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LEGAL REGIMES ON PROHIBITION OF CHILD LABOUR : A CRITICAL STUDY



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ABSTRACT

Children are an important component of the social structure and the potential future careers of the culture. Unfortunately, the problem of child labour (especially age group of 5-14 years) exists in our country, children receive a rude and unpleasant introduction of life. They not only lack the basic necessities of life but are also forced to spend a major part of the day working in inhuman and unhealthy conditions for miserable pittance. Child labour has become a worst form in every society. Although the govt. has taken positive initiatives for eradication of child labour, through various legislation and policies. But the situation is remain still now. The problem of child labour has been one of the major issues to be tackled in any economy, as it is a development issue considering the ill effect of its prevalence. In fact, to eliminate child labour we need convergence strategy. Besides this we need a strict implementation of laws, for the betterment of child.

KEYWORDS : Legal Regimes, Child Labour,

INTRODUCTION :

Child Labour occurs when children under the age of fourteen are used to do labour. Children are usually forced to do adult work to help provide for their families. The working conditions are poor and children usually suffer physical, emotional and sexual abuse. They work long hours every day and are unable to attend school, which is their fundamental right.

It is very difficult to define child labour, it has not even been defined by the child labour (prohibition and regulation) Act 1986. But for understanding of concept of child labour, let us examine some of the important definitions.

[Encyclopedia of social science](#) – “When the business of wage earning or of participation in itself or family support conflicts directly or indirectly with the business of growth and education, the result is child labour.

[International labour organization](#) – “Child labour includes children prematurely leading adult lives, working long hours for low wages under conditions damaging to their health and to their physical and mental development, sometimes separated from their families, frequently deprived of meaningful education and training opportunities that could open up for them a better future.

[Second National Law Commission on labour](#) – “Children out of home away from family working for wages and the place of work unfriendly and unsuitable for their well-being are child labour.”

[Census of India](#) – “Any child engaged in productive work is child labour”.

[Govt of Andhra Pradesh](#) – All children out of school are child labour. Being out of school is equal to worst form of child labour ‘hazardous intolerable circumstances’ and harmful to the overall growth and development of the child.

[Gujarat State Action Plan for Elimination of child labour 2008](#) - “All children deprived of their fundamental right to education between the age of six to fourteen years are child labour”.

Child labour is a worst phenomenon, not only in India but all over the world. Child labour is an integral part of labour force, especially in poor countries. These children are the most deprived section of population forced to enter labour market at tender age to earn a pittance or to contribute to family work, sacrificing personal development. Child labour hampers the normal physical, intellectual, emotional and moral development of a child. Children who are in the growing process can permanently distort or disable their bodies when they carry heavy loads or are forced to adopt unnatural positions at work for long hours. Children are more vulnerable because they are less resistant to diseases and suffer more readily from chemical hazardous and radiation than adults.

In India Child labour is not a new phenomenon. It has been in existence since time immemorial in one form or the other and has been changing from time to time. With the advent of Industrialization and urbanization in the early 19th century, the factory and industry began taking the place of handicrafts. Agriculture became more mechanized. This gave rise to landless labourers and consequently, there was an unbroken stream of the rural poor migrating to urban centre in search of livelihood. Factory, on the other hand, required cheap and plentiful labour. Children started being employed both on farms and in factories because they provided a cheap and uncomplaining labour force as against adults who could be more demanding and hence more difficult to handle. Children are preferred as they are not unionized, can be easily controlled, tortured and exploited without any fear of backlash. Moreover, children are better suited to jobs like brick making, carpet, weaving and silk spinning etc. Their cheapness and remote possibility of collective bargaining on their part makes them

vulnerable and induced producers to employ and exploit the child labour. The importance of education is neglected for the child and replaced with necessity of providing food and shelter i.e. children work to supplement meager family income or otherwise to help the family business. In doing so they are being denied of basic rights such as the right to education, to freedom from abuse, and to proper health. Therefore, there is a need to look the problem of child labour from a multi dimensional aspect to understand and address the same in a society where the parents are programmed to undermine the value of education, poverty persists and century old traditions upheld.

There are still many people in the world who are so poor that they often don't have enough to eat each day and suffer from hunger, people who are extremely poor are people who have less than US \$1 a day to live on. There are more than 1 billion people in the world who live on less than \$1 a day. The problem of child labour has been one of the major issues to be tackled in any economy, as it is a developmental issue considering the ill effect of its prevalence. Almost all the countries whether developed, developing or under developed are facing one or other kind of issue related to child labour. But the issue of child labour is seen in the worst form in some of the developing and under developed countries. As per an estimate of ILO, there are between 190.7 million child labourers in the world. Out of these million, half may be found in south and East Asia. By employing children we are denying their right to education, which is crucial for their development.

International Initiatives for Eradication of Child Labour :

The international initiatives for child rights may be divided into two categories namely, with ILO and United Nations, as India, is the member of the organization. The International Labour Organisation (ILO) was established on April 19, 1999 with the object of improvement of the condition of the labourers, since its constitution 189 conventions have been adopted with some protocols. India is a signatory to many of them. The following are as:-

- i. prohibits the employment of person below 14 years of age.
- ii. prohibits the employment during night of person below 18 years of age.
- iii. prohibits a person who is below 18 years of age from being employed on vessel as Toimer or stockers.
- iv. prohibits the employment in miens of a child below the age of 16 years.
- v. prohibits worst forms of child labour as including all forms of slavery, trafficking, child prostitution, child pornography, use of children for illicit activities below 18 years of age should not be involved.

UN Convention on the Rights of the Child (CRC)

This convention was adopted by General Assembly on 20th November 1989 and entered into force from 2nd September 1990. Article 28 of the convention provides right of the child to education and further states a view to achieving this right progressively and on the basis of equal opportunity. Article 32 provides rights of protection from economic exploitation and from performing any hazardous work or to interfere with the child's education or to be harmful to the child's health or physical mental, spiritual, moral or social development. A number of rights have been stipulated in the convention which includes the following:-

1. Right to life (Article 6, Para 1)
2. Right to acquire nationality (Art. 7)
3. Right to freedom of expression (Art. 13, Para 1)
4. Right to freedom of thought, conscience and religion (Art 14, Para 1)
5. Right to freedom of association and to freedom of peaceful assembly (Art. 15, Para 1)

6. Right to Education (Art. 28, Para 1)
7. Right to benefit from social security (Art. 26, Para 1)
8. Right to a standard of living adequate for the child's physical mental, spiritual and social development (Art. 27, Para 1)
9. Right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. (Art. 24 P 1)
10. Right to protection of the law against arbitrary or unlawful interference with his or her privacy, family, home or correspondence (Art. 16 Para 1). There are two optional protocols to the convention on the Rights of the Child, First Protocol prohibits "involvement of children in Armed Conflict and second prohibits the sale of children, child prostitution and child pornography". These optional protocols were adopted by U.N. General Assembly on 6th Marh 2000 and both are signed by India on 15th November, 2004.

Constitutional Provisions

Our constitution framers were aware about the problem of child labor and compulsory education of children, so they made prohibition of children in certain employment as a fundamental right, and issued many directive principles of state policies in Part IV. 86th constitutional amendment has inserted it as fundamental right and fundamental duty of the parents to send their ward to school. The constitutional provisions may be described as follows:-

Article 15 (3) – This Article provides guarantee of right to equality without any discrimination but on the other hand, empowers the state to make, the special provisions relating to child and women for their advancement.

Article 21 – says "no person shall be deprived of his life or personal liberty, except according to procedure established by law". The supreme court held that 'life' includes free from exploitation and to live a dignified life.

Article 21-A – The state shall provide free and compulsory education to all children of the age of 6-14 years in such manner so as the state may, by law, determine. The supreme court has directed that where children are allowed to work in such establishment, it is the duty of the employer to make provisions for the education of child labourers.

Article 23 – 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 – 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 step should be taken for the welfare of such children as well as for improving the quality of their life.

Article 39 (F) – 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 39(E) – The state shall in particular direct its policy towards securing the health and strength of the tender age of children so that they are not abused and that citizen are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 45 – The state shall endeavour to provide early childhood care and education for all children

until they complete the age of six years.

Article 51 (K) – 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 to fourteen years.

The child labour (Prohibition and Regulation) Act 1986 – This act has been enacted to prohibit the engagement of children in certain employment and to regulate the conditions of work for children in certain employments and to regulate the conditions of work for children in certain other employment.

This act seeks to achieve the following objectives –

- i. To ban the employment of children i.e. those who have not completed their 14 years in specified occupations and process.
- ii. To lay down a procedure to decide modifications to the schedule of banned occupations or processes.
- iii. To regulate the conditions of work of children in employments where they are not prohibited from working.
- iv. To lay down enhanced penalties for employment of children in violation of the provisions of this Act and other Acts which forbid the employment of children.
- v. To obtain uniformity in the definition of child in the related laws.

Sec. 3 of this act prohibits the child labour. According to this section, “No child shall be employed or permitted to work in any of the prohibited occupations or in any workshop where in any of the process is carried on. According to sec. 14 of the Act “Whoever employs any child or permits any child to work in any of the prohibited occupations or process shall be punished with imprisonment for a term which shall not be less than three months but which may extend to one year, or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

The Factories Act 1948 – This act also prohibits the employment of child less than 14 years of age in factories. A child who has completed the age of 14 years is not permitted to work in a factory for more than 4 hours in any day. They should not work at night i.e. twelve consecutive hours including the period from 10 p.m. to 6 a.m.

Minimum Wages Act 1948 – Provides for the fixation of minimum rates of wages in certain employment which haven specified by appropriate government in the schedule of the Act. The Act made provisions of fixing minimum rates of wages of adults, adolescents and children.

The Mines Act 1952 – Provides for some more stringent provisions. The act prohibits employment of persons (below 18 years) in any mine or part thereof and also their presence in any part of the mine above ground where any operation connected with or incidental to any mining operation is being carried out. The act prescribed punishment of fine upto Rs. 20,000 in case of employment of persons below 18 years. For contravention of any other provision of the act there is the provision of imprisonment upto three months or fine upto Rs. 1000 or both.

The Plantation Labour Act 1951 – According to this act a child below 14 years or an adolescent between 15-18 years cannot be employed for work unless he is certified fit for work by a surgeon. The certificate of fitness is given by a certifying surgeon who certified that the person being examined by him is fit to

work as a child or as an adolescent.

The Merchant Shipping Act 1958 – Prohibits employment of children under 14 years in a ship except in a school ship or training ship, or in ship governed by family members or in a home trade ship of less than two hundred tons gross, or where such person to be employed on nominal wages and will be in the charge of his father or other adult near male relatives.

There are some worst form of child labour or their exploitation the punishment shall be as follows:-

A : Sale or Trafficking of children

Whoever imports exports, removes, buys, sells or disposes of any person as a slave or accepts, receives or detains against his will any person as slave shall be punished with imprisonment upto seven years and fine (sec. 370 of IPC 1860).

B. The Bonded labour system (Abolition) Act 1976

Whoever enforces any custom, tradition, contract, agreement or other instrument by virtue of which any person or any member of the family of such person or any dependent of such persons is required to render any service under the bonded labour system shall be punishable with imprisonment upto three years and fine upto Rs. 2000. Sec. 18.

C. The juvenile justice (care and protection of children) Act 2000

If any person ostensibly procures the child in needs of care and protection (below the age of 18 years) for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punished with imprisonment upto three years and fine (sec. 26).

D. Unlawful compulsory labour Sec. 374 of IPC

Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment upto one year or with both.

E. Selling minor for purposes of prostitution etc. Sec. 372 of IPC

Whoever sells, lets to hire or otherwise disposes of any person under the age of 18 years with intent that such person shall be at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful an immoral purpose or knowing it to be likely that such person will at any age be employed or used for any such purpose shall be punished with imprisonment upto ten years and fine.

F. The Marchand Shipping Act 1958

Whoever do engaged or carried any person under 14 years age to work in any capacity in any ship to sea shall be punished with imprisonment for 3 months to one year or with fine of Rs. 10,000 to Rs. 20,000 or with both.

F. The Apprentices Act 1961

Engaged any person in an apprentice to undergo apprenticeship training in any designated trade below 14 years shall be punished with imprisonment up to six months or with fine or with both

(Sec. 30 (1)).

G. Children (Pledging of Labour) Act 1933

Whoever being the parent or guardian of a child makes an agreement to pledge the labour of that child, he shall be punished with fine up to Rs. 50.

Whoever makes with the parent or guardian of a child an agreement whereby such parent or guardian pledges the labour of the child he shall be punished with fine upto Rs. 200. Whoever knowing or having reason to believe that an agreement has been made to pledge the labour of a child, in furtherance of such agreement employs such child or permits such child to be employed in any premises or place under his control he shall be punishable with fine up to Rs. 200.

The National Policy on Child labour

In consonance of recommendations of Gurupadaswami committee and enactments of child labour (prohibition and regulation) Act 1986, a national policy on child labour was formulated in 1987. The policy seeks to adopt a gradual and sequential approach with a focus on rehabilitation of children working in hazardous occupations and process in the first instance. The main object of this policy was, to strict enforcement of child labour (prohibition of regulation) Act and other labour laws to ensure that children are not employed in hazardous employment and that the working conditions of children working in non hazardous areas are regulated in accordance with the provision of the Act. The policy laid down that the state shall provide adequate services towards children, both before and after birth and during the growing stages for their full physical mental and social development. The policy emphasized the need for the measures of the balanced growth of children; children shall be protected against neglect, cruelty and exploitation.

A National Charter of Children 2004

This charter emphasizes Govt. of India's Commitment to children's right to survival health and nutrition, standard of living, play and leisure, early childhood care education, protection of the girl child, equality, life and liberty, name and nationality, freedom of expression, freedom of association and peaceful assembly, the right to a family and the right to be protect from economic exploitation.

National Plan of Action of Children 2005

Emphasizes the role of government to ensure all measures and an enabling environment for survival, growth, development and protection of all children, so that each child can realize his or her inherent potential and grow up to be a healthy and productive citizen. Indian Trafficking Prohibition Act (ITPA) is being amended to save the girl child from trafficking and exploitation, Sarva Shiksha Abhiyan (SSA) is being intensified to reach the goals. Rural Health Mission (RHM) is another attempt to cover better health services in rural areas.

Child Labour : The Magnitude of the Problem

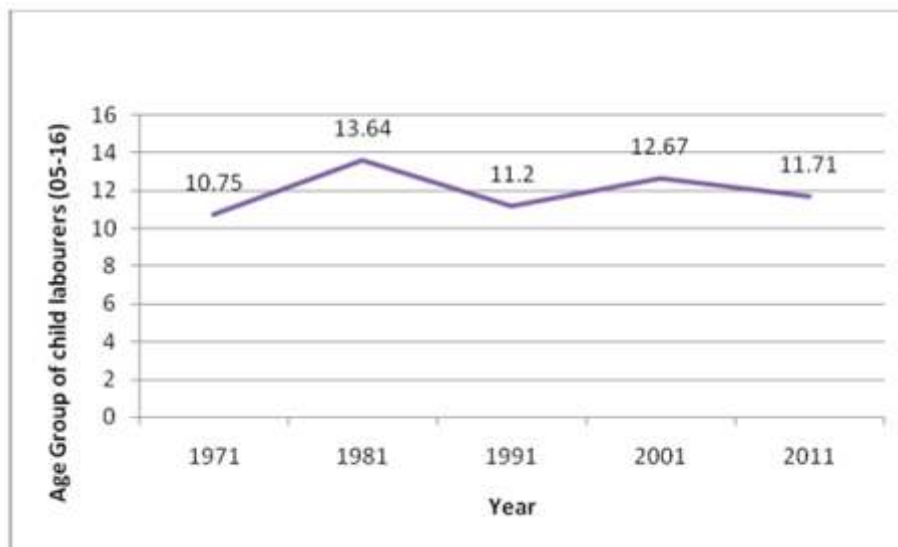
Although the governments are working and making their policies in the field of child rights and govt. has made many provisions relating to child rights and eradication of child labour. But it seems all the above measures are not sufficient, because we still hear and see that child being exploited in the street, home and school. The child is the father of man said William Wordsworth but today it seems, the child is the slave of man. Problems with children all over the globe are mainly related to growing, human

population, poverty, illiteracy and poor population migration. Today according to some estimates about 20 million children are engaged in forced labour. There are about 50,000 children working in Firozabad's glass factories. Begun with age of seven, they are likely to suffer lead poisoning through occupational exposure to lead fumes. In Moradabad brassware industries, chronic lung, muscle and bone disorders paid for earning their living to the child workers. As per an estimate of ILO in 2006 there are between 190.7 million child labourers in the world. Out of these million, half may be found in South and East Asia. By employing children we are denying their right to education, which is crucial for their development. The problem of child labour is not limited to India but is an international issue. If we look at a glance the magnitude of the problem at international level, it reveals that in 1950, there are 27.58% children of the world were working children, which declined in 2000 to 11.32%. The Figures in Europe and China have declined faster than in Africa, Asia and India, which attracted the attention of international organizations, researchers and policy makers to eliminate child labour. In 2000 the ILO estimated 211 million working children in the world in the age group of 6 to 14. At 127.3 million, Asia-Pacific had the largest number of child workers. In 2004, the ILO estimated that there are 219 million economically active children, out of which 166 million are child labour. They are engaged in various forms of Hazardous and non-hazardous work in sectors like construction, brick kilns, fireworks, glass factories, mining and quarry, restaurant transport manufacturing etc. It is believed that child labour is the consequence of social inequality, attitude of the privileged class, lack of employment opportunities poverty and most important lack of parental motivation. Children of poor family are a source of their income.

After a look at global scenario, let us focus on India. After 68 years of independence of our system we does not ensure education for all. Out of 200 million children in the age group of 6 to 14 years, 5.9 million children do not attend the school in India. There are 12.8 million workers between 5 to 14 years in India. They make 5 percentage of population and 3.15 percentage of workforce. From 1991 to 2011 child labourers have increased upto 11.69 percent. According to National sample survey organization (NSSO) 2009-2010 there are 49.84 lakh child labourers are working in India. Children are employed in different hazardous and on occupation i.e. domestic helpers in dhabas and hotels, rage pickers, factory and shops mechanic in motor workshops etc.

According to the census of India, the working children in India were 10.75 million in 1971 but it increased in the next decade and reached 13.64 million, which disturbed the researchers and policy framers. The Govt. has framed a central policy in 1987. The result of the policy was reflected in the census of 1991, where the figure declined to 11.29 million. Many steps have bee taken by the central govt. and state govt. to eliminate child labour during the decade of 1991-2001 and many occupations and process were prohibited from employing of children. Again the census of Idnia 2001, attracted the attention of the policy makers, to re-think for elimination of child labour as the census reveals that child labour increased to 12.67 million between the age group of 05-14 years. The trend of child labour may be seen as follows-

Trend of Child Labour in India (in millions)



Source : The Census of India

Census 2001 reveals that Uttar Pradesh was having the highest rate in employing child labour with more than 15% of its child population followed by Andhra Pradesh, Rajasthan, Bihar and Madhya Pradesh which were found with more than 8% children in the work force.

Domestic household chores and child care either paid or unpaid, fall on girls whether or not they go to school. In rural areas, amongst schedule tribes or other backward classes girls are more likely to be employed as casual agricultural labourers than boys. 40% of female sex workers are forced into prostitution before the age of 18. Nearly 60% of girls who are employed as child labourers live in rural areas.

The right of children to free and Compulsory Education Act 2009 popularly known as the right to Education (RTE) Act came into being in India from April 1, 2010. Nevertheless this effort could not get its objects or achievement 5.9 million children do not attend the school of India, out of 200 million children in the age group of 6 to 14 years. 35 percent of population are stand below poverty line, they are not able to maintain their primary needs such as food, shelter and child education etc. 90% children are interested to attend the schools but their economic conditions are not allowing them. Only 10% are not willing because they does not like to go to school.

Sexual harassment of children has become a serious problem not only in India but also in world level. According to National Crime record Bureau (NCRB). There are 5,485 children's rape case as registered in 2010 and 10,670 cases was registered in the matter of kidnapping. Besides this 120 murder case of children came in lime light in the same year. According to information given by E. Ahmed former minister of state for human resource development the national commission for child right has received 116 cases related to abuse in school from Tamil Nadu, 105 cases from Delhi. There are estimated to be 9 laksh sex worker in India and 30% are believed to be children. Recent reports estimated that the number of children involved in prostitution is increasing at 8 to 10 percent per year. Most of the prostitution are below the age of 20 years.

Conclusion and Suggestions

It seems all the cited above provisions relating to prohibition of child labour and other legal regimes for child advancement are not basically sufficient because we still hear and see that child being exploited in street, home and work place. They are still deprived from education and suffering from inhuman traffic, beggar, forces and bounded labour. They are compulsively bearing sexual harassment such as rape and prostitution, mental and physical toucher and many other abuse also. In India the first children act was made in 1960 and then labour acts and many more acts came into existence but none could improve the situation of child. Unless the laws on child rights are implemented as properly and seriously no desired results are to be possible. There is a need to formulate a holistic multi-pronged and concerted effort to tackle this problem. An integrated approach involving various strategies like poverty eradication programmes, campaigns budget advocacy, community action, engaging institutions of governance for the ultimate attainment of the desired goal. Even though poverty is cited as the major cause of child labour, it is not the only determinant. Inadequate schools, lack of schools or even the expense of schooling leaves some children but with little else to do work. The attitudes of parents also contribute to child labour, some parents feel that children should work in order to develop skills useful in the job market, instead of taking advantage of a formal education. This abhorred practice is accepted as being necessary for poor families to earn an income. Thus an extensive reform process is necessary to eliminate the proliferation of child labour in India, which strives to end the desperate poverty in the nation. Emergency relief should give attention to the rehabilitation of the agriculture, live stock and fisheries. New labour standards and wages must be adopted and medical examination and minimum nutrition requirement must be established in India. The second step is that there should be strict implementation of child laws. In this regard there must be a policy which strictly prohibits child labour, below the age of child to 18 years. Besides this child labour should be a crime strictly and punishable by rigorous imprisonment. The third step for elimination of child labour is that the non-governmental organizations must be empowered by financial resources. NGO's and voluntary organizations can do an intensive campaign to spread across the civil society organizations through networking to draw the attention of the policy makers implementators and community. The NGOs can play a pivotal role in the process of universalization of education by adopting innovative approaches to quality education.

There is need to bring about widespread public awareness towards initiating community action in promoting school enrolment. Education helps a child to develop cognitively emotionally and socially and needless to say education is often gravely reduced by child labour.

In fact to eliminate child labour we need convergence strategy. Unless there are socially conscious policies in the country, the policies won't make that much of a difference. If we want a better world we should have to ensure that rights of our children must be protected at any cost because they are our future. They will make our society, our country livable for us and future generation. Therefore, let us join hands in protecting children from every kind of exploitation.

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