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Child Labour Laws in India: Progress and Gaps

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ABSTRACT

This paper focus on to which extent constitutional mandate has been implemented. Child labour is a vexed subject in India. People often think about it with their hearts rather with their heads. Child labour represents a fundamental abuse of child right and a violation of various laws.

There are specific clauses in the draft of Indian Constitution dated 26th January, 1950 about the Child Labour Policy in India. These are conveyed through different articles in the Fundamental Rights and Directive Principles of the State Policy. They lay down specific policy rules regarding child labour in Articles 14, 15(3), 23, 24, 38, 39(e), 39(f), 41, 42, 45, 46 and 47. It was also decided that both the Union and State Government could legislate on matters concerning child labour. Various legislative initiatives were also taken in this regard at both the State and the Union level.

But still Statics reveal that India is the largest example of a nation plagued by the problem of child labour – 218 million. All of the policies that the Indian Government has in place are in accordance with the Constitution of India, and all support the eradication of Child Labour. Yhis problem still remains even though all these policies are existent. Enforcement is the key aspect that is lacking in the government’s efforts. No enforcement data for child labour laws are available. “A glaring sign of neglect of their duties by officials charged with enforcing child labour laws is the failure to collect, maintain and disseminate accurate statistics regarding enforcement efforts.” If child labour is to be eradicated in India, the government and those responsible for enforcement need to start doing their jobs. Policies can and will be developed concerning child labour, but without enforcement they are all useless.

Indian laws become unpractical and redundant in the face of necessity. The proposed paper examines how far the constitutional mandate of child labour has been given a practical shape and to what extent the mandate has been enforced and implemented in India. At end paper suggests some strategies to control the child labour in India.

Keywords: *Child, Labour, Laws, Constitution, Rights.*

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I. INTRODUCTION

Over the past two decades India has put in place a range of laws and programmes to address the problem of child labour. UNICEF and its India partners are working together to ensure that children are protected from work and exploitation which is harmful to their development They are working to ensure that children remain in economically stable family homes and get the opportunity to go to school and be educated. Child labour cannot be dealt with in isolation. It is intrinsically linked to socio-economic factors. More specifically, UNICEF has also initiated work with employers and the private sector to assess and address the impact of their supply chain and business practices on children.²

Child labour in India, somehow, has become a social norm that we accept and tolerate in our society. This exploitative and abusive practice will continue unless society adopts a zero tolerance attitude towards it. Children continue to be exploited and abused because the State and people do not address children's issues comprehensively and effectively. However, only 'rescuing' children, often will not help. What is required is addressing the reasons that force children to work. Children work mainly to help their families because the adults do not have appropriate employment and adequate income. Children also work because there is a demand for cheap labour in the market. When children are forced to work long hours their ability to get adequate nourishment and to attend school is limited, preventing them from gaining education.³

II. CAUSES OF CHILD LABOUR

The factors that contribute to child labour – including “hazardous” child labour –include the poverty and illiteracy of a child's parents, the family's social and economic circumstances, a lack of awareness about the harmful effects of child labour, lack of access to basic and meaningful quality education and skills training, high rates of adult unemployment and under-employment, and the cultural values of the family and surrounding society. Often children are also bonded to labour due to a family indebtedness. Out of school children (OOSC) or those children at risk of dropping out can easily be drawn into work and a more vulnerable to exploitation. Girls, especially those from socially disadvantaged groups, tend to be at a higher risk of being forced into work.⁴

Other reasons for children being forced into work: Children are employed because they are cheap and pliable to the demands of the employer and not aware of their rights. The risks that

² Available at; <http://unicef.in/whatwedo/21/child-labour> (visited on 5th March, 2024 at 11.00 p.m.).

³ Available at; <https://www.cry.org/issues-views/child-labour>(visited on 5th March, 2024 at 11.00 p.m.).

⁴ Supra note 2.

these children face can have an irreversible physical, psychological and moral impact on their development, health and wellbeing:⁵

- **Poverty:** Poverty is one of the main causes of child labour. In developing countries poverty is one of the major drawback and the children were considered as helping hand to feed their families, to support their families and to support themselves .Due to poverty, illiteracy and unemployment parents are unable to send them to schools, instead the children were asked to help them in running a family so that the poor parents send their children for work in inhuman conditions at lower wages.⁶
- **Debts:** The poor economic conditions of people in India force them to borrow money. The illiterate seek debt from money lenders during emergency situation .At later point of time they find themselves difficult in paying back the debts and interest, as a result the debtors were made to work for money lenders and then debtors drag their children too in assisting them so that the debts could be paid off.⁷
- **Professional Needs:** There are some industries such as the bangle making industry, where delicate hands and little fingers are needed to do very minute work with extreme excellence and precision. An adults hands are usually not so delicate and small, so they require children to work for them and do such a dangerous work with glass. This often resulted in eye accidents of the children.⁸

III. FACTS AND FIGURES ABOUT CHILD LABOUR IN INDIA

More than 200 million children worldwide are still working as child labourers and a staggering 115 million at least, are subject to its worst forms. As per the National Census 2011, there are close to 10.1 million child labourers in India, in the age group of 5 to 14 years.

- 10.13 million child labourers between 5-14 years in India (2011 Census data)
- Child labour in 2011 has decreased by around 20% from 2001 Census Figures
- There are 22.87 million working children in India between 15-18 years.
- As per 2011 Census, 1 in 11 children are working in India (5-18 years)
- 80% of the child labour in India is concentrated in rural areas
- 168 million children are estimated to be engaged in Child Labour around the world

⁵ Id.

⁶ Kabishna, *Child Labour In India*, available at; <http://www.legalserviceindia.com/legal/article-92-child-labour-in-india.html> (visited on 5th March, 2019 at 11.00 p.m.).

⁷ Id.

⁸ Supra note 6.

(ILO, 2012) that means every 17th working child in the world is in India.⁹

About 1.4 million child labourers in India in the age group of 7-14 years can't write their names, analysis of Census data by CRY- Child Rights and You reveals. This means one in three child labourers in the said age group are illiterate. This is the grim reality of children who work for more than six months in a year. Even for children who support the family economy by working for less than six months in a year, which is very common in a country like India, the situation is equally, if not more, worse. A shocking 2 million of these marginal workers have compromised their education as well. The situation is also reflected in the state figures. While 45% of child labourers in Bihar are illiterate, in Rajasthan and Jharkhand the figure stands at 40%. Madhya Pradesh and Andhra Pradesh also have about 38% child labourers as illiterate. With the education indicators for these children plummeting, the reasons why we face this challenge needs to be addressed. India's legal framework is based on the assumption that children can work and still be educated. The numbers stated earlier blatantly contradict this assumption and are evidence enough that this needs to change, for main as well as marginal child labourers. In 1992 when India ratified the United Nations Convention on the Rights of the Child (UNCRC), a reservation was made in article 32, wherein the Government of India articulated that it would progressively ban all forms of child labour. Now, after 30 years since the Child Labour Law came into force, India has the opportunity to amend the law in favour of its children.¹⁰

IV. RIGHTS OF CHILDREN

(A) Under International Law:

Universal declaration of human rights 1948 - stipulates under article 25 para 2 that childhood is entitled to special care and assistance. The above principles along with other principles of universal declaration concerning child were incorporated in the declaration of the rights of the child of 1959. International covenant on civil and political rights under articles 23 and 24 and international covenant on economic, social and cultural rights - under article 10 made provision for the care of the child. International labour organisation (ILO) - provides universal standards and guideline, a specialized agency of UN ,aims to provide guidance and standards for labour practices around the world. Convention on the rights of the child, 1989 It is another international instrument which protects the child.¹¹

⁹ Supra note 3.

¹⁰ Id.

¹¹ Supra note 3.

The key international laws dealing with child labour include the UN Convention on the Rights of the Child 1989 (CRC) and the International Labour Organization (ILO) conventions on the Minimum Age for Admission to Employment of 1973 (ILO Convention 138) and on the Worst Forms of Child Labour of 1999 (ILO Convention 182).

(B) Rights of Children Under National Laws:

India has not ratified either of the two ILO conventions and also made a reservation to article 32 of the CRC at the time of ratification stating that it would apply the article in a progressive manner, according to its national legislation and international commitments, especially in relation to the minimum age.¹²

India has also taken effective measure under national level. In order to eliminate child labour, India has brought constitutional, statutory development measures. The Indian constitution has consciously incorporated provisions to secure compulsory elementary education as well as the labour protection for the children. Labour commission in India have gone into the problems of child labour and have made extensive recommendations. The constitution of India, too provides certain rights to children and prohibits child labour such provisions are as follows:

1. No child below the age of 14 years shall be employed in any factory or mine or engaged in any other hazardous work.
2. state in particular shall direct its policy towards securing that the health and strength of workers, men and women and the tender age of the children are not abused and that citizen are not forced by economic necessity to enter vocations unsuited to their age or strength.
3. Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and the dignity and that childhood and youth are protected against exploitations and against moral and material abandon.
4. The state shall endeavour to provide, within the period of 10 years from the commencement of constitution, free and compulsory education for all children until they complete the age of 14 years.
5. The state shall provide free and compulsory education to all children between the ages of 6 to 14 years as such a manner as the state may by law determine.
6. Who is parent or guardian to provide opportunities for education to his child or the case may be, ward between the age of six and fourteen years. There are wide range of

¹² Supra note 2.

laws ,which guarantee the substantial extent the rights and entitlement as provided in the constitution and in the UN convention.¹³

(C) Related national legislations:

- a) **Child Labour (Prohibition and Regulation) Act (1986)**, “to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments” (preamble of the CLPR Act). It excludes a section of toiling children in the unorganized sectors including agriculture, as well as household work.
- b) **National Policy on Child Labour (1987)**, with a focus more on rehabilitation of children working in hazardous occupations and processes, rather than on prevention.
- c) **Juvenile Justice (Care and Protection of Children) Act 2000 (the JJ Act) and amendment of the JJ Act in 2006**: includes the working child in the category of children in need of care and protection, without any limitation of age or type of occupation. Section 23 (cruelty to Juvenile) and Section 26 (exploitation of juvenile employee) specifically deal with child labour under children in need of care and protection.
- d) **The Right to Education Act 2009** has made it mandatory for the state to ensure that all children aged six to 14 years are in school and receive free education. Along with Article 21A of the Constitution of India recognizing education as a fundamental right, this constitutes a timely opportunity to use education to combat child labour in India¹⁴.

Indian legislation protects children from exploitation:

- The Child Labour Prohibition Act 1986 bans the employment of children below the age of 14 in many professions, such as domestic labour, and in the hospitality trade for example in roadside dhabas (restaurants), restaurants, hotels, motels and spas. It does not ban child labour in agriculture.
- The Right to Education Act 2009 ensures all children 6-14 years have the right to free and compulsory education.
- The Indian Constitution ensures the right of all children 6-14 years to free and compulsory education; prohibits forced labour; prohibits the employment of children below 14 years in hazardous occupations; and promotes policies protecting children

¹³ Supra note 3.

¹⁴ Supra note 2.

from exploitation.

- Whoever employs a child or permits a child to work is punishable with imprisonment from three months to one year or with fine no less than INR 10,000–20,000 rupees or with both.
- The Juvenile Justice (Care and Protection of Children) Act 2000 defines child as being below 18 years of age. Under the Convention on the Rights of the Child (CRC), ratified by India in 1992, all children have the right to be protected from work that is dangerous, or that might harm children's health or education.¹⁵

Some of them are given below:

- i. The Apprentices Act, 1861
- ii. The Child Labour Act, 1986
- iii. The Child Marriage Restraint Act, 1929
- iv. The Children (Pledging of Labour) Act, 1929
- v. Children Act, 1960
- vi. The Guardian and Wards Act, 1890
- vii. The Hindu Minority and Guardianship Act, 1956
- viii. The Hindu Adoption and maintenance Act, 1956
- ix. The Immoral Traffic (Prevention) Act, 1956
- x. Juvenile Justice Act, 1986
- xi. The Orphanages and other Charitable Homes (Supervision and Control) Act, 1960
- xii. Probation and Offenders Act, 1958
- xiii. Reformatory schools Act, 1857
- xiv. The Women's and Children's Institutions (Licensing) Act, 1956
- xv. The Young Persons (Harmful Publications) Act, 1956¹⁶

(D) Gaps between Law and Reality:

The proposed amendment in the Child Labour law leaves a glaring gap in the prohibition of labour for children under the age of 14. The new law also allows children in this age group to

¹⁵ Supra note 2.

¹⁶ Supra note 6.

work in family occupations after school hours. The Census 2011 data for children in labour, states that 6.5 million children in India in the age group of 5 to 14 years work in agriculture and household industries. This makes a staggering 64.1% of child labourers in this age group. CRY's on ground experience reveals that a large number of children engaged in these occupations are working with their families, thus exempting them from the proposed ban. Allowing children to work in family enterprises is likely to have far reaching implications affecting not only their education and learning outcomes but also their health and overall development.¹⁷

V. PREVENTION OF CHILD LABOUR

(A) CRY's efforts towards the prevention of child labour include:

- Identifying the root causes which force families and communities to allow children to be engaged in labour
- Addressing these underlying issues by interacting with parents, community leaders and children's collective where the importance of child rights and the damaging effects of child labour are discussed
- Empowering communities with the knowledge to demand for proper implementation of employment schemes, food security and access to all government provisions
- In instances of child trafficking and children forced into labour, CRY and grassroots partners work on rescue, repatriation and rehabilitation of children through child protection networks under the Juvenile Justice Care & Protection Act and the Integrated Child Protection Scheme
- CRY and its partners work to create and strengthen 'Children's Collectives'. These forums create a platform for school-going children to play an important role in influencing children who are out of school to get enrolled/re-enrolled. They are also instrumental in voicing their opinions to parents, panchayats, government bodies and decision makers on issues related to child labour and the need for education.¹⁸

(B) UNICEF In Action:

UNICEF has long experience in working against child labour in India. Most programmes focus on children in specific types of work, for example cotton production in the states of Gujarat, Rajasthan, Maharashtra, Tamil Nadu, Karnataka and Andhra Pradesh, metalwork and carpets

¹⁷ Supra note 3.

¹⁸ Supra note 3.

in Uttar Pradesh and tea gardens in Assam. These programmes reach tens of thousands of children and their families in areas with high levels of child labour.

UNICEF has been working to reduce and eliminate child labour using a combination of the following strategies:

- Reform of existing legislation, for example setting a minimum age for child labour, that brings policy coherence,
- Law enforcement to ensure the implementation of the Child labour Act,
- Expanding education access, improving quality and relevance of education, addressing violence in schools,
- Awareness-raising and mobilization of families and communities against the exploitation of children,
- Social protection programmes and cash transfers to improve the economic situation of families and to reduce the “need” to send children to work,
- Strengthening child protection systems, including the Integrated Child Protection Scheme and implementation of Juvenile Justice Act,
- Working towards convergence between government departments to prevent child labour and rehabilitate existing child labourers.¹⁹

(C) Observation made:

Poverty and lack of social security are the main causes of child labour. The increasing gap between the rich and the poor, privatization of basic services and the neo-liberal economic policies are causes major sections of the population out of employment and without basic needs. This adversely affects children more than any other group. Entry of multi-national corporations into industry without proper mechanisms to hold them accountable has lead to the use of child labour. Lack of quality universal education has also contributed to children dropping out of school and entering the labour force. A major concern is that the actual number of child labourers goes un-detected. Laws that are meant to protect children from hazardous labour are ineffective and not implemented correctly. A growing phenomenon is using children as domestic workers in urban areas. The conditions in which children work is completely unregulated and they are often made to work without food, and very low wages, resembling situations of slavery. There are cases of physical, sexual and emotional abuse of child domestic

¹⁹ Supra note 2.

workers. The argument for domestic work is often that families have placed their children in these homes for care and employment. There has been a recent notification by the Ministry of Labour making child domestic work as well as employment of children in dhabas, tea stalls and restaurants "hazardous" occupations.²⁰

VI. CHALLENGES TO ENDING CHILD LABOUR

Child labour is not uniform. It takes many forms depending upon the type of work that children are made to do, the age and sex of the child and whether they work independently or with families. Due to this complex nature of child labour, there is no one strategy that can be used to eliminate it. Combatting child labour requires long term co-ordinated action which involves many stakeholders and the government. This includes educational institutions, mass media, NGOs and community-based organizations as well as trade unions and employers. It is important that the attitudes and mindsets of people are changed to instead employ adults and allow all children to go to school and have the chance to learn, play and socialize as they should. Education is a key to preventing child labour and has been one of the most successful methods to reduce child workers in India. This includes expanding education access to schooling, improving the quality and relevance of education, addressing violence in schools, providing relevant vocational training and using existing systems to ensure child workers return to school.²¹

(A) Types of child labour: A recent change

The types of child labour have changed in recent years due to enforcement of legislation, awareness amongst buyers about child exploitation, and international pressure. Child labour is now more invisible because the location of the work has changed from the more formal setting of factories, to business owners' homes. There has also been an increasing involvement of children in the home-based and informal sectors. Children are engaged in manual work, in domestic work in family homes, in rural labour in the agricultural sector including cotton growing, at glass, match box and brass and lock-making factories, in embroidery, rag-picking, beedi-rolling, in the carpet-making industry, in mining and stone quarrying, brick kilns and tea gardens amongst others. Work is often gender-specific, with girls performing more domestic and home-based work, while boys are more often employed in wage labour. In general, the workload and duration of the working hours increases as children grow older. Getting accurate, detailed information about children working in different sectors is a major challenge because,

²⁰ Available at; <http://childlineindia.org.in/child-labour-india.htm> (visited on 5th March, 2019, at 11.00 p.m.).

²¹ Supra note 2.

in many cases, children work in informal sectors such as agriculture, and in urban settings in restaurants, motor repair workshops and in home-based industries.²²

(B) Drawbacks:

The main cause of child labour is higher poverty level. These children have no choice other than working as a labour in the factories child labour for these children is survival. If they don't work they will die of poverty and hunger. They are the future of India. None of these children have the privilege to go to school and being able to go to a house at the end of the day. The child labour is prevalent at a large scale in the country. In Punjab it is found in hotels, restaurant, tea stalls, for which the administrative authorities, parents, educationalist, police officials and employers of public authority is responsible. There is lack of implementations of child laws. Since politicians and other authorities ignore it and the various departments for the labour laws fails to implement the laws properly. Laws remain merely on the paper for which the lack of control of population and increasing unemployment are the major causes and politicians fear to tackle these problems in view of their vote banks.²³

(C) Remedies:

The remedy is only in the hands of the government, it should take necessary steps to eradicate poverty through employment to the parents of the child labour. Necessary practical steps should be taken to educate the children. The government should allocate the necessary funds to educate and nurture the poor children. The violators of child labour laws should be punished accordingly.²⁴

²² Id.

²³ Supra note 6.

²⁴ Supra note 6.