



CHILD LABOUR: CAUSES AND PROTECTIVE LEGISLATIVE MECHANISM IN INDIA

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Cite This Article: Dr. Sanjay J. Ambekar, "Child Labour: Causes and Protective Legislative Mechanism in India", International Journal of Multidisciplinary Research and Modern Education, Volume 8, Issue 1, Page Number 19-22, 2022.

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Abstract:

From the 18th of century, legislation of India has tried to protect and regulate child labour in various industries and plantations. The first and foremost concern of the legislation was to regulate working hours for children, to prescribe the lowest age limit for working of children, to ensure the life, health of the child workers, and to prevent the working of children in hazardous work. Child Labour legislations are preventing the working of children below the age of 14 years and 15 years in industries, factories, plantation, and occupations. In absence of provisions to resolve the problem and due to lack of political will, the number of child labour in total labour force of the Nation is keeping on increasing.

Key Words: Child Labour, Constitutional Law & Labour Laws

*"There's nothing more satisfying than seeing a happy and smiling child.
I always help in any way I can, even if it's just by signing an autograph.
A child's smile is worth more than all the money in the world."*

– Lionel Messi¹

Children are the magnificent gift to humanity and childhood actually it is a significant and impressionable stage of human being development as it holds the potential to the outstanding development of any society. If we the parents provide conducive environment to our children definitely they will developed intellectually, physically and in the social context. After that they will be responsible and appropriate productive members of the standard society. Because every nation has its future that future will be create by the good citizens of country therefore there is prime responsibility of the states and nation to promote and secure fundamental and other legal rights of the children. Several children are under extreme economic distress, they are forced to forego educational opportunities and they usually engaged in the jobs which are mostly physically, psychologically, and economically exploitative as well as we are observing children are engaging in the hazardous nature of work only for their family welfare. There are several legal provisions to prevent children to work at the workplace and in hazardous condition then also parents are also allowed their child for engaging in a job as a desperate the measure due to poor economic condition, because parents wants that their child should earn in the early age but they don't think about child's primary education and future.

Factually, there is great need to change the mentality of the parents towards their wards as well as appropriate government should adequately implement legal provisions in the grass root level. Because children involved in hazardous work comprise around 38.7 per cent of global child labour population. Among the different regions, largest number of child workers, 122 million constituting 64% was concentrated in Asia and the Pacific, within which India accounts for a substantial size.

According to the experts, the main reasons for the emergence of child labour in metropolitan cities are unhealthy family life and economic deprivation. Families strained by financial difficulties cannot cope with the increasing demands of their children and sometimes even fail to provide them with adequate nutrition.² Sometime, it's shocking to know that in most of the cases, the parents or relatives of the children belong to socially backward families push them towards child labour. In many cases, children are forced to quit school and work in order to earn and support their families.

Child Labour:-

The term "child labour" is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that: is mentally, physically, socially or morally dangerous and harmful to children; and/or 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.³

¹https://www.brainyquote.com/quotes/lionel_messi_553565, last visited on 13/12/11/2021.

²https://www.google.com/search?q=introduction+on+the+child+labour+in+India&rlz=1C1CHBD_enIN907IN907&eq=introduction+on+the+child+labour+in+India&aqs=chrome..69i57j0i22i30j0i390.10156j0j15&sourceid=chrome&ie=UTF-8#cobssid=s, last visited on 12/11/2021.

³<https://www.ilo.org/ipecc/facts/lang--en/index.htm>, last visited on 12/11/2021.

Article 3 of ILO Convention No. 182: Child labour takes many different forms, a priority is to eliminate without delay the worst forms of child labour as defined- "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children."

According to India's Census 2001, when a child below the age of 17 years participate in economic activity with or without compensation, either physically, or mentally, or both ways. Part-time help or unpaid work on farms, a family business or any other economic activity like cultivation and milk production for sale or domestic consumption will be included in child labour. Child labour is classified into two groups in India:

- **Main workers:** Main workers are those workers who work for at least some months or more per year, and
- **Marginal child workers:** Marginal child workers are those workers who work for less than 6 months in a year and work at any time during the year.

Article 24 of the Indian constitution clearly states that, "No child below the age of fourteen years shall be employed to work in any factory or mine or employed in any hazardous employment."⁴

Causes of Child Labour in India:

Poverty, illiteracy of parents, social and economic environment of the family all are the major causes of child labour in India.

- **Poverty:** If the family background is poor that time children are showing helping hand towards their family and usually they are engaging in agricultural work, domestic work, factory work, industrial work, with low wages. This situation usually same in the rural as well as urban areas also. It is very difficult to control child labour to do work at the workplace. Due to that poverty and other reasons an estimated 6.1 million children out of school in 2014 reduced from 13.46 million in 2006. Out of 100 students, 29 per cent of girls and boys drop out of school before completing the full cycle of elementary education, and often they are the most marginalised children.⁵ In other words poverty is the enemy of the weaker section because very of that issue children cannot complete even primary education and also not access other facilities.
- **Previous Debts:** Due to their poor economic condition people take loans. But they don't have sufficient money to pay back the loans so they not only work day and night to pay off the loans but they also drag their children to work so that the loan could be paid off before time and easily.
- **Professional Needs:** Some industries require delicate and soft hands rather than rough hands that are required in bangle industries. So they prefer children and not adults for such work.
- **Bonded Labour:** Children often work for long hours in the sun and they are deprived of water, food. These children are seldom paid. Bonded labour further adds to the large scale increase in child labour.
- **Domestic Help:** Small children often work for educated families and irrespective of several laws that violate the employment of children, they often welcome small children so that these children can take care of their homes as well as their children.
- **Child Sex Workers:** Often, girls who attained the age of puberty are forced into prostitution in lieu of a promise that they would be given opportunities to do glamorous jobs.
- **Forced Begging:** Families who can't support themselves force their children to beg on the roads in sub-human conditions. They get their children maimed in order to get more money from the people.

Protective Legislative Mechanism under Indian Laws:

India has also taken effective measure under national level. In order to eliminate child labour, India has brought constitutional, statutory development measures. The Indian constitution has consciously incorporated provisions to secure compulsory elementary education as well as the labour protection for the children. The constitution of India, too provides certain rights to children and prohibits child labour such provisions under various labour laws are as follows:

1. Indian Constitutional Law:

The makers of the Indian Constitution have used their vision and wisdom by protect, secure and for development of children. If the children are exploited for the education then India cannot attains progress and development in the true sense. Hence, all the children should be protected under the constitutional provisions and other statutory provisions of the various legislations.

- **Preamble of the Constitution:** The preamble of the constitution clearly provides that justice- social, economic and political and Equality of status of an opportunity. In short, no one has right to deprive

⁴The Child Labour (Prohibition and Regulation) Act of 1986.

⁵Source: SRI-IMRB Surveys, 2009 and 2014.

children from their rights as well as from all opportunities to develop their socio, economic and political status.

- **Article 15(3):** State shall make special provisions for women and child.
- **Article 24:** It prescribes prohibition of employment of children in factories or mine. It provides that the age of 14 years of child shall not be employed to work in any factory or mine or engaged in any other hazardous employment. In *M.C. Mehatra v. State of T.N.*⁶ Supreme Court held that children should not be employed in hazardous jobs in factories and positive steps should be taken for the welfare of such children as well as for improving the quality of their life. After that in 1996 S.C. held that the employers of children below 14 years must comply with provisions of the Child Labour (Prohibition and Regulation) Act.⁷
- **Article 39(e) (f):** Provides that the State shall, in particular, direct its policy towards securing to "ensure that the health and strength of workers, men and women and the tender age of children are not abused" and "that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength" and that "the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity" and that the childhood and youth are protected against exploitation and against moral and material abandonment. *Gaurav Jain v. Union of India*,⁸The Supreme Court held that 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 them. The Court directed for the constitution of a committee to formulate a scheme for the rehabilitation of such children and child prostitutes and for its implementation and submission of periodical report of its Registry.
- **Article 45:** The State shall endeavor to provide for a period of ten years from the inception of the Constitution, for free and compulsory education for all children until they reached the age of fourteen.
- **Article 21(A):** Free and compulsory education to all children of the age of 6 to 14. *Unni Krishnan v. State of Andra Pradesh*,⁹ The Right to education is implicit in Article 21 read with Article 41, 45 and 46 but merely to rely on directive principles per se doesn't mean that each and every obligation casted by directive principles would automatically include in purview of Article 21.

The State obligation limited until the child attain the age of 14 years and beyond that stage, state obligation to provide education is subject to the limits of economic capacity and development of state. The obligation of state can be discharged by state either through governmental schools or private aided schools.

Article 14 applies to state Institutions and its application cannot be excluded by supplementary activity. The court evolved a scheme regarding level of fees chargeable by private educational institutions.

2. The Minimum Wages Act, 1948:

It provides for fixation of minimum rate of wages for the child worker under directions of the state government. Here the legislative authority has defined child "a person who has not completed his fourteenth year of age". In other words a person who has completed his 14th year of age he shall deem to be a child worker.

3. The Factories Act, 1948:

Section 23 of the Act defines that no young person is allowed to be employable on dangerous machines. Section 27 of the Act prohibits employment of children in any part of a factory for pressing cotton in which a cotton-opener is at work.

4. 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 a fitness certificate from the appointed surgeon. Section 25 of the Act specifies that Women and children can be employed only between the hours of 6a.m and 7p.m. They can be employed beyond these hours only with the permission of the State Government.

5. The Mines Act, 1952:

It states that no child shall be employed in any mines nor shall any child be allowed 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 on.

6. 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 conditions.

7. The Children Act, 1960:

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

⁶ (1991) 1 SCC 283 (Paras- 5,7,8,9, and 11)

⁷ *M.C. Mehata v. State of T.N.* (1996) 6 SCC 756 (Paras- 27-29)

⁸ [(1997) 8 SCC 114; AIR 1997 SC 3021

⁹ AIR 1993 SC 2178

8. 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 prescribed.

9. 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 employments.

Judicial Decisions and Child Labour:

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

M. C. Mehata v. State of Tamil Nadu, Supreme Court 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.

P. U. D. R. v. Union of India, 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.

Salal Hydro Project v. State of J & K, in this case Child Labour is a difficult problem and it is purely on account of economic problem and it cannot be solved by mere legislation. So long poverty continues the problem of Child Labour eradication is not possible.

Bandhua Mukti Morcha v. Union of India, 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:

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.