



Long Article

Raising a Protective Wall: An Analysis on Child Labour

Eshita Mongia¹ Aparajita R. Jha²

¹School of Law, University of Petroleum and Energy Studies, Dehradun ²School of Law, University of Petroleum and Energy Studies, Dehradun

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Abstract: *Children are considered as the assets in society because they are our future. However, with the increase in child labour, there is a barrier which stops these children to get the necessities of their life. Child labour has been a pressing concern for the world at large and specifically for the developing countries. Even after the passing of several legislations at both national and international level, we still failed to curb the social evil. The research paper will deal with the causes and impact of child labour. A substantial part of the paper would be analyzing the steps taken by the government and shall search for the reason why even after efforts on the part of the legislature, executive and judiciary that there is a constant rise in the rate of child labour. We will also determine the extent to which the rights of the child are affected because of child labour. The paper would conclude by suggesting the projects that the government can implement to reduce child labour. The work will be accomplished by mostly doing a literature review of the materials that have been written on the same topic.*

Keywords: *Child labour, Employment, Forced Labour.*

Introduction

Children are the real asset of the country; they are the seed that would give rise to a strong tree but the same would only be possible when the roots are strong and nurtured enough to withstand the harshness of nature. The constant reference of Child Labour in movies and the news solidified that fact it is indeed a part of the culture and society now and this social evil needs to be eradicated at any cost and as soon as possible. It can be simply understood as forcing children to work at an incredibly young age. This is in a direct violation of child's rights to education and dignified life, as the formative years of a person's life is to be spent in their physical, emotional, and mental development and shall not be spent in work. Every child deserves the same and it is the duty of the state to assure the same. Further, child labour is not just constrained to the underdeveloped states but is prevalent worldwide. None the less, there have been active attempts to eradicate it by the nation-states and by International Organisations. It shall be noted that child labour may push the children into an infinite loop of poverty, one of the many reasons for which children are prone to be employed, as the very basic ingredient to fight poverty is not given to them which is education. We shall be discussing the same in further details along with the legal aspects attached to the same to give us clarity over the issue. Even after the passage of several legislations and an active attempt of elimination of child labour, India still is a breeding ground for child labour and the 2011 census revealed that there were about 10.1 million children working at the tender age of 5 to 14.

International Perspective

As per ILO, globally there are 152 million children who are working as child labour amongst which 64 million are girls and 88 million are boys.¹ The number of child labour has decreased by leaps in bounds in the previous decade which would just prove that the policies implemented by International Organisations and respective Courtiers to fight child labour are doing its work slowly and steadily but with such speed, by the end of 2025, the world will still have 121 million child labourer as predicted by ILO.² The 2019 Global childhood report showed a decrease in the number of child labour, child death, child marriage and child homicide. Africa has the highest per cent of child labour followed by Asia and the Pacific and America. With respect to the total labour force, the per cent of child labour in India is 5.2%, 27.3% in Turkey, 20.7% in Thailand, 19.7% in Pakistan and Sri Lanka has only 4.4%.³ ILO has passed a lot of conventions to control the minimum age for employment and on the rights of a child to protect them from getting exploited. As per 2011 census of India, there are 10.13 million children within the age group of 5-14 working

¹ Results and Trends, 2012-2016, Global Estimates of Child Labour, ILO https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575499.pdf

² *Ibid*

³ B Suresh Lal Child Labour in India: Causes and Consequences, International Journal of Science and Research https://www.researchgate.net/publication/333644690_Child_Labour_in_India_Causes_and_Consequences

as child labourers in India. The rate of child labour has however decreased by 20% when compared to the census of 2001.⁴

The Causes of Child Labour

The most significant cause for child labour is poverty and the families below the poverty line are sending them to work in place of sending them to school. Even though so many laws have been enacted but child labour is still in prevalence shows that the laws are not being executed properly at the ground level. In countries where there is a situation of conflict or a situation of unrest then the presence of child labour is more than the rest of the world.

I. Legal Mechanism

Constitutional Provisions: As per the Principle of rule of law which states that law is supreme thereby meaning that no one is above law. In India Constitution is the ground norm and is of supreme importance. So, to curb this menace of child labour Constitutional makers have incorporated the provisions in Chapter IV Fundamental Rights and Directive Principles of State Policies. This indicates the nation's concern towards the development and well-being of a child and thereby securing the protection of child rights.⁵ The Constitution provides for positive discrimination thereby allowing the state to make special provisions for women and children⁶ and it also states that it is the duty of State to provide free and compulsory education to all children of the age 6 to 14 years.⁷ Directive principles of state policies impose a duty upon the state to make policies concerning the well-being, education and employment of a child and have clearly stated that the children of tender age provides should not be abused and due to their economic necessity, they should not be forced to enter avocations which are unsuited to their age or health or strength.⁸ It also provides opportunities for children to facilitate their development in a healthy manner, freedom, and dignity and to prevent their exploitation.⁹ The constitution has also tried to deal with the child illiteracy by providing early childhood care and free education to all children until they complete six years of age.¹⁰

II. Statutory Legislations

The Factories Act of 1948: This Act prohibits children below the age of 14 years to be employed in any factory. Besides this, there are provisions which state the criteria as to who, when, and how long persons between 15 –18 years can be employed in any factory.

⁴ Census Data on Child Labour, Ministry of Labour & Employment, Government of India <https://labour.gov.in/childlabour/census-data-child-labour>

⁵ Sylvine, Legal Framework In India to Curb Child Labour, ipleaders (July 13th, 2016) <https://blog.ipleaders.in/legal-framework-india-curb-child-labour/>

⁶ Article 15(3), The Constitution of India, 1950

⁷ Article 211, The Constitution of India, 1950

⁸ Article 39, The Constitution of India, 1950

⁹ Article 39(f), The Constitution of India, 1950

¹⁰ Article 45, The Constitution of India, 1950

The Mines Act of 1952: This Act prohibits the employment of children below the age of 18 years in mining as it is considered to be one of the most hazardous occupations which have claimed the lives of many children in the past.¹¹

The Child Labour (Prohibition and Regulation) Act of 1986: This legislation was formed on the recommendation of the Gurupada Swamy Committee and is considered to be one the most comprehensive legislation which deals with child labour. It also provides a list of hazardous occupation where children below the age of 14 years are prohibited and the list was further expanded in 2006 and 2008.¹²

The Act is divided into four parts and one schedule and classifies the occupations in two watertight compartments, namely hazardous and non-hazardous. Schedule enumerates on prohibited occupation and the process by which children can be employed.

Children are prohibited from being employed in any occupation other than their family business which is not hazardous in nature in vacation after school hours.¹³ they are allowed to work as artists in the audio-visual entertainment industry provided that all safety measure as taken. No child is permitted to be employed in any hazardous industry.¹⁴

The Central Government needs to appoint Technical Advisory Committees who would determine whether an industry is hazardous or not¹⁵ and the places where a child can work is mentioned.¹⁶ The parameter regarding the working hours has been mentioned along with the holidays which has to be compulsorily given so that the child can nature himself and identify his potentials.¹⁷ The child is protected from mishaps and the Inspector needs to be reported as to what work has been given to the child.¹⁸ A register of inspection has to be maintained by the employer bearing the name of the child, the working hours and the type of work to maintain transparency.¹⁹ Proper health conditions have to be ensured in the workplace by maintaining a check and balance.²⁰ If there is any violation of this Act, then the employer can be punished with 6 months to 2 years if imprisonment or Rs. 20,000 to Rs. 50,000 fine or both.²¹ The practise of child labour is recognised as a cognizable offence²² and rehabilitation is providing for the victim child.²³

¹¹ Amartya Bag What are the Laws related to child labour in India (16th January 2015) <https://blog.ipleaders.in/laws-related-child-labour-india/>

¹² Diva Rai, Legal Framework for the protection of Child Rights in India (22ndFebruary 2020) <https://blog.ipleaders.in/legal-framework-for-the-protection-of-child-rights-in-india/>

¹³ Section 3, *The Child Labour (Prohibition and Regulation) Act of 1986*

¹⁴ Section 3A, *The Child Labour (Prohibition and Regulation) Act of 1986*

¹⁵ Section 5, *The Child Labour (Prohibition and Regulation) Act of 1986*

¹⁶ Section 6, *The Child Labour (Prohibition and Regulation) Act of 1986*

¹⁷ Section 7, *The Child Labour (Prohibition and Regulation) Act of 1986*

¹⁸ Section 9, *The Child Labour (Prohibition and Regulation) Act of 1986*

¹⁹ Section 11, *The Child Labour (Prohibition and Regulation) Act of 1986*

²⁰ Section 13, *The Child Labour (Prohibition and Regulation) Act of 1986*

²¹ Section 14, *The Child Labour (Prohibition and Regulation) Act of 1986*

²² Section 14 A, *The Child Labour (Prohibition and Regulation) Act of 1986*

²³ Section 14 C, *The Child Labour (Prohibition and Regulation) Act of 1986*

This Act is one of the most important legislation in curbing child labour. This Act by providing standard norms with respect to which industry is hazardous and which is not did an exceptionally phenomenal. Earlier there was no transparency in the system but this act initiated the transparency norms and inspection process. This act has protected many children from the garb of the brick industry, chemical and fertilizer industry. Regular reporting and inspection in certain factories have assured that the owner of such specific industries to adhere to the enumerated standards. Ensuring Rehabilitation of the victim of child labour is a positive approach to bring them back into mainstream society.

The Right of Children to free and Compulsory Education Act of 2009: This legislation mandates free and compulsory education for children between the age of 6 to 14 as a Fundamental Right. Although it was originally added to the Constitution by the 86th Constitutional Amendment Act, the recognition of the need for specific legislation due to the seriousness of the situation gave rise to this legislation. The legislation reserves 25% of the seats for disadvantaged and physically challenged children in private schools. The implementation of the Act is monitored by the National Commission for Protection of Child Rights (NCPCR).

National Child Labour Policy 1987: In 1980s Many changes were initiated at the grass-root level by the ministry of labour and welfare in order to prevent the children from entering into labour industry. In 1987 The Most important step undertaken by the government was National child labour policy, 1987 as by then government had realised that legislation needs a supportive enforcement mechanism to enhance its utility. This policy was formulated for addressing the socio-economic needs aiming at health, education, well-being, nutrition and overall development of child thereby reducing the instances of child labour and rehabilitation of children who were working in hazardous industries. The policy helped in setting out the action plan, which was primarily aimed at the functional mechanism like legislative action, child development programmes and plans for child labour who are engaged in wage along with quasi wage employment.²⁴

National Child Labour Project, 1988: In the lieu of the policy National child labour project was launched in 1988 to implement the action plan of National child labour policy. Total 12 projects were launched which provided for establishing special schools for non-formal education, nutrition, vocational training, health care facilities and a stipend of Rs 150 per month to the children who were withdrawn from employment.

The implementation of this project was with the District Magistrate or the collector, but the project was not a success because of the defective implementation mechanism as there was no system of check and balance either at the state level or central level for monitoring the implementation of the project despite having members of reputed NGOs and government department This led to the setting up of child labour cell for ensuring effective implementation in order to eliminate child labour. This child labour cell was set up in the V.V. Giri National labour institute in 1990

²⁴ Child Labour Legislation in India https://shodhganga.inflibnet.ac.in/bitstream/10603/648/9/09_chapter4.pdf

with the help of UNICEF and the government of India. Later in March 1933 cell was upgraded to National resource centre on child labour with the financial assistance of the ministry of labour and UNICEF.

The task undertaken by the government was very challenging as bringing the victim of child labour back into the mainstream society is like unstrapping them from the vicious cycle of the child. This scheme was able to solve the get done to the root cause that is providing education because the educated child has a less probability of falling prey to child labour. This was the area where the scheme became a success.

III. Other National Projects Implemented by the Government

A strategy for eliminating the menace of child labour was adopted in X Five Year Plan thereby linking its efforts with the scheme of Sarva Shiksha Abhiyan of the Ministry of human resource and development. Further, the Ministry of Labour, the Government of India have jointly funded the Indus project on the elimination of child labour along with the Department of Labour, USA.²⁵

The implementation of Indus project was done in hazardous sectors in 21 districts across five states namely Maharashtra, M.P., T.N., U.P. and Rajasthan. Through the Indus project, 80,000 children were withdrawn and rehabilitated from hazardous industries. Government of India has Established Anganwadies which is a significant step for promoting the welfare of children and their educational physical and mental development.²⁶

IV. Judicial Approach to Eliminate Child Labour

Despite having statutory legislation and constitutional provisions, children are still the vulnerable section of society and the deplorable acts are committed by exploiting them. Court has time and again tried to curb this menace by directly applying the constitutional provisions to such occupations under the order of the court.

In the case of ***Sheela Barse v Secretary, Children Aid Society and Others, 1987***²⁷, the Supreme Court held that in order to have a sustainable future of the country, present needs for proper growth of children should be taken care. Every generation is obliged to provide a healthy environment for the development of the children because these children will be the leaders of tomorrow who will maintain the prestige of the nation.²⁸

In the case of ***M. C. Mehta v State of Tamil Nadu & Ors.***²⁹, M. C. Mehta, a prominent environmental lawyer in 1986 filed a writ petition stating the gross violation of article 24 of Indian constitution in Shivkasi, Tamil Nadu. Article 24 is a fundamental right which prohibits employment of children below the age of 14 years in any factory or mine or any hazardous

²⁵ Constitutional Provisions and Programmes on Child Labour in India (1st September 2018) <https://syskool.com/constitutional-provisions-and/>

²⁶ *Ibid*

²⁷ 1987 AIR 656

²⁸ *Ibid*

²⁹ AIR 1997 SC 699

employment. Shivkasi is known for its firecracker industry and it has been witnessed that there is a high concentration of child labour which is in derogation of Article 24.

The judges observed that constitutional provisions are being violated. Even the states are not fulfilling their duty to ensure the development of children in a healthy environment, protection from exploitation and access to education under Article 39(f) and Article 45. This is causing grave injustice, so this led to the formation of a committee of advocates. This committee was required to visit the place thereby making a comprehensive report. The reports mentioned that steps on behalf of the Tamil Nadu Government should be taken in order to prohibit the employment of children in those hazardous factories. several norms and standards were laid down to ensure a safe and healthy environment to children:³⁰

- Separate premises should be allocated to the children who are employed in the package section of those firecracker industries.
- Working hours and recreational facilities were laid down; children were not permitted to work for more than 6 hours per day and should be fed with the healthy environment including basic diet, access to education and insurance scheme.
- It was felt a need to have a commission for child welfare to eradicate child labour in a phased manner.

Judgement acknowledged the fact that besides Shivkashi, child labour is still prevalent in other parts of India also indicating child labour as deep-rooted evil and it can only be abolished by the combined efforts of Central and State government. There are various constitutional provisions and statutory legislation in consonance with the constitutional provision through which this menace can be curbed if proper implementation takes place.

India is a signatory to the international convention of child rights which was adopted in UNGA in 1989 so its India is bound by its terms and this international commitment makes it necessary to protect children from any sort of exploitation and their nurture them with a healthy environment which led to their overall development. In this respect, India is a responsible member of this treaty should ensure that no child is employed in hazardous industry and criteria of minimum age along with the fixed parameters of limited working hours should be followed.

The judgment also signified the certain provisions of statutory legislations such as Section 67 of Factories Act, 1948 which lays down the minimum age for employment, Section 109 of Merchant Shipping Act, Section 24 of the Plantation Labour Act, 1951, Section 45 of Mines Act, 1961. These provisions indicate the long-felt need for the prohibition of child labour.

This judgement also provides directions for payment of compensation of Rs. 20,000 by the employer who acted in derogation with the act by employing children in the hazardous industry. This judgement has tried to curb this menace by eradicating the grassroots cause that is poverty by providing alternate employment to the adult member of the family when the child is withdrawn

³⁰ *Ibid*

from hazardous industry or payment of Rs 5000 to every child employed in the hazardous industry by the appropriate government. A CHILD LABOUR REHABILITATION-CUM-WELFARE FUND shall be constituted in this respect. Court ordered that the survey should be completed within 6 months in order to identify children in hazardous industry and it involves payment of interest of Rs 25000; Rs 20,000 by the employer and Rs 5000 by the appropriate government to the family where the child is withdrawn from work. It also mentioned creating provisions of education for those children withdrawn from work.³¹

In order to have a proper implementation of the aforesaid judgement Court directed to constitute a SEPARATE CELL IN THE LABOUR DEPARTMENT OF the appropriate government which shall serve the purpose of monitoring. State governments in response to the judgement had sent the manner in which the direction of the supreme court could be enforced. THE NATIONAL AUTHORITY FOR ELIMINATION OF CHILD LABOUR examined the directions of the supreme court in a meeting thereby decided the release of funds by the Ministry of Labour to state governments in order to conduct surveys. To keep transparency, the Ministry of Labour was required to report to the supreme court about every action taken by the central and state government.

Responsibility of the Public to Curb this Menace

It is a duty of each and every citizen to lodge a complaint to the local police station or NGOs or with the National or state commission for protection of child rights whenever they witness the incidence of child labour. If the police fail to register FIR or refuse to investigate then application be made to the superintendent of police. In case of failure on the part of the superintendent of police, file an application to the magistrate who will look upon this concern. Government has also provided access to 24 hours toll-free number that is 1098 which is operating in 72 cities.³²

Analysis and Road Ahead

Many actions have been taken by the three organs of the government but achieving complete abolition of child labour is still a far cry in the society because of the major lacunas such as:

1. One such hindrance is that different acts have discrepancies concerning working age of the child, working hours, the period of employment, the period of rest, night shifts so there is no concurrence of opinion on these important aspects of legislations, so all these aspects were dealt by M. C. Mehta and eventually tried to fix them.
2. Another such defect is the implementation of these acts. One can hardly witness any cases where the employer has been taken to court and is punished for violation of legislation and even if they are punished, they find their ways out by giving the fine which is very minimal

³¹ *Ibid*

³² Child Labour in India: Child Slavery and Legal Solutions to the menace (12th May 2017) <https://www.lawnn.com/child-labour-india-child-labour-laws-child-rights-legislations-recent-amendments/>

in the eyes of the employer, so this shows the lack of deterrence in the legislation is paving the way for employers to violate the legal framework.

3. One such lacuna is that the Child Labor (Prohibition & Regulation) Act, 1986 does not align with the fundamental right protected under constitution Article 24 which prohibits child labour completely. This act only prohibits child labour in hazardous industry and fails to cover other unorganized sectors such as agriculture and cottage industries where the conditions are not suitable for the health and wellbeing of the child and act as a hindrance to the physical development of the child. Moreover, this act fails to cover every hazardous industry listed in the schedule. This act has also taken the prohibits employment in factories but failed to cover the other aspects. Children of such tender age work as rag picker and another such field where they are more prone to skin diseases and health problem. This Act neglected such employments which is a violation of not only Article 24 but Article 39 and Article 45 also which provides for free and compulsory education for the development of the child.
4. There are causalities within the Act as the Section II of the Child Labor (Prohibition & Regulation) Act, 1986 directs the employer for maintaining a register for inspection but the defect is that it covers only regular workers and most of the child labour are not employed on regular basis, so employers find their way out to escape from this inspection process.
5. Many girls are employed as the house workers in the families, so they become invisible in the definition of child labour under the act. The definition provides for the identifiable employer and identifiable employee, so this is the major shortcoming as this is a hindrance to the development of the child.

So, this indicates that despite having multiple legislations, India is still lacking in the elimination of child labour because of its limited scope of legislations so there is a need to have a code on child labour which will fix the major shortcoming in the consonance of the constitutional provisions and will work upon the judicial directives. There is a need for having a Proper reporting mechanism in order to maintain transparency in the implementation mechanism.

Conclusion and Suggestion

The State should ensure that not only the punishment for making child labour is increased so that a deterrent effect is created but also that the execution of the laws are done seriously as it was seen that since 1986's only 49,092 people were prosecuted and convictions were as low as 4774.³³ The UN agencies and NGO's are of the view that the number of child labour in India is as high as of 4-6 cores as the children are falsely registered in schools but in reality, they are just getting indulged into child labour. The government should carry out a proper survey to find out the true numbers of the same, to know how big the problem is and then implement a program which would not only vocationally training but also provide employability opportunities to these

³³ Conclusion, Suggestion & Recommendations, Shodhganga
https://sg.inflibnet.ac.in/bitstream/10603/76714/15/16_chapter%207.pdf

children in future. The government should also spread awareness at all levels about child labour and should provide support to the NGOs to ensure that they could work at local levels and protect the children from child labour. The future is on the hands of the youth, and the youth shall be protected at any cost because a nation deserves the efforts of the youth and not the pestering of the geriatric.