⁴.

Incidences which we can refer as a Child Labour

- is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by:
- depriving them of the opportunity to attend school;
- obliging them to leave school prematurely; or
- Requiring them to attempt to combine school attendance with excessively long and heavy work.

Reasons behind Child Labour

1. The combination wide spread Poverty and the lack of a Social Security Network
2. Lacking of effective Education Policy
3. Unemployment or under employment of the Parents and Guardians of the Child
4. Child Laborers are always better than Adult Workers (Cheaper Labor)
5. Homelessness.
6. Population explosion, Traditional Occupations
7. Parental Attitude.
8. Lack of Minimum Wages.
9. Single Parenthood.

Various issues regarding Child Labor in India

Issues of Child Labor in India are of great magnitude compared to other developing countries of the world.

1. National Progress
2. Productive Efficiency.
3. Social Security
4. Education

¹²Justice P.S. Narayana & Anita Gogia, The Laws Relating to Children In India, Gogia law Agency, Hyderabad, 1st Edition, 2007

¹³Child Labour and Education Policy in India, Shantha Sinha

¹⁴STREE SHAKTI, Rights of Women and Children, Sunita Khariwal & Narayan Kumar, Esskay Publishing House, Mumbai, 1st Edition, 2003.

5. Sexual exploitation
6. Juvenile Justice
7. Health Care
8. The wage structure of Adults
9. Illiteracy and ignorance of parents

RESPONSES:

As A response to the problem of Child Labour there are various legislations enacted to prohibit exploitation of Child Labour.

Indian Constitutional Law

The makers of our Constitution had used their vision and wisdom by providing protection and provisions for developments of children. The view was that if children of the country are not nurtured and educated India Cannot attain progress and development in the true sense¹⁵.

- a) Preamble of the Constitution clearly says that Justice social, economic and political and equality of Status and of Opportunity. It means no one can deprive children from all opportunities to develop their socio, economic and political status.
- b) Article 15(3): State shall make special provisions for women and child.
- c) Article 24: Prohibit the employment of Children
- d) Article 39(e) (f): State shall safeguard health of children and offered opportunities and education of children.
- e) Article 45: Free and compulsory education to children.
- f) Article 21(A): Free and compulsory education to all children of the age of 6to 14¹⁶.

The Minimum Wages Act, 1948

It provides for fixation of minimum time rate of wages by state government. It also includes the fixation of minimum piece rate of wages, guaranteed time rates for wages for different occupations and localities or

class of work and adult, adolescence, children and apprentices¹⁷.

The Factories Act, 1948

The Factories Act expressly prohibited Child Labour under its significant provision. This is nothing but a protection given to the child workers against exploitation¹⁸.

The Plantation labour Act, 1951

The employment of children between the ages of 12 years is prohibited under the Act. However, the act permits the employment of child above 12 years only on fitness certificate from the appointed surgeon¹⁹.

The Mines Act, 1952

This act state that no child shall be employed in any mines nor shall any child bellowed to be present in any part of mine, which is below ground, or in any open cast working in which any mining operations being carried on²⁰.

The Merchant Shipping Act, 1958

The act prohibits employment of children below the age of 14 in a ship except a training ship, home ship or a ship where other family members work. It also prohibits employment of young person below the age of 18 as trimmers and stokers except under certain specific conditions²¹.

This is also important legislation which prohibits employment of children for begging and exploitation of child employee²².

The Apprentices Act, 1961

It states that no person shall be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade unless he is 14 years of age and satisfied such standards of education and physical fitness as may be prescribed²³.

¹⁵Dr. S. C. Tripathi, Law relating to Women and Children, Central Law Publications, Allahabad, pp. 371-37

¹⁶Durga Das Basu, Comments on The Constitution of India, Lexis Nexis, Butterworth's Wadhawa, Nagpur, 8th Edition, 2008, Vol.3, pp.3414-3418

¹⁷The Minimum Wages Act, 1948

¹⁸D. S. Chopra, Commentaries on Factories Act, 1948, Labour Law Agency, Mumbai, 3rdEdition, 2005.

¹⁹The Plantation labour Act, 1951

²⁰The Mines Act, 1952

²¹The Merchant Shipping Act, 1958

²²The Children Act, 1960

²³The Apprentices Act, 1961

The Child Labour (Prohibition & Regulation) Act, 1986

The main object of the said Act is to prohibit the engagement of children in certain employments and regulation of condition of work of children in certain other employments²⁴

United Nations Declaration of the Rights of the Child
The said declaration dealt with special provisions and facilities to develop physical, mental, moral and social status. Also the right to Social Security and protection against exploitation has given special importance²⁵. The organizations like SAARC, National Commission for Protection of Child Rights and UNICEF also took efforts for protection and effective implementation of Child Right conventions. However having all these mechanisms millions of children engaged in hazardous establishments. The Socio-Economic situation forced children to do work to sustain their family. Moreover negligent attitude of parents towards education is also one of the causes behind problem of Child Labor

JUDICIAL RESPONSE IN THE AREA OF CHILD LABOUR

The Supreme Court of India at the apex has been assigned a very important role and constituted as a guardian of Constitution. Our judiciary is an independent organ of the State. They perform a great job of interpretation of Constitutional and Legislative provisions. The Indian Judiciary played pivotal role in the field of Child Welfare.

A) M. C. Mehta Vs. State of Tamil Nadu²⁶

The Supreme Court while interpreting Article 21 held that right to receive education by child worker until they completed 14 years of Age is an integral part of right to life and personal liberty.

B) P. U. D. R. Vs. Union of India²⁷

In this case Supreme Court directed the State Government to amend the schedule of the employment of children Act, 1938. Further Court held that construction work is hazardous occupation.

C) Salal Hydro Project Vs. State of J & K²⁸

In this case Child Labour is a difficult problem on account of an economic problem and it cannot be solved by mere legislation. So long poverty continues the problem of Child Labour eradication is not possible.

D) Bandhua Mukti Morcha Vs. Union of India²⁹

The Supreme Court held that child today should be developed to be a responsible and productive and child should be assured social and physical health.

CONCLUSION

In conclusion it can be said that the problem of Child Labour exploitation is still burning issue in India. The disease spreading day by day to tackle the problem we have to find proper and effective mechanism. Government of India should form separate mechanism for effective implementation of Education policy in India. The Education policy of Government in existence is not satisfactory not capable to fulfill their economic needs. The negligent behavior of parents indulges children in to work which is one of the risks to their socio-economic status. The various organizations in the area of Child Labour, child right violation, child abuse is taking efforts to protect and eradicate the same, and the Parents of the children make aware that temporary gain is not helpful to their family. The efforts shall be taken from the Government with help of NGOs in the area of small family norms, compulsory education, and so on. The picture is clear that the problem of Child Labour can only eradicate if there is joint efforts of Governmental agencies and NGOs actively working in the same area.

SUGGESTION

1. Strict implementation of Child Labour legislations and practical and healthy alternatives to replace this evil can go a long way to solve the problem of Child Labour.
2. Application of Compulsory Education policy to curb the problem of Child Labour.

²⁴ The Child Labour (Prohibition & Regulation) Act, 1986

²⁵ United Nations Declaration of the Rights of the Child

²⁶ AIR 1991, SC 417

²⁷ AIR 1982, SC 1473

²⁸ AIR 1984 SC 177

²⁹ AIR 1997 SC 2218

3. Special Social Development programmer should be implemented for assistance of domestic workers.
4. Organization of literacy and awareness programmer to prevent children from employment.
5. Amendment and Modification into Social Security Legislation governing Child Labor
6. Control on Population growth to eliminate of Poverty which is basic cause of Child Labor issues.
7. Mandatory on industrialists for equal pay without discrimination as to Age, Status, Religion etc.
8. Adequate health services for children at large living in the society.
9. Need to provide training and education to the child workers during their free time

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