

# Child Labour In India: An Overview

Himanshu Pundir

(BALLB 5<sup>th</sup> year Law College Dehradun, Uttaranchal University, UK, India)

Co-author: Mrs. Sandhya Verma.

(Assistant Professor Law college Dehradun, Uttaranchal University, UK India)

## Abstract

It has been observed over decades that, poverty forces poor families to send their children to work, which results in a serious problem the world is facing nowadays. Child labour can leave many severe consequences on children and their families. When children work, it does not mean as a standard, they support their families economically, neither all of them get paid for their work since many of them work as bonded labour or as slaves. In addition to that, they face many problems which may cause permanent damage to their childhood. Children usually work to contribute and provide financial support to their families. Their health is often ignored by their parents or they may not be aware about their children's health. This paper illustrates how India have adopted laws and regulations to eliminate child labour. However despite all the efforts, child labour and the factors that influence the incidence of child labour continues to be prevalent. The results from this study explain the reasons which forces children to work, poverty. This paper also draws conclusion that governments, societies, and communities should cooperate in a better way with each other to decrease child labour. Possible and innovate solutions and suggestions are arose at the end of this paper.

**Keywords:** child labour, poverty, education, India, governments,

## INTRODUCTION

“The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into a fullness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation.”

--- P N Bhagwati, Former CJI. Almost one-third of the world population consists of children. Therefore they need to be cared and protected, to keep up and improve posterity. Children are important component in social structure and potential future carries to the culture. Now the question arises, who is a child? Or who can be considered as a child? Finding a single definition to describe a "child" is becoming an uphill task. The plain dictionary meaning of the word 'child' is that, a young person especially between infancy and youth.<sup>1</sup> Biologically, a child is anyone between the stages of infancy and adulthood, or child is a human being between the stages of birth and puberty. The legal definition of "child" refers to a minor, or somebody who is yet to become an adult. It is used as an opposite to 'adult'. It is not concerned with the age. The only qualification is that the child should be unable to maintain himself. Hence a child though not a minor is still a child as long as it is unable to maintain himself.<sup>2</sup> In contrast to the preceding decades India seems to have done enough for the protection of children from all untoward circumstances. In keeping with international development in the area of child welfare, India as a democratic state has launched scores of program and policies devised on statutory footing. The Ministry of Women and Child has been instrumental in this direction and it has particularly catered to children in crisis situation such as street children, children who has been abused, abandoned, children in conflict with law etc.

The United Nations Convention on the Rights of the Child defines a child as "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier."<sup>3</sup> "Child" means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.<sup>4</sup>

“A child is a person who is going to carry on what you have started...the fate of humanity is in his hands.”

--- Abraham Lincoln.

Whether children have any rights? Yes. Of course, like other human beings, even children have certain rights. They shall not be deprived of it. The children's right is a world widely accepted phenomenon. Moreover, UN adopted the Declaration of the Rights of Child.<sup>5</sup> Children have rights as human beings and need special care and protection. "A child is any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier"<sup>6</sup> Recognizing that the child, for the full and harmonious development of his or her personality, should grow in a family environment, in an atmosphere of happiness, love and affection. Considering that the child should be fully prepared to live an individual life in society he has to be guaranteed with the spirit of peace, dignity tolerance, freedom equality and solidarity. Children's rights are the perceived human rights of children with particular attention to the rights of special protection and care afforded to the young, including their right to association with

<sup>1</sup> <http://www.merriam-webster.com/dictionary/child>

<sup>2</sup> Nanak Chand v. Chandra Kishore, AIR 1970 SC 446, at 449,450

<sup>3</sup> <http://www.unhcr.ch/html/menu3/b/k2crc.htm>

<sup>4</sup> Sec. 2(a) of The Prohibition of Child Marriage Act, 2006

<sup>5</sup> At General Council meeting in 20th Nov, 1959

<sup>6</sup> [http://en.wikisource.org/wiki/UN\\_Convention\\_on\\_the\\_Rights\\_of\\_the\\_Child](http://en.wikisource.org/wiki/UN_Convention_on_the_Rights_of_the_Child)

both biological parents, human identity as well as the basic needs for food, universal state-paid education, health care and criminal laws appropriate for the age and development of the child. The compulsory education law says children up to 14 are entitled to free education. Child labour refers to the employment of children at regular and sustained labour. This practice is considered exploitative by many international organizations and is illegal in many countries. Children who are below 14 cannot take out a livelihood. If they are found working in an establishment, the employer is charged under labour laws that prohibit employment of any child until they attain adulthood.

In this project I tried to identify the problem of child labour and its socio-ethical and legal dimensions in the Indian society.

## **CHILD LABOUR**

### **MEANING**

The children should not have to work is universally accepted, but there are no universal answer why the problem of child labour persist and how it needs to be tackled. India is faced with the crucial task of eliminating the child labour which is prevalent in all spheres of life. Thousands of children are engaged in the carpet factories, glass factories and other hazardous industries all over the country.

The term child labour has generally two-fold interpretations. Firstly, it is implied to be an economic necessity of poor households and secondly, the explosive aspect in children's work concerned with the profit maximizing urge of commercial establishment wherein children are made to work for long hours, paid low remuneration and deprived of educational opportunities.

International Labour Organisation<sup>7</sup> (ILO) defines child labour to "... include children leading permanently adult lives, working long hours for low wages under conditions damaging to their health and physical and mental development, sometime separated from their families, frequently deprived of meaningful educational and training opportunities that could be open up to them a better future".

### **REASONS FOR CHILD LABOUR**

There are many reasons for the existence of child labour and it varies with place and place to place. In India, poverty is one of the important factors for poverty, but it's not the sole factor. Children provide cheap labour, the person who wants labour has to pay less to them than adult labour. The child can be commanded more than an adult. The pull factor of the child labour is the profit maximization.

The main causes to failure to control the child labour are; poverty, low wages than adult, unemployment, absence of schemes for family allowance, migration to urban areas, large family size, children being cheaply available, non existence of strict provisions for compulsory education, illiteracy, ignorance of parents and traditional attitudes<sup>8</sup>.

### **CHILD LABOUR IN INDIA**

India accounts for the second highest number where child labour in the world is concerned. Africa accounts for the highest number of children employed and exploited. The fact is that across the length and breadth of the nation, children are in a pathetic condition.

Child labour in India is a human right issue for the whole world. It is a serious and extensive problem, with many children under the age of fourteen working in carpet making factories, glass blowing units and making fireworks with bare little hands. According to the statistics given by Indian government there are 20 million Child labours in the country, while other agencies claim that it is 50 million.

The situation of Child labours in India is desperate. Children work for eight hours at a stretch with only a small break for meals. The meals are also frugal and the children are ill nourished. Most of the migrant children, who cannot go home, sleep at their work place, which is very bad for their health and development. Seventy five percent of Indian population still resides in rural areas and are very poor. Children in rural families who are ailing with poverty perceive their children as an income generating resource to supplement the family income. Parents sacrifice their children's education to the growing needs of their younger siblings in such families and view them as wage earners for the entire clan.

In Northern India the exploitation of little children for labour is an accepted practice and perceived by the local population as a necessity to alleviate poverty. Carpet weaving industries pay very low wages to Child labours and make them work for long hours in unhygienic conditions. Children working in such units are mainly migrant workers from Northern India, who are shunted here by their families to earn some money and send it to them. Their families dependence on their income, forces them to endure the onerous work conditions in the carpet factories.

While experts blame the system, poverty, illiteracy, adult unemployment; yet the fact is that the entire nation is responsible for every crime against a child. Instead of nipping the problem at the bud, child labour in India was allowed to increase with each passing year. And today, young ones below the age of 14 have become an important part of various industries; at the cost of their innocence, childhood, health and for that matter their lives.

<sup>7</sup> ILO 1983

<sup>8</sup> M C Mehta v. Union of India, AIR 1997 SC 699

### **INDIAN CONSTITUTION AND CHILD LABOUR**

Article 23<sup>9</sup> of Indian Constitution prohibits the trafficking in human beings and forced labour. And Article 24 prohibits the employment of children in factories. It says that No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

The general understanding was that right secured by Article 24 will hardly be effective in the absence of legislation prohibiting and penalising its violation. However, Supreme Court clearly stated that Article 24 “must operate proprio vigore” even if the prohibition lay down in it is not “followed up by appropriate legislation.” In *Labourers, Salal Hydro Project v. State of J&K* it was again held that the employment of children below 14 in construction work violates Article 24.

It was noted in *M C Mehta v. State of Tamilnadu*, that menace of child labour was wide spread. Therefore it issued wide ranging directions in the context of employment and exploitation of children in Sivakasi, prohibiting employment of children below the age of 14 and making arrangement for their education by creating a fund and providing employment to the parents or the able bodied adults in the family. These directions were reiterated in *Bandhu Mukti Morcha v. Union of India*<sup>10</sup>, concerning the employment of children in carpet weaving industry in U.P.

The State shall, in particular, direct its policy towards securing 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. Also the State shall, direct its policy towards securing the 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 to the children.

Article 45 of Indian Constitution made provision for early childhood care and education to children below the age of six years. As per this Article the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

### **NATIONAL FRAMEWORK TO ELIMINATE CHILD LABOUR**

Our Constitution provides special provisions for the protection of children. Some Articles are as follows – 15(3), 21, 21-A, 23, 24, 39 (e), 39 (f), 43, 45 and 51-A (k). In relation with the above mentioned Conventions and Constitutional provisions, we have enacted special laws to eliminate the child labour; some important ones are as follows.

1. The Children (Pleading of Labour) Act, 1933.
2. The Factories Act, 1948.
3. The Minimum Wages Act, 1948.
4. Plantation Labour Act, 1951.
5. The Mines Act, 1952.
6. The Merchant Shipping Act, 1958.
7. The Motor Transport Workers Act, 1961.
8. The Apprentices Act, 1961.
9. The Schools and Establishments Act, 1961.
10. The Beedi Cigar Workers (Conditions of Employment) Act, 1966.
11. The Child Labour (Prohibition and Regulation) Act 1986.

### **CHILD LABOUR (PROHIBITION & REGULATION) ACT, 1986**

Recognizing the increasing problem of child labour in India, the Parliament passed ‘The Child Labour (Prohibition and Regulation) Act, 1986’. The purpose of this Act was to declare child labour as illegal and make it a punishable act by any citizen of India. The Act is to bring to the notice of the people of this nation that there are child labour laws to protect the child. However, in spite of this the situation has not improved, nor has it been brought under control.

### **NATIONAL CHILD LABOUR PROJECT**

The Child Labour (Prohibition & Regulation) Act was enacted in the year 1986<sup>11</sup>. Under the provisions of this Act a National policy on child labour was formulated in the year 1987. The policy seeks to adopt a gradual and sequential approach with a focus on rehabilitation of children working in hazardous occupations and process in first instance. As poverty is the root cause of child labour, the action plan emphasizes the need to cover these children and their family under various poverty alleviation and employment generation schemes of the government.

Pursuant to this, in 1988, the NCLP scheme was launched in 9 districts of high child labour population in the country. The scheme envisaged special schools for the child labour withdrawn from work. The coverage of the NCLP scheme has increased from 12

<sup>9</sup> ] Art.23 (1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

<sup>10</sup> AIR 1997 SC 2218

<sup>11</sup> In consonance of recommendations of Gurupadaswamy Committee.

districts in 1988 to 250 district in 10th plan. Some of the salient features of the plan strategy 2001<sup>12</sup> are focused and reinforced action to eliminate child labour in the hazardous occupation by the end of plan period.

## PRESENT SCENARIO

At national level as well as local level many organizations<sup>13</sup> are busy to protect the rights of child as well as to solve the problem of child labour with the help of funding agencies and with the help of government machinery. Government's commitment to addressing the problem of child labour is reflected in the National Agenda of governance. And when we look in to the statutes on child labour, minimum wage is not prescribed for the occupation permitted for children and no provision exists for working children.

## ROLE OF JUDICIARY IN SOLVING CHILD LABOUR

The Supreme Court of India, in its judgement dated 10th December, 1996 in Writ Petition (Civil) Number 465/1986, has given certain directions regarding the manner in which children working in the hazardous occupations are to be withdrawn from work and rehabilitated, and the manner in which the working conditions of children working in non-hazardous occupations are to be regulated and improved. The judgement of the Supreme Court envisages:

- (a) Simultaneous action in all districts of the country;
- (b) Survey for identification of working children (to be completed by June 10, 1997)
- (c) Withdrawal of children working in hazardous industries and ensuring their education in appropriate institutions;
- (d) Contribution of Rs.20, 000 per child to be paid by the offending employers of children to welfare fund to be established for this purpose;
- (e) Employment to one adult member of the family of the child so withdrawn from work, and if that is not possible a contribution of Rs.5000 to the welfare fund to be made by the State Government;
- (f) Financial assistance to the families of the children so withdrawn to be paid out of the interest earnings on the corpus of Rs.20,000/25,000.00 deposited in the welfare fund as long as the child is actually sent to the schools;
- (g) Regulating hours of work for children working in non-hazardous occupations so that their working hours do not exceed six hours per day and education for at least two hours is ensured. The entire expenditure on education is to be borne by the concerned employer;
- (h) Planning and preparedness on the part of Central and State Governments in terms of strengthening of the existing administrative/regulatory/enforcement frame-work (covering cost of additional manpower, training, mobility, computerization etc.) implying additional requirement of funds.

## CONCLUSION

Children of the nation are supremely important asset. Children's programs should find a prominent part in our national plans for the development of human resources. So that our children grow up to become robust citizen, physically and mentally fit, and morally healthy; endowed with the skills and motivations needed by the society.

Child labour is a significant problem in India. The prevalence of it is shown by the child work participation rates which are higher in Indian than in other developing countries. Equal opportunities for development to all children during the period of growth should be our aim. For this purpose even we citizen should join hands with government and other institutions which are set up for this purpose.

Educating the child can be a solution for solving the problem of child labour. To provide compulsory primary education and in order to reduce the burden on parents to meet the expenditure for their children's education, while they are struggling for a day's meal, our Government had allotted funds. But due to the lack of awareness most of the poor families are not availing these facilities. So, proper steps have to be taken to create awareness.

Child labour cannot be eliminated by focusing on one determinant, for example education, or by brute enforcement of child labour laws. The government of India must ensure that the needs of the poor are filled before attacking child labour. If poverty is addressed, the need for child labour will automatically diminish. No matter how hard India tries, child labour always will exist until the need for it is removed.

The development of India as a nation is being hampered by child labour. Children are growing up illiterate because they have been working and not attending school. A cycle of poverty is formed and the need for child labour is reborn after every generation. India needs to address the situation by tackling the underlying causes of child labour through governmental policies and the enforcement of these policies. Only then will India succeed in the fight against child labour.

<sup>12</sup> <http://labour.nic.in/cwl/ChildLabour.htm> last accessed on 8th October 2009 at 21:43

<sup>13</sup> CAVL, UNICEF, Gantar, Shaishav, Childline, etc.