

Child Labour Issues and Concerns

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Abstract

In a welfare State it is duty of the State to take Care of wellbeing of all the Children without any discrimination on the basis of cast, colour and creed. Since India is a Welfare State and also member of the United Nation Organization, hence, it is her moral and International duty to save her children from any type of distress. Therefore, to line up with the guidelines of the Welfare State and the United Nation Organization, a number of pro Children legislations are enacted by Government of India, but, still the offences against children are rampant here. In the present article the author is trying to trace out the real factors of this evil and consequences through doctrinal research.

Introduction:

Before raking up the child related issues we have to understand who is Child? According to Indian law, a person below the age of 18 years is a Child, however, if somewhere law thinks it otherwise e.g more than eighteen years or below 18 years, then that will be considered the age.

In almost all societies children work in some way, though the type of work they do and the forms of their involvement vary from situation to situation. But millions of children work under abusive and exploitative conditions that are clearly dangerous to them. India has about 472 million population of children, In other words approximately 39 percent population of the country, out of it about 29 percent consists of kids between 0- 6 age Group.¹ In our country due to poverty children face a number of problems of food and lodging, which compel them to indulge in begging and labour related activities. Child labour includes children prematurely leading adult lives working long hours for low wages, under conditions damaging to their health and to their physical and mental development, sometimes separated from their families, frequently deprived of meaningful education and training opportunities that could open up for them a better future. Child labour is, therefore, all work that places children at risk.

One of the most visible forms of child labour in big cities of many countries is that performed by street children. This applies to countries such as Brazil in South America, Kenya in Africa and India in Asia.² It is always said that children are the future of a country, but by looking at the condition of children of a particular country we can easily judge its future. In India the children who live in slum areas or in rural areas or in poor families one can guess the tragic fate of these children who are working at the age which

¹<https://www.humanium.org> Indian access on 13. 4. 2020.

² See Sandy Hobbs, Jim Mc Kechnie and MiichaelLavealette, Child Labour:A World History Campanion, MPG Books Limited, Bodmin, Cornwall Great Britain 1999.

is meant for their learning. Their condition is vulnerable, as they have to work whole day and in return they get very meagre amount. Children should be first priority of any nation, as the foundation for life-long learning and human development are laid in the early age of a child. At this age, even a small positive change yields long term social benefits and even a temporary deprivation inflicts life long damage. But situation in most of the developing and under developed nations is reverse, as they have the myth that children cannot do any work, therefore, there is no need to waste resources for their development, but the reality is that the opportunities of early childhood development determine the present and the future human resource development of a nation. No doubt a number of laws and pro children policies are made by the government, but still children's sufferings are not over.

Factors Responsible for Child Exploitation:

It will not be wrong to say that socio-economic disparities have plagued India since time immemorial. Earlier it was the exploitation of peasants by Zamindars in the Mughal era to concentration of wealth and influence in few, today the plight of the lower strata of society is in stark contrast to the influence of the upper class. It is being said that extent of poverty in a country decides the number of child labour in that country. However, there are other factors also responsible for this evil, which are following:

- A] Poverty,
- B] Illiteracy and ignorance of Parents,
- C] Tradition of making children learn the family skill
- D] Social and cultural environment
- E] Cheap labour
- F] Non implementation of law relating to child labour.

Child labour often creates a vicious circle of poverty, as a child coming from an impoverished family surviving harsh conditions becomes an unskilled, debilitated adult who is not employed even in the industry that exploited him/her earlier. Furthermore, child labour receives a low, negligible income and often no wages at all. They have no rights as workers and may not join trade unions. Child labour also depresses adult labour and keeps adults unemployed.³ Mostly children are employed as domestic helpers, they are engaged in household chores and are paid very low wages and are subject to mental and physical torture, they are also forced to work in factories, sometimes work allotted to them in factories is hazardous to their lives, sometimes they work to pay debts of their parents or guardians and are forced by the creditor that till the time they do not discharge their debt, they will work under the instructions of creditor, this is termed as bonded labour.

³VikasAdhyayan Kendra, Facts against Myths, Vol. 111, Mumbai, India [1996] p 2.

Legislature on Child Protection:

In India the legislature has enacted a number of laws to control and regulate child abuse, for long time even in pre independent India these laws were there for the protection of children for instance, the Factories Act 1881, which had laid down minimum 7 years of age for the employment of a child ,and he was allowed to work maximum 9 hours in a day, this Act was amended a number of times e.gin 1891, 1922, 1948 , the minimum age of employment in factories was raised to 14 years, in the year 1954 the Act was again amended and it was laid down that persons under the age of 17 years cannot be employed at night. The Mines Act 1901 , didnot allow theemployment of children below the age of 12 in mines. It was amended in the year 1923 and raised the minimum age for employment from 12 to 13 years after independence the Act was amended again in the year 1952 and prohibited employment of children below the age of 15 years. The Children [Pledging of Labour] Act 1933 was also amended in the year 1951 which provides that any person employing or forming agreement with parents for the employment of children in return for payment or any other benefit in lieu of are liable to pay fine of rupees 50 and employer will also be fined Rs. 200.To implement the provisions of the International Labour Organization 1937, which inserted a special Article on India in the year 1938 ,the Employment of Children Act was passed, it was further amended in the year 1978, which prohibits employment of children below the ageof15 years in occupation concerned with transportation of goods, passengers or mails or in the railways .Before the year 1951 the children below the age of 12 were also employed in planting tea, rubber etc. , which was stopped by the legislature by enacting the Plantation Labour Act 1951 which prohibits employment of children under 12 years of age for plantation. The Merchants Shipping Act 1958, restrains employment of children below the age of 15 years in ships registered in India with certain exemptions. The employment of children less than 15 years of age in any motor transport undertaking is also banned under the Motor Transport Workers Act 1961.

A person below the age of 14 years is barred to get training in any undertaking, factory etc., unless he has such standard of education or physical fitness as may be prescribed under the Apprentice Act 1961. The Beedi and Cigar Workers [Conditions of Employment] Act 1966, restricts the employment of children below the age of 14 years in any industry ,manufacturing beedi or cigar. Besides, these laws . For the protection of children from domestic burden the Child Marriage Restraint Act 1929 was passed. It was repealed in 2006 and in place of it the Prohibition of Child Marriage Act 2006 was passed. However, it came into force on 1st November 2007.In this Act, age of marriage for girls is fixed 18 years and for boys 21years.

In the year 1986, the legislature passed Child Labour [Prohibition and Regulation } Act , this Act repealed the Employment of Children Act 1938.The main object of this Act is to outlaw engagement of children in occupations and processes which are unsafe and harmful to the child workers ,keeping in view their tender age and personality development. According to it a child means, who has not completed his fourteenth year of age. The Act has classified all establishments in two categories first in which employment of children is denied and secondly, those in which working conditions of child labour shall be regularized. It provides for the hours and period of work and weekly

holidays for the children. According to it a child is entitled to get at least one hour rest after every three hours work, the total period of work inclusive rest will be six hours, the double employment of child is barred and he is not allowed to work between 7 p.m and 8 a.m and also not allowed to do overtime⁴. To stop the child labour the Act provides that whoever employs any child or permits any child to work in any hazardous employment shall be punishable with imprisonment for a term which shall not be less than three months, but which may extend to one year, or with fine which shall not be less than ten thousand rupees, but which may extend to twenty thousand rupees or with both [section 14 [1]] , however, if offence is repeated than punishment can be extended to two years. The Act empowers the government to make rules for the health and safety of the children employed in any establishment.⁵ For the control and prohibition of this problem, it is mandatory to send children to schools, by making them aware about the importance of education and ill effects of Child labour. In the year 2012, the Protection of Children from Sexual Offences Act was enacted, it was amended in the year 2019. The main purpose of this Act was to save the children from sexual abuse, as it was prevalent in India in abundance under disguise and victims were helpless to complaint against the offenders, In absence of any law. According to it, if a child below the age of 12 years is subject to sexual assault, the offender can be put behind the bars for minimum period of 10 years with fine and sentence can be extended to life term.

With a view to give speedy justice to the children whose rights are infringed, the legislature set up the National Commission for Protection of Child Right Act 2005, which was amended in the year 2006. This Act was passed according to the provisions of the Constitution of India and the United Nations Convention on the Rights of the Child 1989. The main functions of the Commission are to analyse the existing provisions of children rights to know, whether with the passage of time these laws are still relevant or need any change and to appraise the Union of India about the measurements taken for the welfare of children. It also reviews the reasons, which restrain a child from the enjoyment of life, if he is affected due to riots, AIDS or any other child related crimes etc. and work on methods which can help them to overcome these fears. It also updated itself about the International measurements, which are in the best interest of child, to implement them in India. The Commission is also responsible to raid Juvenile Homes to know, whether children are safe there or subject to any type of torture etc.

The Indian Penal Code was amended in the year 2013, to make offence of rape of a female under the age of 16 years as severe offence under Section 376 (2) and the punishment is made minimum 10 years rigorous jail, and same can be increased to life imprisonment with fine. On 16 December 2012 Nirabhya rape case took place in Delhi, which had shaken whole country. In this crime one of the offenders was a minor, who could not be punished with death sentence as law did not permit to do so. There was hue and cry in the country to punish the minor for his brutal Act, hence, In 2015 the Juvenile Justice (Care and Protection of Children) Act was amended and the age of juvenile was reduced to 16 years from 18 years. From this it is clear that if some minor attained

⁴ Section 7 of the Act.

⁵ Section 13 *ibid*.

majority earlier and committshenious offence, then he should not be let free, but must be punished at par with others, to set an example for others that monitory does not give one licence to outrage modesty of any innocent finale.

This Act was amended in the year 2016, which provides that children below 14 years will not be employed in any occupation and the adolescents between 14 and 18 years will not be engaged in hazardous occupations directly or indirectly. The responsibility is also fixed on the parents, besides employer of the child. It provides that, if there will be any transgression of the provisions of the Act, the penalty under the present law would be imprisonment which shall not be less than six months and may be extended up-to two years and monetary penalty will be between Rs. 20,000 to Rs. 50,000. It is pertinent to mention here that the number of hazardous occupations has been decreased from 83 to 3 only. This change does not seem to be pro children, It will encourage people to force children to work under such conditions which are not favourable to them. The offences have been made compoundable and cognizable. This Act has another drawback, as it permits children to be employed in family occupations, this is also exploitation of children, as it mostly occurs in lower strata families, where nothing is systematic and without the wish of child he is forced to join family business, which halts all his development and if he fails to fulfill his dreams sometimes he indulges in anti social activities.

In **Ganesh Ram Vs. State of Jharkhand and Others**⁶, the court held that if a person below the age of 14 years, is appointed in any organisation then employer can be punished under the Child Labour (Prohibition and Regulation) Act 1986). In **Roshan Gupta Vs. State of Bihar and Others**,⁷ a child was employed in shop of the petitioner illegally, therefore, Rs. 20,000/ fine was imposed on him by the Court.

Constitution of India , Judiciary and Children:

The Constitution of India has included provisions in the form of Fundamental Rights and Directive Principles, which constrain child victimization. The judiciary is also playing significant role by passing such judgments which protect children against exploitation.

Fundamental Rights:

Article 15(3) empowers the government to make special provisions for children, whenever, it seems appropriate, so that under privileged class can be benefited and not be subjected to any type of sufferings and childhood of a child should not be absurd in any circumstances either by the government or family and child can freely enjoy his childhood.

Prohibition of Employment of Children in Factories etc.:

Article 24 of the Constitution of India forbids employment of children in factories. According to which "no children below the age of 14 shall be employed to work in any

⁶ April 5, 2006, www.google.com/amp/s/blog.pleader.in/judicial-view-on-child-labour/amp/ dated 14.12.2019.

⁷ March 20, 2012, [Wwe.google.com/amp/s/blog.pleader.in/judicial-view-on-child-labour/amp/](http://www.google.com/amp/s/blog.pleader.in/judicial-view-on-child-labour/amp/).

factory or mine or engaged in any hazardous employment". In **People's Union for Democratic Rights vs. Union of India**⁸, the court held that the construction work is hazardous employment and therefore, under Article 24 no child below the age of 14 years can be employed in the construction work even if construction industry is not specified in the schedule to the Employment of Children Act, 1938. Further in **Labours Working on Salal Hydro Project vs. Jammu and Kashmir**⁹, the court has reiterated the principle that the construction work is a hazardous employment and children below 14 years cannot be employed in this work. In another landmark Judgment in **M.C Mehta vs. State of Tamil Nadu**¹⁰ popularly known as **Child Labor Abolition case**, the matter was brought before the Apex court through the public interest litigation, under Article 32 of the Constitution, the petitioner told the court about the plight of children engaged in Sivakasi Cracker Factories and how the constitutional right of these children guaranteed by Article 24 was being grossly violated and requested the court to issue appropriate directions to the Government to take steps to abolish child labor. The Apex court held that children below the age of 14 years cannot be employed in any hazardous industry or mines or other related work.

The Court Issued the Following directions –

- 1) Setting up of Child Labour Rehabilitation Welfare Fund and asked the offending employers to pay for each child a compensation of Rs. 20000/- to be deposited in the fund and suggested a number of measures to rehabilitate them in a phased manner.
- 2) The liability of the employer would not cease even after the child is discharged from work, as

It has to be ensured by him that an adult member of the child's family gets a job in a factory or any where in lieu of the employment of child.

In **Rajangam, Secretary, District Beedi Workers Union vs. State of Tamil Nadu and Others**¹¹, the court opined that tobacco manufacturing was indeed hazardous to health. Child labour in this trade should, therefore, be prohibited as far as possible and employment of child labour should be stopped either immediately or in phased manner that is to be decided by the State Government, but it should be in a period not exceeding three years.

The Apex Court in **M. C Mehta vs. State of Tamil Nadu and Others**¹², allowed children to work in prohibited occupation like fireworks. However, they can be employed in the process of packaging of fireworks, but packaging should be done in an area away from the place of manufacture to avoid exposure to accident.

Directive Principles:

⁸ AIR 1983 SC 1473.

⁹ AIR 1984 SC 177.

¹⁰ AIR 1997 SC 699.

¹¹ [1992]1 SCC 221.

¹² 1991 SCC

Article 39(f) of the Constitution was amended by the Constitution (42nd Amendment Act 1976) with a view to ascertain the constructive role of the State in relation to children, it provides that it is duty of the State to make it's policy in such a way that children are given opportunity and facilities to develop in a healthy manner and conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. **In M-C Mehta vs. State of Tamil Nadu²**, it was held that in view of Article 39 the employment of children within the match box factories directly connected with the manufacturing process of matches and fireworks which cannot be allowed as it is hazardous. Children can however, be employed in the process of packing but it should be done in area away from the place of manufacturing to avoid exposure to accident.

According to Article 45 , the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. To fulfill this object, the Apex court in **Unnikrishnan vs. State of Andhra Pradesh**(AIR1993 SC 2178), held that the fundamental rights and the directive principles are inter-related with each other. It paved the way to 86th amendment of the Constitution of Indian in 2002 and Article 21A was inserted as fundamental right.e.g right to free education for the 6 to 14 years age Group and in the year 2009 the Right to Education Act was passed with the primary aim to impart compulsory Education to children between the age of 6 to 14 years.

Article 47 provides that the State is duty bound to raise the level of nutrition including that of children ,for the implementation of this directive, the government has started mid-meal scheme in government schools across the country for under privileged children,. The main motive behind this scheme was to boost the slum class to send their wards to schools, rather putting them in forced work due to their poverty.

The victim can knock out the doors of judiciary under Article 32of the Supreme Court and Article 226 to the High Court or where victim is not aware about his rights, Then any public spirited person can move to court under public interest litigation for the implementation of rights of children.

Conclusion and Suggestions :

It is clear from the above discussed that child abuse indifferent kinds is not new problem, but it is prevailing for long time, to overcome this problem a number of laws have been enacted from time to time by the legislature. For the eradication of this problem, the law has made education compulsory for the children between the age group of 6 – 14 years and those who cannot afford; they are given free education by the State. Still a large number of children do not go to schools and some join schools , but later on leave the school without completion of their study, different surveys reveal that dropout rate of slum children is very high.

The main reason of this evil is poverty and in India large number of population is living below the poverty line, they have to work to feed themselves and their families .Despite the laws which provide compulsory education for children, they do not afford to go to schools and colleges even on scholarships , as their parents are illiterate and do not understand the importance of education and force their children to work and earn

livelihood for the family and a large number of children are exploited at the work place. To protect the rights of children, it is necessary to break the vicious circle of poverty and to make poor people aware about the importance of education, so that instead of sending their children at work place, the parents willingly send them to educational institutions, only then menace of child exploitation can be rooted out and children can live their life smoothly and will become responsible citizens.

In the western countries people boycott the product of those establishments, which employ child labour. In India also efforts are being made to increase awareness among people and to alleviate some of the evils of child abuse, in this regard, India joined, as a private voluntary, Non-profit entity in Rigmark foundation in the year 1994 by incorporating in it under section 25 of the Indian Companies Act 1956, after that Indian Carpet and Manufacture and Export Association certified under it that no child will be involved in carpet making, it is a laudable step to stop child exploitation other such like business activities in which children are employed should also follow the suit.

Children should be encouraged to get education, as it will make them worldly wise and enable them to defend themselves against exploitation. Saravsiksha Program started by the government is a laudable step towards it, because when children will get education, then there would be no need to impose ban on child labour, as it would gradually decline on its own with the passage of time.