
PROBLEMS IN ENFORCEMENT OF CHILD LABOUR PROHIBITION LAWS IN INDIA- A CRITICAL STUDY

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"There can be no keener revelation of a society's soul than the way in which it treats its critical children."

-Nelson Mandela

ABSTRACT

Child is an important human resource with a huge potential which in the coming time can lead the nation towards success and development. Childhood is a very important phase where it can be moulded into any shape and it is very important where it is led to because it is what that will decide the future of the nation. The development of the nation is seen in every aspect, be it social, economic, cultural and moral aspects. India is a country where majority of the population is young which means that if they are channelized in the right direction then nothing can stop it from achieving success and it is also a country where the children are made to do labour in large numbers. Child labour is an evil practice which still exists. It is more prevalent in developing countries. As per Global estimates the working children account for 152 million out of which 64 million are girls and 88 million are boys. In the recent scenario the Covid-19 has made the situation worse and increased the number of child labors. The condition of many people in developing countries is not up to the mark. In India a huge population is living in poverty and one of the drawbacks of which is child labour. The children who are believed to be the abode of god are compelled to do work at the expense of their life. The age when they should be happy, enjoying their childhood and living in the atmosphere of love and affection in the care and responsibility of their parents, they are left at the mercy and exploitation of the employers. Poverty and illiteracy are the major cause for this problem. It affects the health of the child and deprives him of his growth and development. It is not only derogatory to the child but also the society

and the entire nation. This problem is not a new phenomenon and has been there in every society in different forms. Eradication of this problem has always been very difficult in spite of various laws been made for the protection of the rights of the children and also for the prohibition of this evil practice in the Constitution of India, National legislations, Judicial determinations, international legislations and other policies. The main reason behind it is the insufficient enforcement of these laws with strictness.

Keywords: child labour, child employment, exploitation, hazardous work, poverty.

Introduction

Children are regarded as the asset of the nation. They are the future leaders who will lead the nation in the coming time. They are the trendsetters of tomorrow having the command of the sovereignty, justice, peace and security of the nation. They are like a growing bud that will become a flower one day and spread its fragrance all over. Like a bud children are also very delicate they need protection, nourishment and proper environment so that they can grow and develop to the fullest. The future of the nation depends on the quality of the upcoming generation.

Child is considered as a precious gift but there is a dark side to it that is child labour. When we hear the word child, the first image that comes to our mind is that of a smiling face of a child enjoying his childhood free from all worries, pressures and tensions. He doesn't have to look after the family, pay bills, taxes, go to work with new tasks and deadlines. He is just carefree and loved by all. Unfortunately we see many children deprived of their right to freedom and development as they are seen doing labour in household, mines, factories, agriculture etc. at a very tender age. Mostly they are found working in hazardous occupation like bangle making, beedi making, mines, brick kilns, construction works which involves toxic substances and chemicals which are dangerous to the lives of children. The age when they should be attending school they become bread earners of their family.

Koderma and Giridih the two districts of Jharkhand, one of the States in India, where the majority of the world's mica come from, hides a bitter reality behind it. Mica is translucent, shimmery mineral used in cosmetics, toothpastes, automobiles etc. The workers that extract mica from the mines here are children working as young as the age of 4 or 5 years working in narrow mines with the fear of debris falling on them and causing injury and sometimes death. This reality came into spotlight when NGO Legal Rights Observatory filed a complaint to the National Commission for the Protection of Child Labour against 'Fenti beauty', a cosmetic brand the owner of which is Rihanna for using the blood Mica from Jharkhand mines involving child labour.¹

Engagement of the children in child labour deprives them of their childhood which is one of the most important stage of human life distancing them from social, physical, emotional and mental development hampering not only the growth of the children but also of the nation as it is the wastage of the potential human resources. Therefore, they need to be protected.

If the basic needs are fulfilled then this problem can be removed. Because the main reason for the child labour is that families do not have sufficient means to earn for the living. They are deprived of the basic essentials of survival and if the family is large as it is seen in villages then it becomes very difficult to survive and if there is only one member earning for the whole family it becomes burdensome for him. So in order to survive the children also work. It is also true that not everywhere the children working are deprived of their rights and development. There is a difference between child engaged in work and child labour. The children may be engaged in family businesses or enterprises are not much exploited, it is like a help by the children because they also enjoy their childhood, go to school and get proper environment to grow. Unlike Child labour which is exploitative. It is a socio- economic problem the root cause of which is poverty and social trend in India. The thing which is more concerning is that it exploits them, there is burden on them, it is dangerous for them and it hampers their growth and development. Other causes can be over population, migration, unemployment, non-implementation of laws etc.

In 1924 the first convention adopted by the League of the Nations that is The Geneva Declaration of the Rights of the child talked about the children's' rights. Then after Declaration of the Rights of the Child adopted by the United Nations General Assembly in 1959 was the first major international consensus on fundamental principles of children's rights. The principle 8 of this declaration says that children should be the first one to receive protection and relief. Principle 9 says that they should be protected from all forms of cruelty, neglect and exploitation. Principle 10 says that they should be brought up in a spirit of understanding, universal brotherhood, tolerance and peace. The Universal Declaration of Human Rights 1948 also gives emphasis on child rights. Article 10 of the International Covenant on economic, social and Cultural rights also talk about the rights of the child.

In order to abolish this practice 12 June is marked as the World Day against Child Labour. The United Nations General Assembly has adopted a resolution in which it has declared the year 2021 as the International Year for the Elimination of Child Labour where the member states have made commitments take effective measures and end all forms of child labour by 2025.

Child labour has also increased due to pandemic as there is shortage of jobs and schools are also closed. Migration was already a cause of child labour as people move from place to place and do not send their children to school, they also work with them and the pandemic

has increased this problem. With the moving back of people to their cities has created shortage of labour and increase in child labour. According to the research conducted by Child Rights and You it is found that many children prefer to work rather than going to school.

As per the census of 2011: Uttar Pradesh, Bihar, Rajasthan, Maharashtra and Madhya Pradesh are the states which are engaged in maximum child labour, where over 10 million children are under 14 years of age.

ILO estimates that 152 million children are engaged in child labour and 73 million of them working in hazardous sectors like construction and mines.² Out of which India comprise of 7.3 %. India has 33 million child labour and 80% of which belongs to rural India.³

There has been no success in eradication of this problem and it has continued since ancient times and is still prevailing. We have various national laws regarding the prohibition of child labour and apart from them there are also certain international organizations that are determined to eliminate child labour such as UN and ILO through various conventions and declarations. Such as the United Nations Convention on the Rights of the Child 1989 and under ILO: the Minimum Age Convention (No. 138, 1973) and the Worst Forms of Child Labour Convention (No. 182, 1999).

There is also an International Programme for the Elimination of Child Labour which deals with child labour, hazardous work and employment of children.

Although the laws are made but they are not enforced strictly and there are many lacunas in them. The employers practicing child labour can easily escape the legal procedure and go unpunished which is not deterrent to them. In order to remove this problem a combined effort is required both at the hands of people and the government.

Legal Definition of ‘Child’

Child is most commonly used word that has many different legal definitions depending on where you live in the world and what laws you are abided with. In India there is no uniform definition of child. It varies from Acts to Acts and also it is different in every States. Therefore it becomes difficult to find out the exact number of child labours and who are considered as child labours.

The U.N. Convention on the Rights of the Child, 1989 defines that term ‘Child’ means any human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.⁴

The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 defines that ‘Child’ means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more.⁵

Child labour

According to ILO the term “child labour” is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development It refers to work that is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work.⁶

UNICEF defines child labour as: Children 12-14 years engaged in any economic activity (except light work for less than 14 hours per week), or 28 hours or more domestic work per week; children 15-17 years engaged in any hazardous work.⁷

Child labour includes: the employment of child for any gainful occupation; the work to which the child is exposed must be harmful; and the child’s opportunity of development must be denied.⁸

Historical Background:

The problem of child labour is not a new phenomenon; it has been in existence since the time immemorial. All the jurists were silent about this inhuman practice except Kautilya.

Mahatma Gandhi was also strongly against the child labour. In a speech he said: “It is a sign of national degradation when little children are removed from school and are employed in earning wages. No nation worthy of the name can possibly afford so to misuse her children. At least up to the age of 16 they must be kept in schools.”⁹

In Indian history child labour existed in different forms it was mainly in the form of child slavery where children were exploited and made to do dishonorable and low work. Slavery was the practice where the masters had dominance over the poor. They were owned by the high class/ rich people who made them do all kinds of work and were treated like things. “The harsh reality of ancient India was that children of slaves were born as slaves, lived as slaves and died as slaves unless the master was pleased to manumit them.”¹⁰

The problem of child labour was not improved in medieval period also. In fact it became more rampant. This problem had terrified many social reformers. Due to the pressure on land it resulted in the fragmentation of the holding of the land. The families had to look everywhere for their survival. The landless poor had to work as bonded laborers for the people with large holdings and their children also assisted them as they had no other means of livelihood. Here the families worked together in their hereditary occupations and the children were taught the craft work at a very young age. In this period also the conditions of the children was worse and were exploited. Children had no freedom and no free will. Their condition did not improve from those of child slaves.

During the British period there was a change in the problem of child labour due to capitalism which destroyed the family based economy. There was the mechanization of the agriculture and a lot of farmers lost their jobs. The main cause for this was the uneven development of industrialization. They had no option but to earn wages and due to extreme poverty their children were also engaged as labour. The farmers who used to work in the family environment now had to work as wage earners in unhealthy environment.

After independence many laws were made for the welfare of the children. The makers of the constitution have made many provisions in the constitution for the protection of the rights of the children. The legislations are passed for the prohibition of child labour.

Causes of Child Labour in India:

There are various causes that lead to child labour in India and which are so deeply rooted that it has been very difficult to eradicate this problem completely and even the enforcement of the laws preventing it are ineffective. Some of the causes are:

- Poverty is believed to be the main reason for child labour. Due to everlasting poverty and unequal distribution of wealth it has resulted in poor conditions of certain strata of society

leading to poverty and forcing children to work to earn for their survival. In a developing country like India which is not fully developed many people live below poverty line.

- An inadequate income of the parents is another cause where parents compel their children to do some work so that there is a little more income to meet the daily needs. Their income is low and is not sufficient to manage all the family needs so they send their children to look for jobs and knowing how they are treated by the employer, they are helpless and are happy as long as they are earning.
- Unemployment is another cause that leads to child labour. If a family is poor and on top that there is unemployment of adult members in the family then it completely breaks the family. When there is no source of income the condition becomes worse.
- Illiteracy is one of the causes that lead to child labour. Illiterate parents do not realize the importance of education and are pleased with their children earning and do not think of the future of their children. They do not care about development or progress and are just concerned about getting two times meals.
- Large families are another cause for child labour. Low income and many dependents make it difficult to fulfill everybody's needs whereby children start working. It is not a problem in small families as the situation does not become so bad that they will have to send their children to work and earn money. It is easy to take care of small families and provide them the environment for their all-round growth and development. They are just concerned about two times meals.

Various other causes include: school dropouts, migration, child labour cheaply available, inequitable distribution of land assets, failure on the part of govt., absence of scheme of family allowance and social security and insufficient enforcement of laws.

Constitutional and legislative safeguards for the protection of child rights:

After India's independence in 1947, our lawmakers kept in mind the welfare of children when drafting the constitution and made the following provisions to protect them.

- Article 15(3) empowers the state to make special provisions for women and children.
- Article 21 provides for the protection of life and personal liberty.
- Article 21A, which was added by the Constitution (Eighty-sixth Amendment) Act, 2002 provides for the free and compulsory education to all the children between 6-14 years.

- Article 23 provides for the prohibition of traffic in human beings and forced labour and if there is any contravention it is punishable by law.
- Article 24 provides that no child below 14 years be employed in to work in any factory or mines or hazardous employment. Supreme Court in the case of People's Union for Democratic Rights v. Union of India¹¹emphasized that Article 24 is a fundamental right which is enforceable against everyone.
- Article 39(e) directs the state that they shall make the policies which does not abuse the tender age of children.
- Article 39(f) provides that children should be protected against exploitation and should be given the opportunities to develop in a healthy manner.

Apart from constitutional safeguards, there are also various legislative enactments for the protection of child rights and prohibition of child labour such as:

- **The children (Pledging of Labour) Act, 1933**

Under this Act, child means a person who has not completed the age of 15 years.¹² It provides that an agreement to pledge the labour of a child shall be void.¹³ It also provides the punishment for the contravention of this provision by parent or guardian who makes an agreement to pledge the labour of a child is fine which extend to fifty rupees.¹⁴ Penalty for making with a parent or guardian an agreement to pledge the labour of a child that is fine which may extend to two hundred rupees.¹⁵ In the same way, penalty for employing child whose labour has been pledged is fine which may extend to two hundred rupees.¹⁶ The reason behind the passing of this Act was that there was a hope that children will be protected from exploitation in hazardous occupations but it was not fruitful and judiciary also did not take any step to for it.

- **The Factories Act, 1948**

The employment of young children is prohibited under this Act. It also provides the provisions for the safety and health of the children who are allowed to work and punishment in case there is any violation. This Act prohibits the employment of children who has not completed fourteen years of age.¹⁷ Even if the child had completed fourteen years of age (an adolescent) still he was not allowed to work until he was granted a certificate of fitness by the surgeon kept in custody of the manager of the factory and the adolescent carried a token giving reference to the certificate.¹⁸ It also provides that no child shall be employed or permitted to work, in any factory for more than four and a half hours in any day and during the night. It also prohibited the double employment of children on the same day. Female

child was not allowed to work except between 8 a.m. and 7 p.m.¹⁹. Although the provisions are made for children working in factories but they are not strictly observed and are most of the time ignored.

- **Plantation Labour Act, 1951**

This Act prohibits the employment of children below the age of twelfth year in any plantation. The child here is taken as a person who has completed fourteen years of age and he is not allowed to work in any plantation between 6 a.m. and 7 p.m. and unless he carries a token giving reference to the physical fitness certificate.²⁰

- **The Mines Act, 1952**

This Act prohibits the employment of persons below eighteen years of age in any mine or part thereof, and in case of trainees not below sixteen years of age may be allowed to work under proper supervision of the manager of the mine.²¹ It also does not permit a child to be present either above or below the ground where mining operation is carried on.²²

- **The Child Labour (Prohibition and regulation) Act, 1986**

Child according to this Act is a person who has not completed his fourteen years of age.²³ This Act prohibits the employment of children in certain occupations and processes mentioned in Part A and Part B of the Schedule.²⁴ A ‘Child Labour Technical Advisory Committee’ is set up by the Central Government to add any occupation or process in the schedule.²⁵ It makes provision for the regulation of working hours for the children where they are allowed to work. The total working hours is fixed for six hours and no period of work shall increase three hours where they will be entitled to an interval for one hour.²⁶ The provision for a weekly holiday is given to every child labour.²⁷ This Act has been amended in 2016 and is called as The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. This amendment added ‘adolescent’ (children between 14 to 18 years) and also deal with the adolescent labour.

Beside constitutional and legislative safeguards efforts to eradicate child labour are also made by a number of NGOs also like: Campaign Against child labour, Bandhua Mukti Morcha, Concern for Working Children, Child Rights and You.

Loopholes in laws

- The laws that are made mainly talk about the age of the children, working conditions, and hours of work but do not provide strict penal sanctions against child labour.

- There is no uniform definition given for a ‘child’, and the minimum age of employment it varies in different enactments and from State to State. Which makes it difficult to determine the child labour and due to this reason many child labour cases do not even get reported.
- The certificate of fitness is required in some Acts and not in others, there is no uniform provision related to it. Like in Mines Act 1952, it is required for underground work and not for above ground work. So is it saying that it safe for children to work above the ground in Mines?
- When the working hours are fixed in the Acts, they remain in the written form on papers only and are not implemented practically and children are made to work beyond it. They are made to work for long hours.

Drawbacks in the Child Labour (Prohibition and Regulation) Act, 1986:²⁸

- This Act as the name suggests does not deal with the abolition of child labour but talk about the prohibition and regulation of it. When this Act mentions ‘regulation’ which means child labour is practiced leading to the never ending of this evil and it being practiced everywhere due to non-mention of the word ‘abolition’ of child labour.
- It allows child labour in some occupations instead of not practicing it at all. It is against Article 24 of the Constitution of India where employment of children below fourteen years is prohibited in factories and mines and hazardous employment.
- This Act does not cover all the occupations; the unorganized sectors are not even mentioned.
- The word ‘hazardous’ is not defined and whether a work is hazardous or not, is decided by the Technical Advisory committee.
- This Act allows an exception to family enterprises where children are allowed to work.
- The minimum age of the employment is also not specified.
- The medical fitness and medical examination of the children willing to work is not suggested.
- The punishment provided under this Act is either imprisonment or fine. The violators manage to escape by paying fine only. It is not effective and deterrent.
- This Act also does not make any provision regarding the rehabilitation of children rescued from child labour.

Although this Act was amended in 2016 and introduced the word ‘adolescent’ but still there are certain shortcomings in the amended Act also²⁹:

- The no. of hazardous jobs is reduced from 83-3. Now mining, explosives and occupations mentioned in Factories Act fall under hazardous work. It means no other work than these are hazardous and on top of that as per the new amendment Act, the hazardous work can also be removed by the govt. authorities by their discretion.
- It introduced the concept of working part time like part time student, part time child labour by which govt. has the idea that it will help children to study also and help poor families earn and their children can learn new skills. Basically it is like, the poor families is to be exploited all the time they do not deserve the life of leisure and happiness and children of these families should be trained to get up early in the morning, work in the family, go to school come back and work again and then go to sleep late at night. They have no time to relax, enjoy their childhood and make their life happening like normal kids. Due to fatigue when they are not able to take it anymore they will choose either of it and the more chances are that they may choose to work because they will get money for that and studying which may brighten their future and bring huge improvement in their life is a remote possibility.

Not only this enforcement machinery is not efficient enough, the number of inspectors are less and are not able to inspect all the establishments. They are not provided with proper training and in some places the guilty even try to escape due to corrupt behavior of the officers.

Judicial Determinations

In People's Union for Democratic Rights and others v. Union of India and others,³⁰ or popularly known as Asiad Workers Case, a liberal interpretation was given to the term 'hazardous employment'. The Supreme Court held: "Large number of men, women and children who constitute the bulk of our population are today living a sub-human existence in conditions of abject poverty; grinding poverty has broken their back and sapped their moral fibre. They have no faith in the existing social and economic system. Construction work is clearly hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. 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. There can be no doubt that notwithstanding the absence of specification of construction industry in the Schedule of 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.”

In *M.C. Mehta v. State of Tamil Nadu*³¹, The Supreme Court observed that: “The spirit of the Constitution perhaps is that children should not be employed in factories as childhood is the formative period and in the term of Article 45 they are meant to be subjected to free and compulsory education until they complete the age of 14 years.”

In *Rajangam, Secretary, District Beedi Worker's Union v. State of Tamil Nadu and others*,³² the Supreme Court held that tobacco manufacturing has health hazards. Child labour in this trade should therefore be prohibited as far as possible and employment of child labour should be stopped.

Conclusion and Suggestions

Child labor is found mostly in countries with lower socio-economic conditions. Prior to the pandemic there had been a reduction in the child labour in the past few years but the pandemic has given rise to it. Due to closure of schools children stayed at home and preferred working. If compared with other countries India is a country with most no. of child labours. As per census 2011, the total child population in India in the age group (5-14) years is 259.6 million. Of these, 10.1 million (3.9% of total child population) are working, either as ‘man worker’ or as ‘marginal worker’. In addition, more than 42.7 million children in India are out of school.³³

It is said by Guy Ryder, ILO Director-General: “As the pandemic wreaks havoc on family incomes, without support, many could resort to child labour.” It is also said by Henrietta Fore, UNICEF Executive Director: “As poverty rises, schools close and the availability of social service decreases, more children are pushed into the workforce,”³⁴

The pandemic resulted in the lockdown and everybody was closed inside their houses. No jobs, no earning, everything was closed; it was difficult to survive with less resources. The people belonging to lower socio-economic strata were worst affected as there was unemployment and the help provided by the govt. was not enough. When gradually unlock began, as the schools were also closed children preferred working in farms and factories instead of taking online classes. The condition during Covid-19 was bad but there was a need

of income in the poor families so they sent their children for work which increased the number of child labour.

Child labour is a practice found in every society in different forms and mostly prevalent in developing countries. In India it was in existence in ancient times and despite of various efforts made to eradicate this problem it is still prevalent. It is a matter of protection of children and their rights, especially children belonging to poor families, destitute and orphan children. They also have the right to protection, education, development and enjoyment like other children. Poverty being the main cause apart from it the low income of the parents, illiteracy, and insufficient enforcement of laws are some other causes. Employers prefer to employ children in place of adults as a cheap substitute, low wages and greater profit to them. They are made to work in unhygienic conditions with lack of facilities. They never complain and the employers take advantage of it. If the skills are taught to them at young age then it is not a problem but when it takes the form of excessive labour and becomes exploitative depriving the rights of the children then it becomes a big problem. Child labour affects the health of these children which may last for a lifetime too. At the age when they should be going to school and enjoying their childhood they get responsibilities and this is one of the reasons that they get maturity at early age. These children easily become prey to bad habits like theft, gambling, drug pedaling, kidnapping etc.

In spite of various laws made for the child labour, they are not enforced effectively. A combined effort has to be made by the society along with the government and also at the individual level to completely abolish this practice. Some of the suggestions are:

- There should be a uniform definition of 'child' so that it becomes feasible for the enforcement of laws as various definitions gave a chance to escape penal provisions prohibiting child labour.
- Article 24 of the Constitution needs to be amended to include family enterprises as well.
- Efforts must be made to eradicate poverty which is the main cause due to which children of poor families has to suffer. They must be provided with the basic amenities, there should be scheme of family allowance and social security. This problem is more prevalent in rural areas than in urban areas. More employment opportunities must be provided in rural areas as they are not aware of the new employment schemes and which fail to implement there.
- Next is the eradication of illiteracy, since many people don't have access to education due to poverty and despite of free and compulsory education up to the age of 6-14 years still

parents don't send their kids to school because the schools are very far and they do not know the importance of education because they themselves are illiterate. They have lack of awareness and are not aware of their rights. A proper survey of the rural area is necessary to check whether there are schools or not and if there are, so whether the teachers are available or not.

- The existing enforcement bodies must be empowered and trained well. The number of labour inspectors must be increased so that they can cover all establishments.
- An independent body should be appointed to implement and enforce the child labour laws and a body to check that employment opportunities are provided to poor families so that they have enough for their survival and do not send their children to work.

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