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## CHILD LABOUR IN INDIA: A SOCIO-ECONOMIC PROBLEM; LEGAL REMEDIES AND SOLUTION

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### Abstract

*In our country children are found in agriculture fields performing heavy work. They are doing work in dangerous industries and occupations like glass making, construction, mining and carpet weaving. At many concerns they are working long hours for low wages. The present paper analysis the various dimensions of Socio economic problems of Child labour in India*

**Key Words:** *Psychological Development, Socio-Economic*

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### INTRODUCTION

Children are an important component of our society. They are the future of our nation. But the lives of children have become prone to sufferings and agonies due to social disruption and poverty. The problem of child labour engulfs the society where poverty and social discrimination exist. This problem is not only prevails in India but also in several developing and under developed countries of the world, difference is only of form and degree. Late Shri V.V.Giri, Former President of India once observed, "Child labour is commonly interpreted in two ways –as an economic practice and as a social evil."<sup>1</sup>

Child labour is a socio-economic problem deeply linked to poverty and illiteracy. There is liability of parents, society and nation towards the physical and psychological development of this valuable asset of society. The future of the human world very much depends upon the rights of the children and the fate of nation inextricably intertwine with the welfare of its

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<sup>1</sup> Giri V.V., "Labour Problem in Indian Industries", Asia publishing house, Bombay,(1958)p.360.



children.<sup>2</sup> So child labour is not only harmful for present generation, but for our future generations also. Child labour is a hazard to a child's mental, physical, social, educational, emotional and spiritual development. It is a matter of grave concern that children are not provided with education and leisure which are necessary and important for their growing age. Hundreds millions of children of the world are adversely affected by inadequate basic health facilities and lack of shelter, education, love and affection.

In our country children are found in agriculture fields performing heavy work. They are doing work in dangerous industries and occupations like glass making, construction, mining and carpet weaving. At many concerns they are working long hours for low wages. Children working in any sector whether organized or unorganized, within or outside the family are included in the child labour. A report of International Labour Organization(ILO) on child labour used the term 'child labour' to cover all economic activities carried out by persons less than 15 years of age regardless of their occupational status(wage earners, own account workers, unpaid family workers etc.), but not household work performed by them in their parents' home.<sup>3</sup>

In the study titled as 'Working Children in Urban Delhi' conducted by the Indian Council of Child Welfare, it has been stated that every child below fourteen years, who contributes the family income or is gainful or is employee including that marginally working can be treated as a child worker."<sup>4</sup> Child labour means any work done by child that work becomes hurdles in his physical growth and mental development. Hommer Folks, Chairman of the United Nations Child Labour Committee has defined child labour as, "any work done by children that interferes with their full physical development, their opportunities for a desirable level of education or their needed recreation."<sup>5</sup> According to the UNICEF, child labour in India is more than 90 million out of 250 million in worldwide, excluding child in domestic labour, India has the highest number of child labour of age group 6-14years.15 million children in India are in hazardous occupation. According to the National Sample Survey Organisation (NSSO), in 2004-05 the number of working children was reported 90.75 lakh. It is reported that 42% of our total population are children. It is shocking that about 5% of this child population is child labour, which is about 6% of the total work force of the country.<sup>6</sup>

## HISTORICAL BACKGROUND OF CHILD LABOUR

Child labour is not a new problem. The child labour has been more or less in all periods of time. In the past child labour has been a part of the social organisation in which all members pooled their labour to produce for the subsistence and survival.<sup>7</sup> In ancient India child labour was only in the form of slavery. In those times children were required to do some work either at home or in the fields along with their parents. We find in Manusamriti and Kautilya's Arthshastra that the duty of the king to educate every girl and boy and parents

<sup>2</sup> Shandilya Topan Kumar and Khan Shakeel Ahmad . " Child Labour: A global Challenge", Deep and Deep Publications( pvt). Ltd, New Delhi, p. 1.

<sup>3</sup> Bajpai Asha, "Child Rights in India: Law, Policy and Practice", Oxford University Press ( 2<sup>nd</sup> edition)2006,p. 149.

<sup>4</sup> Quoted from Joshi S.C., "Child Labour: Issues Challenges and Law", Akomsha Publishing House, New Delhi,p.1.

<sup>5</sup> Giri V.V. , "Labour Problem in Indian Industries", Asia publishing house,Bombay,(1958)p.360.

<sup>6</sup> C.K. Shukla,S.Ali (editor) , "Child Labour and the Law" Sarup & sons New Delhi p.38.

<sup>7</sup> Nangia parveen, " Child Labour Causes effect Syndrome", Janak Publishers, New Delhi, Pp.6-7.



could be punished for not sending their children to school called Ashram, which were really residential school under a Guru.<sup>8</sup> Kautilya's Arthshastra also describes the existence of domestic slavery in the prosperous households. Where slaves were normally of low caste status child slaves of less than eight years of age were known working in these houses.<sup>9</sup> The children of slaves took birth as slaves, lived and died as slaves unless the master liked to release them from slavery.<sup>10</sup> In medieval period, children were placed as trainees under artisans and craftsmen. Certain crafts were dependent totally upon the employment of children. The traditions still continue in carpet weaving and cotton/ silk weaving industries which provide employment to large number of children even today.<sup>11</sup> Industrialization on a large scale leads to the employment of children in factories, workshops, hotels and other regulated occupations. Factories required cheap and plentiful labour. Industrialization gave a new turn in social scenario. With the development of industrialization the exploitation of children has been increased.

### ROOT CAUSES OF CHILD LABOUR

With the advent of industrialization and growth of urbanization, radical change occurred in social life of the people. There was unbroken stream of the rural people migrating to urban areas in search of livelihood. In modern times family based economy has been destroyed. In this situation, children have to earn for themselves and their family members. There is not any one factor responsible for the problem of child labour. Sometimes inadequate income of the parents does not fulfil the minimum requirements of the children then parents are compelled to send their children into the job market though parents have knowledge that their children are not safe in such jobs. Polluted environment in the jobs effects physical as well as mental health of the children. Poverty is most often supplemented by other socio-economic factors to expose the child to manual jobs.<sup>12</sup> Majority of the parents of child labour are not aware of the importance of education. They are only concerned with present and they deliberately send their children for earnings instead of schools. They never try to think about the future of their children. Child labour cannot be eliminated in presence of poverty and illiteracy. Child labour is actually product of economic necessity and economic distress. A study of the informal sector shows that 86% of the child workers belong to backward casts and also 86% of them are between 11 to 14 years of age and one third of the family heads of child workers are illiterate.<sup>13</sup> A big size of family is also a factor of this socio-economic problem. Enlarged family cannot afford to nourish high ideals and even proper food to all members. But the illiterate parents think that if God has given the body, He will care them. They also think that extra children are the big source of extra income. The late Prime Minister Smt. Indira Gandhi observed after the family planning campaign of eighties,<sup>14</sup>

<sup>8</sup> Shandilya Topan Kumar and Khan Shakeel Ahmad . " Child Labour: A global Challenge", Deep and Deep Publications( pvt). Ltd, New Delhi, p. 1

<sup>9</sup> Banerjees, "Child Labour in India", London Arti Slavery Society,1979,p2.

<sup>10</sup> Dr. Chinna S.S., "Child Labour: Problem and Policy Implications", Regul Publications, New Delhi,p.13

<sup>11</sup> Shandilya Tapan Kumar,Nayan Kumar and Navin Kumar, "Child labour Eradication: Problems, Awareness, Measures", Deep and Deep Publication pvt. Ltd New Delhi,p.64.

<sup>12</sup> Shandilya Tapan Kumar and Khan Shakeel, " Child Labour: A global Challenge", Deep and Deep Publications( pvt). Ltd, New Delhi, p14.

<sup>13</sup> C.K. Shukla,S.Ali (editor) , "Child Labour and the Law" Sarup & sons New Delhi p.198.

<sup>14</sup> Gupta Padmini Sen, "Child Labour as a Social Problem, Its Causes, Extent and Consequences " National Seminar On the Employment of Children,NIPCCD,1975,p.20.



“Though India was the first country to take up family planning as an official programme. But it is so personal that it cannot be forced upon the people, However it was where there was greater general development that family planning had also progressed. The birth rate had gone down from 42 per thousand to 35.5 per thousand. Formerly a very poor person felt that an extra child meant extra help.”

To control the population in India no serious efforts were made by the Centre or the State Governments after the period of national emergency (1975-1977). Trend of big families is still prevailing in many parts of our country. This can be only changed with education and awareness.

### **INTERNATIONAL LEGAL FRAMEWORK TO TACKLE CHILD LABOUR**

At International level, various instruments provide for the protection to children from labour. The International Labour Organisation's (ILO's) policy has provision for the abolition of child labour. To achieve this end, under the auspices of the ILO a series of Conventions and on the exploitation of child labour have been adopted and recommendations are made. In 1919, ILO, in its first session adopted a Convention on minimum age of children for admission into industrial development. This Convention laid down that no child under 14 years of age should be employed in any public or private undertaking other than in which only family members are employed. This minimum age was revised from 14 to 15 in the Convention No.59 of 1937. Subsequently ILO prohibited employment of children in agriculture undertaking shops, hotels, restaurants, offices and place of public employment etc. ILO Minimum Age Convention No. 138, 1973 obliges member states to pursue a national policy designed to ensure effective abolition of child labour. This Convention establishes that no child can be employed in any economic sector below the age designated for the completion of compulsory schooling and not less than 15 years. The minimum age for admission to any work likely to jeopardize health, safety or morals is 18 years.

The Universal Declaration of Human Rights as adopted by United Nations in 1948 incorporated the basic rights of children for growth and education. An independent “Declaration on the Rights of Child” was made by United Nations in 1959. This emphasized on special protection and care for child to develop in a normal and healthy manner in an atmosphere of freedom and dignity.

UN Convention on the Rights of the Child, 1989 provides full range of the civil, political, economic, social and cultural rights to all children that are meaningful for their survival, development, protection and participation in the society. Article 32 of this Convention recognises children's right to be protected from work that threaten their health, education or development and enjoins state parties to set minimum age for employment and to regulate working conditions. India is also a signatory of this Convention from 1992. In 1999 ILO Convention No.182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour<sup>15</sup> was adopted. This Convention includes a ban on forced or compulsory recruitment of child soldiers. It defines the worst forms of child labour as:

<sup>15</sup> Adopted by the General Conference of the International Labour Organization at its eighty- seventh session, Geneva, 17 June 1999.



- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, serfdom, and forced or compulsory labour;
- Forced or compulsory recruitment of children for use in armed conflict;
- Use of a child for prostitution, production of pornography or pornographic performance;
- Use procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs; and
- Work which is likely to harm the health, safety or morals of children.

The year 1979 was declared as International Year of the Child by United Nations which gave importance on the cooperation of the Nations in common tasks of the basic needs of the children, i.e. nutrition, health, education, maternal protection, family care, equal society status and protection from racial and other forms of discrimination.<sup>16</sup>

### CONSTITUTIONAL SAFEGUARDS IN INDIA

After Independence, many Constitutional provisions and legislative enactments have been made and suitable amendments were passed from time to time to control the magnitude of problem relating to child labour. Article 24 of the Indian Constitution provides that no child below the age of 14 shall be employed to work in any factory or mines or engaged in any other hazardous employment. The Constitution of India in Article 39(e) of The Directive Principles of State Policy 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. Article 39 (f ) states that children be given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth be protected against exploitation and against moral and material abandonment. So it has been made a duty of the state to raise the level of nutrition and the standard of living and to improve public health. After passing 86<sup>th</sup> amendment of December 2002 of the Constitution, right to education becomes a fundamental right. By this amendment Article 21-A has been inserted in the Constitution and it provides that State shall provide free and compulsory education to all children of the age of six to fourteen years. By 86<sup>th</sup> amendment inserted as Article 51-A(k) it has now become a fundamental duty for the parents, guardian and wards to provide the opportunities for education to their children or as the case may be wards between the age of six and fourteen years. The Parliament has also enacted the Right to Free and Compulsory Education Act 2009. This Act is not only for sending children to school but also to provide quality education to them. The Act also envisages that 25% of seats in every private school should be allocated for children from economically disadvantaged groups. Although Article 38, Article 42 and Article 43 of Directive Principles of State Policy do not directly deal with child welfare but provide indirectly promoting welfare of children.

### LEGAL SAFEGUARDS AGAINST CHILD LABOUR IN INDIA

<sup>16</sup> C.K. Shukla,S.Ali (editor) , “Child Labour and the Law” Sarup & sons New Delhi, p.40.





The framers of the Constitution were aware of the need for special care for children hence provisions to promote the welfare of the children and to protect them against exploitation in work places were made in detail. Therefore both Centre and States governments enacted laws on child labour. There are thirteen enactments that provide legal protection to the children in various occupations. The Factories Act 1948 prohibits employment of child below the age of 14 years in any factory. The Act puts restrictions in the matters of working hours of these young persons. The restrictions are also placed on their employment in dangerous occupations and are required to work for a limited period of four and half hours in a day. Indian Mines Act, 1951 prohibits employment of children below of 16 years in any underground mines. But Plantation Labour Act, 1951 has prescribed this age as 12 years.

The Motor Transport Workers Act, 1961 absolutely prohibits employment of children. The Factories (Amendment ) Act,1954 prohibits employment of children under 17 years at night. The Beedi and Cigar Workers( Conditions of employment) Act1966 prohibits the employment of children under14 years in any industrial premises manufacturing beedis or cigars; and also prohibits persons between 14 and 18 years from working at night between 7 p.m. and 6 a.m. The Employment of Children (Amendment) Act 1978 prohibits employment of a child below 15 years in occupations in railway premises such as cinder picking, cleaning of ash pit or building operations, in catering establishments and in any other work which is carried on in close proximity to or between the railway lines.

The Child Labour (Prohibition and Regulation) Act (CLPRA) was enacted in 1986 which seeks to prohibit employment of children below 14 years in hazardous occupations and processes and regulates the working conditions in other employment. This Act repeals the Employment of Children Act 1938. The main object of the Act is to prohibit engagement of children in occupation and processes which are unsafe and harmful to the child workers for their personality development. The Act prohibits employment of children to work in any occupation set forth in Part A<sup>17</sup> of the schedule or in any workshop wherein any of the processes set forth in Part B<sup>18</sup> of the schedule is carried on. Part 3 of this Act provides that no child shall be allowed or required to work between 7 p. m. to 8 a. m. and to work overtime. The period of work shall not exceed three hours and no child shall work for more than three hours before he has had arrest interval of at least one hour. The total working hours including the rest interval and the time spent in waiting for work shall not be spread over more than six hours per day. The Act contains provisions dealing with offences and penalties In case of employment of children in violation of the provisions of this Act the penalty is imprisonment for 3 months to one year or a fine not less than rs.10, 000 or both.

The Juvenile Justice (Care and Protection) of Children Act 2000 was amended in 2002 in conformity with the UN Convention on the Rights of Child covers young persons who below 18 years of age. Section 26 of this Act deals with the exploitation of a Juvenile or Child

18 The Schedule in its Part A mentions occupations: Transport of passengers, goods or mails by railway; cinder picking, cleaning of ash pit or building operation in the railway premises; work in a catering establishment ay railway station involving movement of a vendor or any other employee of the establishment from one platform to another or into or out of moving train; the work relating to construction of a railway station or with any other work where such work is done in a close proximity to or between the railway lines; any port authority within the limits of any port; work relating to selling crackers and fireworks in shops and temporary licences

<sup>18</sup>. The schedule in its Part B mentions processes: Beedi making, carpet weaving cement manufacture, cloth printing dyeing and cleaning, building and construction industry, manufacture of slate pencil, manufacturing process using toxic metals and substances etc.



Employee and provides that whoever procures a Juvenile or the Child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings for his own purpose, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable for fine. In October 2006, the government has included children working in the domestic sectors as well as roadside eateries and motels under the prohibited list of hazardous occupations. In September 2008, diving as well as process involving excessive heat (e.g. working near a furnace) and cold; mechanical fishing; food processing; beverage industry; timber handling and loading; mechanical lumbering; warehousing; and processing involving exposure to free silica such as slate, pencil, industry, stone grinding; slate stone mining; stone quarries as well as the agate industry were added to the list of prohibited occupations and processes.

Apart from the executive and legislature, the judiciary of India also remained active for intervention by its pronouncements/decisions against child labour. An important such intervention came in the case titled 'M.C. Mehta v/s State of Tamil Nadu and others'<sup>19</sup>, (1996) in which the Supreme Court directed the Union and State governments to identify all children working in hazardous processes and occupations, to withdraw them from work and to provide them with quality education. In 1993, the Supreme Court in Unikrishnan v/s State of Andhra Pradesh ruled that each child has the right to free education until he or she completes the age of 14 years. Article 21-A which was incorporated into the constitution, reflects this standard. In 2005, The M.V. Foundation, an NGO working on child rights brought a public interest litigation petition which argues that child labour up to the age of compulsory education is unconstitutional and is a negation of rights under Article 21-A which provides for compulsory education up to the age of 14.

### **NATIONAL CHILD LABOUR PROGRAMMES AND GOVERNMENT POLICIES**

Besides the efforts of Legislature and Judiciary regarding child labour, certain initiatives have been taken and schemes formulated by the governments, both at the centre and at the states. A National Policy on Child Labour was adopted in 1987 which emphasised the need for strict enforcement measures in area of high child labour concentration. In order to translate this policy into action, the government of India initiated the National Child Labour Project Scheme (NCLPS) in 1988 to rehabilitate the working children. The National Policy reiterates the Directive Principles of State Policy in India's Constitution. The strategy for the NCLPS includes the establishment of special schools to provide non-formal education and pre-vocational skills training; promoting additional income and employment generation opportunities; raising public awareness and conducting surveys and evaluations of child labour. In 2001-2002 the government launched the Sarva Shiksha Abhiyan or the Education for All Programme which is an effort to universalise elementary education. This programme aims to achieve the goal of universal elementary education. The Eleventh Five Year plan (2007-2012) includes expanding the NCLP Scheme to ensure universal enrolment of children in the 6-14 age group to cover those in the hard to reach segment. Another notable government initiative under the Eleventh Plan is to amend all laws to recognise everyone under the age of 18 as children and to take appropriate measures to protect their rights accordingly.

### **CONCLUSION**

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<sup>19</sup> AIR 1997 SC699.



No doubt, children are the important assets and base pillars of any nation. The prosperity of nation depends upon the growth and development of children. Child labour has become a major socio- economic problem all over the world. Child labour is considered exploitative and inhuman by the United Nations and International Labour Organisation. It is a bad economic practice and is a social evil. For total eradication of child labour stringent laws must be passed. Education system should be strengthened so that children removed from work could go to school. In order to effectively abolish child labour it is necessary to remove the artificial distinction between child labour and child work. Penal provisions must be enhanced in Child Labour (Prohibition and Regulation) Act, 1986. Employment of child labour must be deemed as a cognizable offence and enforcement machinery should be strengthened. The NCLP needs to recognise the special situation of migrant child labourer. In addition to this, there has to be national campaign to invoke public interest and large scale awareness on this issue. Only enacting laws are not sufficient for eradicating this evil. Role of social mobilization and community participation should also be necessary. Departments of labour, education, police, women and child development, Panchayati Raj, Judiciary and youth volunteers can play an important role to eradicate this socio-economic problem with coordination and cooperation.

