

**Child Labour Law in India : A critical analysis of causes and the legal provisions**

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**Abstract**

From the beginning of human society children have been exploited mercilessly and indiscriminately. Child Labour has been the cheapest and disciplined. Children were made to work at home and outside, in factories and fields, in hazardous occupations, in hotels, restaurants and as domestic aids. Children have been working even at an early age of 6 to 8. The major determinant of child labour is poverty, the lack of adequate and accessible sources of credit. The Constitution has rightly recognized these crimes against the children and had specific provisions prohibiting the exploitation of the children in various forms of labour. The Article 14 and 15 safeguards the children against the social inequality while Article 21 makes primary education as fundamental right. The Article 23 has specific mention with regard to the bonded labour, child trafficking etc while Article 24 bans employment of children below the age of 14 years into the hazardous and mine work. In the light of these Constitutional provisions and the International Conventions, the Government of India has enacted many laws prohibiting and preventing the child labour in various activities/processes which are harmful to them. The Child Labour Act, 1986 as amended from time to time is the flagship law. Despite the strict laws are in place to protect the children, there are little avenues provided for rehabilitation of such children into the vicious web of exploitation. Until the living standard is raised for the family, the children will remain most vulnerable. The children of migrant workers are at most risks due to uncertain economic security. There is need that the affirmative actions of the Government are accessible in a hassle free and transparent manner.

**Keywords:** Child Labour Act, 1986, Article 23, Constitution of India, Poverty, Right to Education Act, 2009, Bonded Labour,

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*“Child labor and poverty are inevitably bound together and if you continue to use the labor of children as the treatment for the social disease of poverty, you will have both poverty and child labor to the end of time.”*

**Grace Abbott**

The children are the asset of the humanity maintaining our existence and shaping future in this universe. It is our responsibility as a family, social, nation and human being that every child is provided with opportunity for educational, social, economical, political and healthy development. Despite making deep inroads into the removal of poverty and lifting the living standards of people, India is still home to the largest number of children in the world who are employed as labour in different sectors. The government has enacted much legislation like Child Labour (Prohibition and Protection) Act, 1986, Right to Education Act, 2009, etc for removing the children from labour and their rehabilitation and education. These efforts of the Government and the awareness among the masses especially parents has helped India to reduce the incidence and numbers of child labour during 2001 to 2011, but the pace of decadal drop in the incidence of child labour has also decreased which is a thing to worry as India had enacted RTE Act, 2009 during this decade.

**Problem of Child Labour:** - The Indian social structure which is riddled with the various social evils like castism, communal, gender based discrimination, difference in regional economic development etc, had the history of employing children for the economic gains especially treating the children as the savior of the family from the poverty and economic crisis. Before the coming of East India Company in the country, the children were mostly active in the agriculture sector, traditional family occupation under the supervision of their elders, thus children were actually trained like apprentices and the traditional skill sets of the occupation were

| <b>Child Labour in Major States in successive Census</b> |             |             |             |             |             |
|----------------------------------------------------------|-------------|-------------|-------------|-------------|-------------|
| <b>Census Year</b>                                       | <b>1971</b> | <b>1981</b> | <b>1991</b> | <b>2001</b> | <b>2011</b> |
| <b>State/ UT</b>                                         |             |             |             |             |             |
| Andhra Pradesh                                           | 1627492     | 1951312     | 1661940     | 1363339     | 673003      |
| Bihar                                                    | 1059359     | 1101764     | 942245      | 1117500     | 1088509     |
| Gujarat                                                  | 518061      | 616913      | 523585      | 485530      | 463077      |
| Karnataka                                                | 808719      | 1131530     | 976247      | 822615      | 421345      |
| Kerala                                                   | 111801      | 92854       | 34800       | 26156       | 45436       |
| MP                                                       | 1112319     | 1698587     | 1352563     | 1065259     | 700239      |
| Maharashtra                                              | 988357      | 1557756     | 1068427     | 764075      | 727932      |
| Orissa                                                   | 492477      | 702293      | 452394      | 377594      | 334416      |
| Rajasthan                                                | 587389      | 819605      | 774199      | 1262570     | 848386      |
| Tamil Nadu                                               | 713305      | 975055      | 578889      | 418801      | 284232      |
| Uttar Pradesh                                            | 1326726     | 1434675     | 1410086     | 1927997     | 2176706     |
| West Bengal                                              | 511443      | 605263      | 711691      | 857087      | 5500923     |
| India                                                    | 1,07,53,985 | 1,36,40,870 | 1,12,85,349 | 1,26,66,377 | 1,01,28,66  |

## **Child Labour?**

According to International Labour Organisation (ILO), the term child-labour is 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 and morally dangerous and harmful to children, or work whose schedule interferes with their ability to attend regular school, or work that affects in any manner their ability to focus during school or experience a healthy childhood.

UNICEF defines child labour as one who is involved in child labour activities between five to eleven years of age, that is, at least one hour of economic activity or at least 28 hours of domestic work in a week, and in case of children between 12 to 14 years of age, he or she did at least 14 hours of economic activity or at least 42 hours of economic activity and domestic work per week.

In 2001, Indian Census office defined 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. Such participation could be physical or mental or both. This work includes part-time help or unpaid work on the farm, family enterprise or in any other economic activity such as cultivation and milk production for sale or domestic consumption. Indian Government classifies child labours into two groups: main workers are those who work 6 months or more per year. A marginal child worker is one who works anytime during the year but less than six months in the year.

As per the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, amended in 2016 ("CLPR Act"), a "Child" is defined as any person below the age of 14, and the CLPR Act prohibits employment of a Child in any employment including as a domestic help. It is a cognizable criminal offence to employ a Child for any work. Children between age of 14 and 18 are defined as "Adolescent" and the law allows Adolescent to be employed except in the listed hazardous occupation and processes which include mining, inflammable substance and explosives related work and any other hazardous process as per the Factories Act, 1948.

### **Forms of Child Labour:-**

Child labour covers a range and variety of circumstances in which children work. The children being the most vulnerable to the economic fallout caused by the poverty, epidemic, unemployment of parents, social evils etc. Child Labour generally includes those children who are doing paid or unpaid work in factories, workshops, establishments, mines and in the service sector such as domestic labour.

**Street Children:** Children living on and off the streets, such as shoeshine boys, ragpickers, newspaper-vendors, beggars, etc. The street children are completely alone and are at the mercy of their employers. They live on the pavements, in the bus stations and railway stations. They are at the mercy of urban predators as also the police. They have no permanent base and are often on

the move. So their problem is more acute than that of children working in a factory and living at home.

**Bonded Children:** Children who have either been pledged by their parents for paltry sums of money or those working to pay off the inherited debts of their father, falls in this category. Bonded child labour is an acute problem in some states. Bonded children are in many ways the most difficult to assist because they are inaccessible. If the carpet owner has bought them, they cannot escape. If the middle-class housewife has paid for them, they cannot run away. If the landlord in the village owns them, they will spend their life in servitude till they get married and can, in turn, sell their children.

**Working Children:** Children who are working as part of family labour in agriculture and in home-based work are working children. If children are working 12-14 hours a day along with their parents at the cost of their education, their situation is similar to that of children working for other employers. The children, particularly girls, are expected to assist their mothers in the household work and the agricultural activities. The girls are one of the largest categories of children who are out-of-school and are working full time at home, thus affecting their educational opportunities. The missed educational opportunities keep their economic development hampered and the evil social practice like child marriage, discrimination prevails.

**Children used for sexual exploitation:** Thousands of young girls and boys of all social and economic backgrounds are sexually exploited. Direct links between the commercial sexual exploitation of children and other forms of exploitative child labour are numerous. Factories, workshops, street corners, railway stations, bus stops and homes where children work are common sites of sexual exploitation. Children are especially powerless to resist abuse by employers, either as perpetrators or intermediaries. Village loan sharks often act as procurers for city brothels, lending money to the family which must be paid back through the daughter's work. Almost all such children are betrayed by those they trust and end up with their trust abused. The physical (health, danger of HIV/AIDS, sexually transmitted diseases) and psycho-social damage inflicted by commercial sexual exploitation makes it one of the most hazardous forms of child labour.

**Migrant children:** Millions of families in India are forced to leave their homes and villages due to chronic poverty, land acquisition, poor rehabilitation, and social discriminations in search for safety and livelihood. The children of these families are most vulnerable and forced to drop out of schools which are the only available opportunity to break the vicious cycle generation after generation. With the economic development and requirement of land for large projects, the number of such migration is increasing yearly. The number of children below 14 years of age affected may already be in the order of 9 million. Most of such migrants belong to marginalized sections like Scheduled Caste, Scheduled Tribes, and Other Backward Castes.

**Children engaged in household activities:** There are a large number of children (especially girls) who are working in their own houses, engaged in what is not normally seen as “economic activity”. These children are engaged in taking care of younger siblings, cooking, cleaning and other such household activities. As seen in the literature on women’s work, such activities need to be recognized as work. Further, if such children are not sent to school, they will eventually join the labour force as one of the above categories of child labour.

### **Causes of Child labour:**

#### **(i) Poverty:**

UNICEF estimates that India with its larger population has the highest number of labourers in the world under the age of 14 years, while sub-Saharan African countries have the highest percentage of children who are deployed as child labour. The poverty is the biggest cause of forcing children into market. The International Labour Organisation (ILO) and Spreading Smiles through Education Organisation (OSSE) also suggest that poverty is the biggest single force that drives children to workplace. Income from a child’s work is crucial for the survival of the family in most cases. It is felt that as long as poverty continued, it is difficult to totally eliminate child labour and any attempt to abolish it through legal recourse would not be a practical proposition unless it is accompanied by the affirmative income support programme which can uplift the families from the web of chronic poverty.

#### **(ii) Gap between Education and the Vocation Training:**

According to an ILO study published in 1999 on Indian diamond industry, one of the main causes of child labour is that the parents send their children to work because they see education as expensive, education quality offering no real value, while artisan work in diamond and gem industry to be more remunerative as the child grows up. According to another report published in 2014 suggests that one out of every three graduates in India is unemployed. According to labour Bureau’s “ Third annual Employment and Unemployment survey 2012-2013 released on November 29,2013, unemployment rate amongst illiterate youth is lower than educated youth. A comparison with the earlier report by labour bureau shows that the unemployment level has increased during 2012-2013 over 2011-2012. While unemployment rate among illiterate youth is lowest with 3.7 per cent for the age group 15-29 years at all India level in 2012-2-13, the unemployment rate in the same category was reported at 1.2 per cent in 2011-2012 report. Similarly, the unemployment amongst the graduate youth that happened to be 19.4 per cent in 2011-12 increased to 32 per cent during 2012-2013. The study points that the formal education imparted in India is no panacea for the evil of child labour but, on the contrary, a cause of it. The India needs a policy of ‘earn while you learn’ or skill based education.

**(iii) Total absence of social security in informal unorganized sector:** There is little access to the formal social security in the informal or unorganized labour sector which contributes to the largest labour force in India. This makes the families vulnerable to the diseases like tuberculosis,

critical illness, floods, earthquakes often leading them to the abject poverty. The children are forced to join the labour market to provide income support in fighting these unforeseen circumstances by giving up their education.

(iv) **Caste-system in India:** The prevalent caste-system in India forces a child born in a caste to adopt the occupation and practices which are attached to one's caste. It is understood that a child initiated in the caste occupation from early childhood is more likely to be capable of earning his livelihood than one who is sent for schooling in a formal school the qualification of which provides no guarantee for any remunerative job in future.

(v) **Dowry system:** The social evil of dowry system prevalent in the society irrespective of the caste or religion forces the young children to earn the money for marriage. Despite the laws prohibiting the giving or receiving of dowry in marriages, the practice of giving and accepting the dowry is growing, driving children to work instead of to schools.

### **The Constitutional and Statutory Provisions to Prevent the Child Labour:**

#### **Rights of Children under International Law:**

The article 25(2) of the Universal declaration of human rights 1948 stipulates 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 organization (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 is another international instrument which protects the child.

#### **Rights of Children under National Laws:**

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 has gone into the problems of child labour and has made extensive recommendations. The Constitution of India too provides certain rights to children and prohibits child labour. . The Article 15(3) of the Part III of our constitution states that nothing in Article 15 shall prevent the State from making any special provisions for women and children. This provision empowers the state to make special provisions for children and it cannot be unconstitutional on the ground of discrimination. The Article 23 of the Constitution prohibits traffic in human beings and beggar and similar forms of forced labour including the bonded labour. The Article 24 of the Constitution provides that no child below the age of 14 shall be employed to work in any factory or in mine or engaged in any other hazardous employment. As per the Article 24, the children below 14 may be employed in harmless jobs. The Directive Principles of State Policy of the Constitution contained in Article 39 (e) & (f) and Article 45 of Part IV, it is the duty of the Stat to prevent the children from

entering into any job which is unsuited to their age and health. A summary of such measures is given as under:

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 citizens 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 endeavor 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 in 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 laws, which guarantee the substantial extent the rights and entitlement as provided in the constitution and in the UN convention. Some of them are given below:

1. The apprentices Act 1861
2. The child labour Act 1986
3. The child marriage restraint act 1929
4. The children (pledging of labour) Act 1929
5. Children Act 1960
6. The guardian and wards Act 1890
7. The Hindu minority and guardianship Act 1956
8. The Hindu Adoption and maintenance Act 1956
9. The Immoral Traffic (prevention) Act 1956
10. Juvenile justice Act 1986
11. The Orphanages and other charitable Homes (supervision and control) Act 1960
12. Probation and offenders Act 1958
13. Reformatory schools Act 1857
14. The women's and children's institutions (licensing) Act 1956
15. The young persons (harmful publications) Act 1956

**The International Labour Organization** has adopted a number of conventions and recommendations for the medical examinations, minimum age, weight of work on young person etc. It has adopted so far 18 conventions and 16 recommendations. Convention 59 lays down that the person below the age of 14 years shall not be employed in any factor or mine in any hazardous

There are number of labour legislations by which restrictions have been imposed on the employment of child laborers. **The Employment of Children Act, 1938** prohibited employment of children in certain occupations and processes. In the light of direction of the Supreme Court

this Act was amended in 1986 and came in to the form of the Child Labour (Prohibition and Regulation) Act, 1986. In this Act, the Child means a person who has not completed his fourteen year of age and any person below fourteen years of age shall not be employed in any of the occupations or process mentioned in the Schedule. This Act has only mentioned some occupation and process where child labour is prohibited. But an establishment where none of the above occupations or processes are carried on there is no restriction about employment of child labour. It has only regulated the working hours for the child for non scheduled occupations and processes. This act was not applicable to the family business/occupations. The Act also does not protect children in the unorganized sector.

**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 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. There are provisions of punishable and monetary penalties for the person/establishments that employ the child labour.

**Conclusion:** Keeping in light the Constitutional and the International Conventions, the Government of India has enough laws to protect and prohibit the children. However, the reason of the propagation of child labour that is poverty is still in existence. The affirmative action like MNREGA, RTE etc has brought major change in the approach focusing on the rehabilitation. Due to poor implementation, lack of awareness among the masses, wide spread corruption, the nexus among the criminal groups and the people in power, the children are still finding way to the worst form of child labour like sexual exploitation.

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