

# Status of Child Labour in India: Problems and Challenges, An Analysis

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## ABSTRACT

Child is categorised as that class of the society which is most prone to exploitation and abused. He is regarded as the father of the man. With his present secured and guaranteed with the basic rights indispensable for growth and development, we secure the future of the nation. India has more than 10 million children working as child labourer in industrial and family set-ups. These children are susceptible to physical and mental abuse at workplace along with working in hazardous factory setup at minimum or no wages. The child labourer is deprived of education, health and strength that is essential for his or her growth. Such activities inhibit intellectual and personality development. Poverty, migration, low family earning, social conditions etc. drives a child to forcefully work in exploitative conditions. It is incumbent on the government to take cognizance of the deplorable state of the child and initiate measure to uphold the basic human rights of the child. Implementations of Constitutional safeguards and proper enactment of legislations as well as the active role of judiciary and public spirited person are the key factor which have recognized the odious workplace of child labourers and made endeavours to indemnify the plight of child.

**Keywords:** Child Labour, Child exploitation, magnitude, hazardous workplace.

## INTRODUCTION

Childhood is a susceptible phase where one is naïve and easily prone to exploitation. Owing to such manageable nature of a child it is pertinent to note that a

special care and protection is to be awarded to the child. Children of today are the future of tomorrow. Child labour and slavery has been in practice since ancient times. Except for Kautilya, all the law makers were silent on the practice of child labour and inhuman condition of children as slaves. The children were the absolute property of the parents and were sold as chattels. Safeguarding the interest of a child at a tender age not only ensures a health and growth with prospects of future development and professional advancement. Child belongs to the most vulnerable class of the society, with no freedom to determine its future and dependability on parents or family the child is sensitive towards abuse, exploitation and inhuman treatment. The exploitative structure, lopsided development, iniquitous resource ownership with its correlation of large-scale unemployment and abject poverty have contributed towards increasing child labour among the countries. [1]

Child labour is by far the most crucial and abhorrent form of violation of child rights. It not only deprives a child from his childhood but, also clouds all the prospective opportunities of his education and intellectual growth. With emphasis child labour, it is pertinent to note as to who is considered as a child. The United Nations Convention on the Rights of the Child under Article 12 defines "the child" as "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier". According to

Constitution of India, no child below the age of fourteen shall be employed in any factor, institution or hazardous works. The Child Labour (Prohibition and Regulation) Act, prohibits employment of children below 14 years completely and prohibits employment of adolescents (14–18 years) in hazardous occupations/processes. The age of childhood fluctuates with the change in statutes.

Child labour is not a recent issue but, it has gained momentum with the advent and growth of human rights, especially that of children. The international organisations like United Nations and its subsidiaries like, International Labour Organisation, UNICEF etc. and the Constitution of India, along with the endeavours by the Legislature and Judiciary, all together, are vehemently dedicated to protect the children and provide them with the basic amenities that form core part of their growth and development.

#### **CONSTITUTIONAL AND LEGISLATIVE SAFEGUARDS**

The Constitution of India is the grundnorm and source for all the legislations in India. With a socialistic pattern, the Preamble aims at providing equality of status and opportunity and liberty from slavery and of person at large to all the citizens of India, including the children. The Preamble to our constitution is more than just sixty-three words perfectly arranged and catalogued in some normative sentence; most importantly it is all about the democratic aspirations and ideals of the people of India. [2]

The Constitution of India, 1950 under Article 24 prohibits the employment of children under the age of fourteen in any factory or mine or any institution of hazardous nature. [3] Simultaneously, Article 47 creates a duty on the State to raise the level of nutrition and the standard of living and to improve public health. [4] Article 39(e) provides that “*the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to*

*their age or strength*” [5] and Article 39(f) cast a fundamental duty on the government to ensure that “*children are given opportunities and facilities 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 respectively.*” [6]

Amongst all the issues at hand, the Constitutional framers were aware of the condition of the children in the country. They full-fledgedly undertook the effort to secure the future of the nation by taking measures to protect the child from exploitation and providing the child with the rights that are essential for the proper growth and health of a child.

The legislature is entrusted with the principal task of drafting Bills and enacting Acts resonating with the security and development of the citizens. Following the duties provided under the Constitution of India, the Parliament has enacted plethora of statutes that are oriented towards prohibiting employment of children below fourteen and ensuring proper working condition for the adolescents with proper wages for work. Some of the statutes which prohibit child labour in any establishment are provided below:

##### **i. The Factories Act, 1948**

Chapter VII of the Act is related to *employment of young persons*. A child who has not completed his fourteenth year is prohibited from working in any factory. [7] Only the adolescent or a child who has completed his fourteenth year is permitted to work on receipt of certificate of fitness which shall not be issued unless the surgeon is satisfied that the young person has completed his fourteenth year and possess requisite physical standard and is fit for such work. [8] The duration and timings of work was fixed to not more than four and half hour continuously in an institution [9] and between 6 A.M. and 7 P.M. [10] in a factory.

##### **ii. The Mines Act, 1952**

Prohibition on the employment of any person below eighteen in any mine or part thereof is provided under Section 40 of the Act. <sup>[11]</sup> It also prohibits a person below eighteen years to be present in any workplace related to mines, be it under or above the ground. <sup>[12]</sup>

**iii. Minimum Wages Act, 1948**

The Minimum Wages Act, 1948 provides for fixation by State Government of minimum time rate of wages, minimum piece rate of wages, guaranteed time rates of wages for different occupations and, localities of class of work and adult, adolescents, children and apprentices. <sup>[13]</sup>

**iv. The Plantation Labour Act, 1951**

A child, as per the definition of this Act, means a person who has not completed his fifteenth year. It covers all tea, coffee, rubber, cinchona and cardamom plantation which measure 177 hectares or more, in which 30 or more persons are employed. <sup>[14]</sup> A child who has attained the age of twelve and possesses a certificate of fitness is permitted to work under this establishment.

**v. The Beedi and Cigar Workers (Condition of Employment) Act, 1966**

The Act, with its application throughout India, prohibits the employment of children below fourteen in any industrial premises and prohibits the employment of children in the age group of fourteen to eighteen years between 7 p.m. and 6 a.m. in the premises or elsewhere. <sup>[15]</sup>

**vi. The Children Act, 1960**

The Children Act 1960 <sup>[16]</sup> is “an Act to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the Union territories”. It provides that exploitation of child employees shall be punishable with fine which may extend to one thousand rupees. <sup>[17]</sup>

**vii. The Child Labour (Prohibition and Regulation) Act**

A precise definition of child is given as one who has not completed his fourteenth

year and prohibits the employment of children below fourteen years of age. The Act defines the institutions where the child is prohibited from being engaged in any kind of work under Section 3 of the Act and have been categorized as Part 1 and Part 2. Part III of the Act deals with the Regulation of Conditions of Work of Children. It says, “no child shall be required or permitted to work in any establishments in excess of such number of hours as may be prescribed for such establishment or class of establishments.” <sup>[18]</sup> With the aim of well-being of a child the legislation recognises the excessive and industrious work done by a child and has actively taken measures to prohibit exploitation of child and promotion of health and safety at workplace.

**JUDICIAL APPROACH**

Judiciary as a pillar of democracy has actively participated in the quest of safeguarding the interest of the children. With the emergence of the concept of *Public Interest Litigation*, the access to justice has become more approachable as any public-spirited person can approach the court on behalf of the victim for redressal of the rights of the sufferer.

The Supreme Court while addressing the deplorable condition of children in match and firework factories at Shivkashi held in *M.C.Mehta v. State of Tamil Nadu* <sup>[19]</sup> that the fundamental rights of children at the firework factories was grossly violated and the manufacturing process of match and firework amounts to hazardous employment causing fatal and serious accidents. Exercising the right under Article 32, a PIL was filed in the Supreme Court in *Bachpan Bachao Andolan v. Union of India & others*, <sup>[20]</sup> which brought in the picture the inhuman treatment of children in circuses which included sexual abuse, physical abuse and even emotional abuse. Not only this there was instances of deprivation of basic human rights including fooding, clothing and two square meals a day. The Supreme Court made the following directions regarding the children working in circuses:

- (i) *“In order to implement the fundamental right of the children under Article 21A it is imperative that the Central Government must issue suitable notifications prohibiting the employment of children in circuses within two months from today.*
- (ii) *The respondents are directed to conduct simultaneous raids in all the circuses to liberate the children and check the violation of fundamental rights of the children. The rescued children be kept in the Care and Protective Homes till they attain the age of 18 years.*
- (iii) *The respondents are also directed to talk to the parents of the children and in case they are willing to take their children back to their homes, they may be directed to do so after proper verification.*
- (iv) *The respondents are directed to frame proper scheme of rehabilitation of rescued children from circuses.”* [21]

The Supreme Court has, time and again, exercised the power of judicial interpretation and extended protection to child labourers working in institution which are not mentioned as prohibited employment institutions or hazardous occupation in the statutes. In *People's Union for Democratic Rights vs Union of India & Others* [22] popularly known as *Asiad Workers Case* the Supreme Court ruled that construction work fall under the category of hazardous employment. The Court further ruled that *“this is a constitutional prohibition which, even if not followed up by appropriate legislation, must operate proprio vigore and construction work being plainly and indubitably a hazardous employment, it is clear that by reason of this Constitutional prohibition, no child below the age of 14 years can be allowed to be engaged in construction work. Therefore, notwithstanding the absence of specification of construction industry in the Schedule to the Employment of Children Act 1938, no child below the age of 14 years can be employed in construction work and the Union of India as also every state*

*Government must ensure that this constitutional mandate is not violated in any part of the Country.”* [23] Further, in *Ranjangam, Secretary, District Beedi Workers' Union v. State of Tamil Nadu and others*, [24] the Supreme Court held that manufacturing of tobacco as a hazardous activity. *“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 a phased manner to be decided by the State Governments but within a period not exceeding three years from now.”*

The legislations enacted by the Government only extends protection to against child labour. However, the Supreme Court in the case of *Laboureres Working on Salal-Hydro Project v. State of Jammu & Kashmir and Others*, [25] casted a duty on the Central Government where it undertakes a construction project either itself directly or through a contractor to provide education to the children of the workers involved in the construction work.

## **MAGNITUDE, GREY AREAS AND SUGGESTIONS**

### **MAGNITUDE OF CHILD LABOUR**

Child labour in India has been described as *“a human problem of enormous magnitude.”* [26] The meager wages, adaptability towards work and easy availability of the child makes them perfect for employment. Recent estimates reveal that world over, 218 million children (5-17 years, excluding child domestic labour) are involved in child labour, of which about 126 million children are engaged in hazardous situations such as working in mines, working with chemicals and pesticides in agriculture or working with dangerous machinery. [27] Newspaper reports reveal that government statistics on the child labour population show that India has over 20 million child labourers. NGO estimates are higher and these suggest that this number is as high as 60 million in India and can extend upto a 100 million if all out of school children are part of the labour force. [28]

The census of 2011 reveals that an estimate of 10.1 million children are employed in the country. Uttar Pradesh and Bihar accounted for the largest number of child workers with 30.8 per cent of the child population in the country and account for 32.2 per cent of child workers. Uttar Pradesh alone accounting for 2,176,706 child labourers. Seven states of the country, namely, Uttar Pradesh, Bihar, Rajasthan, Maharashtra, West Bengal, Madhya Pradesh and Gujarat, with 62.8 per cent of child population, account for 64.7 per cent of total child workers.<sup>[29]</sup>

Agriculture is the major segment of employment of children in accordance with the Census, 2011. Engagement of children as workers in rural area is most is agricultural setup with 40.1 percent, followed by cultivators which is 31.5 per cent, 4.6 per cent in the household industry, and 23.8 per cent in other areas of work. The other activities in which children were engaged in urban areas were 7.3 per cent in household industry, 4.8 per cent as agricultural labourers and 4.4 per cent as cultivators.

### GREY AREAS

The problem of child labour is a difficult problem and it is purely on account of economic reasons that parents often want their children to be employed in order to be able to make two ends meet. The possibility of augmenting their meagre earnings through employment of children is very often the reasons why parents do not send their children to schools and there are large dropouts from the school.<sup>[30]</sup> Poverty and low earning of the family forces a child to neglect his health and care and engage in institution as child labour.

Children are most vulnerable to labour as they are available easily with low cost of employment or wages. Child labour lack the bargaining power and are easily replaceable making them susceptible to be employed in conditions that are hazardous to their health, development and well-being. Children are tender and easily manageable and can be employed at a lower cost as

compared to adults, this drives the whole concept of child labour. In the urge of avoiding the cost of production the factories, industries and various other institutions, the employers induce the child labourer to hazardous and exploitative conditions at exorbitantly low wages.

Migration from rural area to urban places or to another state in search of employment also drives the child into the clutches of child labour. Lack of opportunity and sustenance induces a child to work even for meager wages for exploitative hours and condition of work. Lack of formal education is also a cause for child labour. School drop-out owing to lack of funds or improper schooling conditions even induces a child to enter working establishments to provide bread for themselves and their family.

Highlighting the relation of education and child labour, the Delhi High Court in *Court on its own Motion v. Govt. of NCT Delhi*<sup>[31]</sup> observed: “today’s children constitute tomorrow’s future. To ensure a bright future of our children, we have to ensure that they are educated and not exploited. In fact, children are the most vulnerable members of any society. They are entitled to special care and assistance because of their physical and mental immaturity. The problem is more complicated in developing countries like ours, where children exist in relationship with illiteracy and poverty.”

### SUGGESTIONS

Child labour is an issue that is rooted in the core of the society. It is not sufficient to enact statutes and provisions of implementation of child labour. The author suggests certain suggestions which can be helpful in the interception and prevention of child labour.

1. There is no definite definition of child labour in the Indian Statutes. With diversity in the minimum age of employment it is difficult to intercept child labour. It is suggested that there should be an exhaustive and identical

definition of child labour for all the industries and working establishment.

2. Education is directly related to child labour. With children inside the school and provided with formal education it is easy to prevent children from the clutches of child labour. The provisions of Article 21A and Right to Education Act should be thoroughly implemented. An analysis of the working of government schools should also be conducted to ensure that quality education is provided and maximum students are admitted in school.
3. Rehabilitative and reformatory activities should be conducted for the children who are found working in hazardous institutions. Provision should be made for ensuring that their mental, emotional and physical health is attained after they are saved from hazardous institutions.
4. A child is compelled to work in poor conditions owing to his financial condition. Provisions should be made to encourage self-dependence by teaching craft or providing training in certain trade.
5. A child is permitted to be employed as help to the family or in family institutions. What constitutes as family institutions and help to the family lacks a precise definition. It is pertinent to define the term family institutions to institution of parents or hindu-undivided family ensure that the provision is not exploited at the hand of crooked people.

## CONCLUSION

Child labour is an evil that lurks in the society owing to various issues like poverty, lack of financial stability and education, social conditions, etc. it not only inhibits growth of child but, also destroys all prospective growth opportunities that would have ensured a promising future to him or her. With permission to be employed in family institutions after school hours, when no proper definition of family institutions is provided, it becomes difficult to intercept the offenders. Drafting and enacting

legislations and Codes is not the ground solution to it. What is necessary is the interception of the offence of child labour and rigorous implementation of penal provisions of the statutes. The duty does not end here, it is necessary that the child is rehabilitated and provided with all the educational, recreational, reformatory assistance that will make him self-sufficient and enable him to secure opportunities that will ensure a promising future as per his or her capacities.

Childhood is considered as a golden age and child labour blots this golden age with the stains of exploitation, violence and physical and emotional abuse. It is essential to uphold the rights of child workers and prevent them from the never-ending loop of child labour and extremely low wages. Child is the father of a man. With his future secured we not only promise him a bright tomorrow but, also build hopes of a promising future of nation.

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