



# CHILD LABOUR IN INDIA: LEGISLATIVE ENACTMENTS AND JUDICIAL APPROACH

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## INTRODUCTION

Children are the greatest gift to humanity and Childhood is an important and impressionable stage of human development as it holds the potential to the future development of any society. Children who are brought up in an environment, which is conducive to their intellectual, physical and social health, grow up to be responsible and productive members of society. Every nation links its future with the present status of its children. By performing work when they are too young for the task, children unduly reduce their present welfare or their future income earning capabilities, either by shrinking their future external choice sets or by reducing their own future individual productive capabilities. Under extreme economic distress, children are forced to forego educational opportunities and take up jobs which are mostly exploitative as they are usually underpaid and engaged in hazardous conditions. Parents decide to send their child for engaging in a job as a desperate measure due to poor economic conditions. It is, therefore, no wonder that the poor households predominantly send their children to work in early ages of their life. here is a strong sect of child labour on school attendance rates and the length of a child's work day is negatively associated with his or her capacity to attend school

Every child has right to lead a decent life and is entitled for the basic human rights. The physical, mental and social wellbeing of a child depends upon the family to which she/ he belong. Family and school are two important institutions which play significant role for integrated development of the child. According to the United Nations Convention on the Rights of Child, child means a person male or female who is below 18 years of age. Keeping in view the problems and challenges faced by the Indian children, laws have been introduced and various policies and programmes are being implemented for the welfare of children in India

## WHAT IS CHILD LABOUR?

Labour is the work done by the worker. Child labor is something that is distinguished from labor per se. Child labour is when a child under the legal age (fourteen) are made to do work that is physically and mentally harmful and which interrupts their education or social development. Child labourers are involved in all type of jobs – agriculture, the sex industry, carpet and textile industry, brick making, construction work, quarrying and many other types of hazardous work.

*Understanding The Concept Of Child Labour:* Universally the age for considering a person to be child is less than 18 years. Child labour is present everywhere but invisible, toiling as domestic servants in homes, labouring behind the walls of workshops, hidden from view in plantations. But some of us get confused with the light work a child is doing at that age with child labour. A hidden concept behind this the differentiation between

1. *Hazard Work:* It implies to the work done by the person of age less than 18 years involving risk. And by the definition set by ILO- International Labour Organisation, 'Risk, Severity of harm,



Probability of harm’.

2. *Decent Work*: It refers to the work which is of no harm instead it helps in the all round development of a child. For instance, the children undergoing internships during their adolescent age cannot be defined as child labour, and no preventive laws are meant for such work.

In India, the child labour was regarded as a distinct component of the workforce and was acknowledged in various statutes from time to time. As a result most of the labour legislations permitted children to work on divergent age specifics under the different legislations. The recommendations of the Gurupadaswamy Committee on Child Labour (1979) and the Sanat Mehta Committee (1986) stressed on the need to have uniformity in defining age of a child. Henceforth, the Child Labour (Prohibition and Regulation) Act, 1986 was enacted which sought to obtain homogeneity in the definition of child by prescribing a uniform age of fourteen years and prohibited employment of children in specified occupations and processes. This Act, was amended in 2016 and renamed as the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (“Child Labour Act”) wherein it prohibited the employment of children below the age of 14 years in all occupations with limited exceptions as a child artist and in family business.

#### GOVERNMENT INITIATIVES

*Child Labour And Constitutional Provisions*: The framers of the constitution of india deemed it necessary to include special provisions in the 1onstitution for the protection of the rights of working children.

*Constitutional Safeguards For Indian Children*: Constitution of India contains provisions for upliftment, development and protection of children; these are mainly included in Part III and Part IV of the Constitution, i.e., fundamental rights and directive principles of state policy. Indian Constitution deals categorically with the welfare of the child and prohibition of practices like child labour. Thus, the concern for children in general and child labour in particular is reflected through the Articles of the Constitution of India. The relevant articles are given below :

1. Ar15(3)

Nothing in this article prevents the State from making any special provision for women and children. Thus, is article empowers the State to make special provisions for the children.

2. Article-21A

-The State shall provide free and compulsory education to all children of the age 6-14years in such manner as the State may, by law determine.

3. Article 23-

Prohibits traffic in human being and beggar and other similar forms of forced labour

4. 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.

This is very important constitutional provision which prohibit the child labour inhazardous employment.

5. Article-39(f)

-Enjoins the State to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that the childhood and youth are protected against



exploitation and against moral and material abandonment.

6. Article 39(e) and (f)-

Requires the State and secure that the tender age of children are not abused and to ensure that they are not forced by economic necessity to enter avocations unsuited in their age or strength. Those children are given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity and that childhood and youth are protected.

7. Article 45-

The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

8. Article 51A(k)-

Makes it a fundamental duty of the parent or Guardian to provide opportunities for education to the child or ward between the age of 6 and 14 years.

Thus it is clear that our Constitution makers were wise and adamant to provide, that children should receive distributive justice in free indications and policies regarding child labour in India.

Legislation to control and regulate child labour in India has existed for several decades. The main concern of these legislations was prescribing minimum age limit for employment of children and regulation of working hours for children; and ensuring the health and safety of the child labourers by prohibiting the employment of children in hazardous work. There are number of child labour legislations prohibiting the employment, children below 14 years and 15 years in certain specified employments. However, contrary to our international commitment and all proclamations in the country's Constitution, and despite all the legislative measures, child labour is a harsh reality.

Due to lack of political will and in absence of realistic measures to tackle the problem the percentage of child labour in the total labour force of the country kept on increasing over the years.

The important laws relating to child labour are listed below:

1. The Children (Pledging of Labour) Act, 1933
2. The Employment of Children Act, 1938
3. Factories Act, 1948
4. The Minimum Wages Act, 1948
5. The Plantation of Labour Act, 1951
6. The Mines Act, 1952
7. The Merchant Shipping Act, 1958
8. The Motor Transport Workers Act, 1961
9. Beedi and Cigar Workers (Conditions of Employment) Act, 1966
10. Contract Labour (Regulations and Abolition) Act, 1970
11. Shops and Commercial Establishment Act, 1969
12. Radiation Protection Rules, 1971
13. The Child Labour (Prohibition and Regulation) Act, 1986

Large numbers of legislations were enacted since 1881 which provides the legal protection to the working children. The Children (Pledging of Labour) Act, 1933 followed by the Employment of Children Act, 1938 was the first statutory enactment dealing with child labour which was repealed by the Child Labour Act, 1986. The Child Labour (Prohibition and Regulation) Act 1986 is an outcome of various recommendations made by a series of Commissions.

This legislation was enacted to reform the legal measure, as the policy of both Prohibition and



Regulation. ON 10th of December 1996 in Writ petition civil ( No.465)1986- on MC Mehta versus State of Tamil Nadu, the Supreme Court of India, gave certain directions on the issue of elimination of child labour. The main features of judgment are as under:

-survey for identification of working children;

1. withdrawal of children working in hazardous industry and ensuring their education in appropriate institutions;
2. contribution of rs.20000 per child to be paid by the offending employers of children to a welfare fund to be established for this purpose
3. Employment to one adult member of the family of the child so withdrawn from work and if that is not possible a contribution of rs. 5000 to the welfare fund to be made by the State government.
4. Financial assistance to of the children so withdrawn to be paid out of the earnings on the corpus of rs.20,000/25000 deposited in the welfare fund as long as the child is sent to the schools;
5. Regulating hours of work for children working in non-hazardous occupations so that their working hours of work do not exceed six hours per days and education for at least two hours is ensured. The entire expenditure on education is to be borne by the concerned employer

## CONCLUSION

Child labour is an international social evil therefore cumulative effort is required to wipe it out. The government of INDIA and Judiciary has also taken few steps. The determinant of child labour is socio-economic conditions prevailing in the country like poverty. Another determinant is access to education. In some areas, education is not affordable, or is found to be inadequate. With no other alternatives, children spend their time working. Therefore, there is need to implement the laws relating to child effectively in India.

However, from the analysis of the relevant statutory provisions of the Indian laws relating to child labour, it has become abundantly clear that the statutes vary as to the age limit of a child employed or permitted to work in various occupations. There is no law fixing minimum age for employment of children in agriculture. The Factories Act, 1948, fixes minimum age of 14 whereas the International Labour Organisation (ILO) Convention prescribes minimum age for any employment to be 15. In the case of plantations, the age of employment has been fixed at 12 years but in the case of non-industrial employment the minimum age varies from 12 to 14 years. Thus, Indian Laws relating to child labour are deficient from the international standards as laid down by the ILO. However, 179 countries have ratified the International Labour Organisation (ILO) convention to combat the worst forms of child labour. Unfortunately, India has not yet ratified this convention. Besides this, India has also not ratified convention on minimum age of admission to employment and work.

In spite of plethora of legislative enactments and the pro-active role played by various agencies, child labour continues to be a major problem. A large number of children are exploited and deprived of what is due to them. It can be said that the carelessness on the part of the enforcement machinery relevant under specific laws is the major issue to be address and cured.

However, fortunately, the Indian Judiciary played a very significant role in promoting child welfare. It has taken the lead to save the child from exploitation and improve their conditions. Judicial mandate clearly demonstrates that right to education is necessary for the proper flowering of the children and their personality. The judiciary has even directed the states that it is their duty to create an environment



where the child workers can have opportunities to grow and develop in a healthy manner with full dignity in consensus of the mandate of our Constitution

It is the need of the hour to expand the machinery for enforcing the various laws on child labour and set free the young ones from the evil of child labour. These children freed from child labour should be entitled for rehabilitation benefits under government schemes. There are plenty of child labour preventive laws but nothing can eradicate child labour unless there is awareness among parents and children, which will go a long way in saving the future of millions of working children in india. Thus, it is possible only if the government and the society would own it that this our responsibility to put an end to child labour in all its forms

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