

CHILD LABOUR RIGHTS: A CHILD IS MEANT TO LEARN AND NOT EARN

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“You can’t regulate child labour. You can’t regulate slavery. Some things are just wrong”

- *Michael Moore*

INTRODUCTION

India’s Census 2001 office defines child labour as, “participation of a child less than 17 years of age in any economically productive activity with or without compensation, wages or profit. “Child” as per the Section 2 (ii) of the Child Labour (Prohibition and Regulation) Act, 1986 is a person who has not completed his fourteenth year of age.

Child labour includes engaging children in such activities which deprive them of their childhood, and is harmful to their physical and mental development. The 1998 national census of India estimated the total number of child labourers, aged 4 to 15, to be at 12.6 million, out of a total child population of 253 million in the 5 to 14 age group.² However, in 2009–10 a nationwide survey found the prevalence of child labour had reduced to 4.98 million children (or less than 2% of the children in the 5 to 14 age group). The 2011 national census of India found the total number of child labourers, aged 5–14, to be at 4.35 million, and the total child population to be 259.64 million in that age group. The child labour problem is not unique to India; worldwide, about 217 million children work, many full-time.

LEGAL DEFINITIONS OF A CHILD

Section 2 (2) of Shops and Establishment act – 1948 states that child is a person who hasn’t completed 15 years of his age.

Mines Act – 1952 says that a child is a person not older than 16 years.

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² Vrinda Nigam, What are the Laws related to child labour in India, (April, 5, 2017, 11:10 p.m.), <https://blog.ipleaders.in/laws-related-child-labour-india/>

According to the Juvenile Justice (care and Protection of a Child) Act, 2000, a child is a person who has not completed 18 years of age.³

INTERNATIONAL FACTS AND FIGURES

Globally number of children in child labour has declined by one third since 2000, from 246 million to 168 million children. More than half of them, 85 million, are in hazardous work (down from 171 million in 2000).

Asia and the Pacific still has the largest numbers (almost 78 million or 9.3% of child population), but Sub-Saharan Africa continues to be the region with the highest incidence of child labour (59 million, over 21%).

There are 13 million (8.8%) of children in child labour in Latin America and the Caribbean and in the Middle East and North Africa there are 9.2 million (8.4%).

Agriculture remains by far the most important sector where child labourers can be found (98 million, or 59%), but the problems are not negligible in services (54 million) and industry (12 million) – mostly in the informal economy. Child labour among girls fell by 40% since 2000, compared to 25% for boys.⁴

CAUSES OF CHILD LABOUR

Increasing Population: India's population has crossed the mark of one billion as per 2011 census and has been incrementing more till now. Parents having more than 2 children face many problems in their maintenance, education and providing basic facilities. This leads to the indulgence of children into labourious works. If the elder members of a family become unemployed then untold miseries are unavoidable. Most of the cases families suffer to fulfill the basic human needs if senior members are unemployed. Therefore some parents send their child

³ K.G. Mallikarjuna, Constitutional Provisions and Legislations Related to Child Labour in India, (April 17, 2017, 11:56pm), <http://www.tjprc.org/publishpapers/2-41-1370423990-13.%20Constitutional%20provisions%20.full.pdf>

⁴ Global child labour estimates 2000-2012 - Analytical Report
Marking progress against child labour - Global estimates and trends 2000-2012, (April 19, 2017, 11:40pm), http://www.ilo.org/ipec/Informationresources/WCMS_221513/lang--en/index.htm

to work instead of school. Interestingly children get work easily because they can be paid less than adults. Children are also more submissive and easier to exploit.

Poverty: According to a report released by U.N. in Feb 2015, about 30 crore people still live in the extreme poor condition in India which accounts for 1/3rd of the total extreme poor people in the world. Poverty is the main reason behind child labour and is still a headache for Indian government. Ignorance from parents is also an out come from poverty and that leaves no choice for children.

Children are cheap source of labour: It's very understandable that cheap labour source is important for business growth. But using children as cheap labour source is very unethical. Although some owner in developing countries always use children to get things done easily and cheaply. Because giving 10 bucks to a child and 100 bucks to an adult worker can make a huge difference in profit. Therefore to cut the labour cost owners go for child worker instead of adult worker.

Parental Illiteracy: Illiterate Parents also cause child labour to increase. An uneducated parent never realizes the harmful effect of child labour. Some parents bear the false believe that working makes a child perfect. So from their point of view children should be sent to work as early as possible. Some parents develop their false believe even further. They think that children don't have the right to become educated only because they are illiterate. So these parents send their children to work without considering their age.

Unemployment: Since, India is a country where the poor are deprived of any work as a result of which the poor people often tend to send their children to fetch job and earn bread for their family. More-so it is of common knowledge that the poor strata of the society is of the opinion that more working hands means more money, which in fact is a myth.

Poor implementation of laws: The Department of Police and other Governmental Departments who are responsible for the prevention and regulation of child labour have failed miserably to implement these legislative acts. Whereas they have due to corruption facilitated the same.

FORMS OF CHILD LABOUR

Slavery

Slavery is where one person is owned by and made to work for another person without having any say over what happens to them. Slaves are held against their will from the time of their capture, purchase, or birth, and are not allowed to leave or to refuse to work.

Trafficking of children

Child trafficking is the illegal trading (buying, selling and movement) of children for labour or sexual exploitation. Children are trafficked for many reasons, including forced labour, prostitution and recruitment as child soldiers and beggars.

Debt bondage

Debt bondage is forced labour, where work is exchanged to pay off loans that people cannot pay off with money or goods. For example, a poor family may hand over their child to someone to pay off their debt, and that child will have to work for years until the debt is cleared.

Serfdom

Serfdom is when a person is forced to live and work on land belonging to another person, often with little or no pay. Forced labour is when someone is made to work against their wishes.

Children in Armed Conflict

Children in armed conflict are forced to fight or to work as cooks, porters and messengers. These children are abused and exploited, often being forced to kill or maim other human beings. A very good example of the same is the stone palters in Kashmir, in which the terrorists have been using children to do all these kind of anti-national acts.

Beggary

Beggary is one of the growing sectors where such criminal rackets involve children in order to earn them profit and also humiliate and exploit them to the fullest. This sector is the most

dangerous of all as the children are forced to work day in and day out and in harsh as well as inhumane conditions.

The sexual exploitation of children (prostitution, pornography and pornographic performances).

Sexual exploitation is the mistreating, abusing and/or taking advantage of someone for personal gain and profit, by involving them in prostitution or commercial sexual activity. Prostitution is the exchange of sexual activities for money. Children around the world, girls and boys, are exploited sexually, used by adults for sex or used in sexual images (pornography) or performances. They may be bought and sold into marriage, prostitution or slavery. They are also kidnapped and then trafficked across borders and then sold to be prostitutes in foreign countries. This form of child labour has serious short and long term consequences. Children are at a high risk of physical abuse, malnutrition and sexually transmitted diseases. It is extremely difficult for children to get out of this situation and very hard for them to deal with what they have experienced physically and mentally.

Illicit activities are illegal activities or crimes.

Producing and trafficking drugs is an illicit activity that often involves children. Trafficking is illegal trading (buying or selling). Children might do this against their will or with the belief that this will give them status and money. Children who produce or traffic drugs are at great risk of abuse and many also become addicted to drugs at a very young age. Children are also involved in other crimes as defined in national laws, such as buying stolen goods, shoplifting, robbery, hijacking cars, theft and burglary.

Children are sometimes even intentionally disfigured to attract more money from passersby, and they may be beaten if they don't manage to collect enough money. Children involved in illicit activities are often exposed to violence, which can severely affect their mental and physical development. In addition, they may not develop good social skills and

are much more likely to suffer from depression, alcohol and drug addictions and identity difficulties and become juvenile delinquents.⁵

“Child slavery is a crime against humanity”

-Kailash Satyarthi

CONSTITUTIONAL PROVISIONS REGARDING CHILD LABOUR

Article 15(3) empowers the state to make provisions relating to child, which will not violate the right to equality.

Article 21A (Right to Education) provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years, in such manner as the State may, by law, determine. Where children are allowed to work, in such establishment, it is the duty of employer to make provisions for the education of child labourer.

Article 23 provides that traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence punishable in accordance with law.

Article 24 (Prohibition of Employment of Children in Factories, etc.) lays down that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. The Supreme Court held that “hazardous employment” includes construction work, match boxes and fireworks therefore; no child below the age of 14 years can be employed. Positive steps should be taken for the welfare of such children as well as for improving the quality of their life.

⁵ ILO, The worst forms of child labour, (April 13, 2017, 12:17pm)
<http://ilo.org/ipec/Campaignandadvocacy/Youthinaction/C182-Youth-orientated/worstforms/lang--en/index.htm#banner>

Article 39 (e) provides that the State shall, in particular, direct its policy towards securing the health and strength of 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) lays down that the State shall, in particular, direct its policy towards securing that children are 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.

Article 45 provides that the State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.

Article 51A (k) lays down that it shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child or ward as the case may be, between the age of six and fourteen years.⁶

The sole purpose of our Constitution makers through the above stated Articles was to secure a bright and safe future of the children of our country. Also the Articles lay emphasis on the Government's role to carry out its actions in such a way that betterment of children in the nation can be achieved. More so the gravity of this issue can be gauged from a bare perusal of the fundamental rights, it is of common knowledge that heart and soul of the Constitution of India lies in the Fundamental rights, hence it should all costs be preserved.

But, it is sheer disgrace that in our country so many children are made to work and that too in such horrendous situation where one won't even let his enemy suffer. That is the harsh reality that in our country the little children's life is less important than money.

IMPACT OF CHILD LABOUR ON CHILDREN

- Leads to decrease in the health standards of a child when exposed to hazardous and inhumane working conditions and also by working for too long.
- Leads to furtherance of illiteracy.

⁶ K.G. Mallikarjuna, Constitutional Provisions and Legislations Related to Child Labour in India, (April 18, 2017, 12:22am), <http://www.tjprc.org/publishpapers/2-41-1370423990-13.%20Constitutional%20provisions%20full.pdf>

- Leads to low self-esteem of the child.
- Leads to various social problems that a child may face.
- Misused and misguided by the anti-national elements of the society and further become a curse for the nation.

ROLE OF INTERNATIONAL ORGANIZATIONS IN FIGHTING CHILD LABOUR

The International Programme on the Elimination of Child Labour (IPECL): launched under the programme of International Labour Organization in 1991 to work towards the elimination of child labour by creating awareness about child labour as a global issue using national platforms. India was among the first nations to sign the MOU with IPECL to help in combating child labour.

National Labour Project (NCLP): is one of the major programs implemented throughout the country under which seven child labour projects were set up in the year 1988. Rehabilitation is also one of the major policies that have been adopted by the government of India to reduce the incidence of child labour in India.

The International Initiative On Exploitative Child Labour (IIECL):

The International Initiative on Exploitative Child Labour (IIECL), also commonly known as the International Initiative to End Child Labour, is a US-based, not-for-profit [US IRS approved 501 (c) (3)] organization, incorporated in 1999. We conduct and/or provides education, training, technical assistance, capacity building, research, social accountability auditing, resources, and evaluation services to public and private institutions and agencies, non-governmental organizations, and international programmatic institutions that seek to eliminate the worst forms of child labour in the United States and around the world.⁷

Unfortunately, the concerned authorities are unable to combat the rising cases of child labour because of varied reasons. They fail to establish the correct age of the child due to the lack of birth proofs and at times fake proofs. Not much is being done on creating the awareness among people. Even if efforts are being made, they cater to a limited population and the endurance

⁷ IIECL@endchildlabor.org, (April 19, 2017, 11:30pm), <http://endchildlabor.net/about/>

among the authorities is not visible. A lot of laxity can be observed during the conduct of awareness programs. There is still a need to address the issue on global platforms time and again with stringent policy framework in place.⁸

LEGISLATIONS AGAINST CHILD LABOUR IN INDIA:-

The Mines Act of 1952:

The Act prohibits the employment of children below 18 years of age in a mine. Mining being one of the most dangerous occupations, which in the past has led to many major accidents taking life of children, is completely banned for them.

The Child Labour (Prohibition and Regulation) Act of 1986:

The Act prohibits the employment of children below the age of 14 years in hazardous occupations identified in a list by the law. The list was expanded in 2006, and again in 2008.

The Juvenile Justice (Care and Protection) of Children Act of 2000:

This law made it a crime, punishable with a prison term, for anyone to procure or employ a child in any hazardous employment or in bondage. This act provides punishment to those who act in contravention to the previous acts by employing children to work.

The Right of Children to Free and Compulsory Education Act of 2009:

The law mandates free and compulsory education to all children aged 6 to 14 years. This legislation also mandated that 25 percent of seats in every private school must be allocated for children from disadvantaged groups and physically challenged children.⁹

Factories Act, 1948 :

Section 22 of the Act mentions that no young person can be shall be allowed to clean, lubricate or adjust any part of machine which thereof would expose the young person to risk of injury

⁸ Child labour in india, Indiacelibrating.com, (Apr 5, 2017, 11:21), <http://www.indiacelebrating.com/social-issues/child-labour-in-india/>

⁹ Vrinda Nigam, What are the Laws related to child labour in India, (April 18, 2017, 12:36 am.), <https://blog.ipleaders.in/laws-related-child-labour-india/>

from any moving part either of that machine or of any adjacent machinery. Section 23 of the Act defines that no young person is allowed to be employable on dangerous machines.

Section 27 of the Act prohibits employment of children in any part of a factory for pressing cotton in which a cotton-opener is at work.

The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 :

Section 24 of the Act defines that employment of child under in this industry is strictly prohibited under this Act.

Plantation Labour Act, 1951:

Section 25 of the Act specifies that Women and children can be employed only between the hours of 6a.m and 7p.m. They can be employed beyond these hours only with the permission of the State Government.

Domestic Workers (Registration Social Security and Welfare) Act, 2008:

Section 14 of the Act specifies that no child shall be employed as a domestic worker or for any such incidental or ancillary work which is prohibited under any law.¹⁰

CRITICISM OF THE LEGISLATIONS

The Legislature in its capacity has tried to eradicate the problem of child labour and also has made it illegal, yet we find that in every industry whether big or small the violation of these statues takes place. The lower authorities present in districts, divisions, sub-divisions and panchayati raj must make sure that these laws are implemented to the fullest. Just by making something illegal does not eradicate it to bring a change its application in the right place and in the right method is required.

¹⁰ WageIndicator 2017 - Paycheck.in - Children – All about their working under various Acts, (April 18, 2017, 12:40), <http://www.paycheck.in/main/labour-law-india/fair-treatment/child-labour>.

There are so many lacunae that need to be done away with. The loopholes left in the said laws have facilitated the offenders to further exploit the children. More so the Government has not been instrumental in its approach while implementing these statutes. There are a few clauses in the Acts that are absolutely vague. There is a quick requirement to fill these loopholes before we strike doomsday.

VIEW OF SUPREME COURT ON CHILD LABOUR

The apex Court in its numerous pronouncements has again and again reiterated that the children are the future of the nation and they should be well educated and also should not be made to do labour. It's the Apex Court which has been instrumental in dealing with this problem.

***Unni Krishnan Vs Andhra Pradesh*¹¹**

The Supreme Court in its judgment held that children up to the age of 14 had a fundamental right to free education.

***Neeraja Chaudhary Vs State of Madhya Pradesh*¹²**

In this case the Supreme Court of India was of the view that the Child Labourers should be rescued and provision for their rehabilitation should be made.

***U.P. Bandhua Mukti Morcha Vs Union of India*¹³**

In this case the Supreme Court of India stated that if no steps are taken under Bonded Labour System Act – 1976 by the Government then it would be a violation of Article 23 of the Constitution.

Sheela Barse Vs Secretary, Children Aid Society and Others, 1987

The Supreme Court held, "If there be no proper growth of children of today, the future of the country will be dark. It is the obligation of every generation to bring up children who will be citizens of tomorrow in a proper way.

¹¹ (1993) 1 SCC 645

¹² AIR 1984 SCC (3) 243.

¹³ AIR 1984 SC 802.

*M. C. Mehta Vs. State of Tamil Nadu*¹⁴

The Supreme Court has not allowed children to work in a prohibited occupation. According to the judges, "the provisions of Article 45 in the Directive Principles of State Policy has still remained a far cry and according to this provision all children up to the age of 14 years are sponsored to be in school, economic necessity forces grown up children to seek employment."¹⁵

HOW TO ELIMINATE CHILD LABOUR

- Abolition of child trafficking, elimination of poverty, free and compulsory education, and basic standards of living can reduce the problem to a great extent.
- Strict implementation of labour laws is also essential in order to prevent exploitation by parties or multinational companies in the respective industries.
- Lot many amendments are required in the present child labour prohibition law in order to implement strict measures to control the situation, since at present the law has become dated.
- The minimum of age of fourteen years needs to be increased to at least eighteen.
- The list of hazardous activities which are present in the law needs to include more occupations which have been left out of the purview of the hazardous activities.¹⁶
- The Child labour laws need to be strictly enforced by the Government.
- The District Headquarters must be directed to work towards the abolition of this practice.
- An increase in employment opportunity for adults would help in overcoming the problem of poverty and child labour.
- Government should ensure that every child gets the opportunity to go to school.
- The owners of factories and mines should take the pledge of not engaging child in their place of business.
- Awareness with regards to child's education and health amongst the people of rural area must be put forth.

¹⁴ (1996) 6 SCC 756.

¹⁵ K.G. Mallikarjuna, Constitutional Provisions and Legislations Related to Child Labour in India, (April 19, 2017, 11:56pm), <http://www.tjprc.org/publishpapers/2-41-1370423990-13.%20Constitutional%20provisions%20.full.pdf>

¹⁶ Child labour in india, Indiacelibrating.com, (Apr 5, 2017, 11:21), <http://www.indiacelebrating.com/social-issues/child-labour-in-india/>

- More perks and scholarships should be granted in order to attract people to send their children to schools and not for work.
- Vocational training centers for children in rural as well as backward areas can be of great help.
- Offering stipend to the children for enrolling their names and attending schools regularly.

CONCLUSION

Children are the future of a country, there should be huge investments done to their childhood so that in future they can be assets for their country. In the present situation for the greed of money and with utter disregard to the child labour laws we are approaching doomsday. We are not only taking away their future but also making the future of our motherland bleak and endangered. These young little souls are meant to learn and not earn. We must pledge and try and educate the children and also urge to the Government to strictly punish the offenders who violate the Child rights and force them or exploit them in order to gain personal benefits. If we want to become a super power in future we will at all costs have to raise the level of education and health of the children of our country and keep them away from child labour. We must in our personal capacities and also with respect to our fundamental duties help the authorities and the government to eradicate this problem of child labour. Child labour is the sheer violation of one's fundamental rights and must be stopped with immediate effect. Child labour is an international issue and must be dealt with immediate effect.