



ORIGINAL RESEARCH PAPER

Law

A COMPERITIVE STUDY FOR CHILD LABOUR AND CHIELD LAWS IN INDIA

KEY WORDS:

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ABSTRACT

"Child" as defined by the Child Labour (Prohibition and Regulation) Act, 1986 is a person who has not completed the age of fourteen years. A child of such tender age, is expected to play, study and be carefree about his life. But as a fact of nature, expectations hardly meet reality. Children, by will or by force are employed to work in the harsh conditions and atmosphere which becomes a threat to their life. Child labour leads to underdevelopment, incomplete mental and physical development, which in turn results in retarded growth of children.

1.INTRODUCTION

Child labour has been an international concern because it damages, spoils and destroys the future of children. The problem of child labor is a serious matter not only in India but also in other developing countries. It is great social problem. Children are the hope and future of a nation. Yet, there are millions deprived children in our country who have never known a normal, carefree childhood.

The law in Indian soil says that any child below age of 14 cannot be employed either in a factory or office or restaurant. In fact, India's international business has been severely affected in many cases because child labors, violating human rights, have been used in some stage or the other in manufacturing, packaging a transport of those items. And, in a large number of cases of export of ready-made garments, prawn and several other items from India has been rejected on grounds of child labor being used.

Truly speaking child labor is frequently utilized in India in various places of production and service e.g., small scale industry, restaurant service, domestic aid, shopkeeper's assistant, stone breaking, book binding, in fact in every house-hold industry.

2. DEFINITIONS**2.1 International Labour Organisation (ILO)**

defines the term *child labour* as, "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 or 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."

2.2 UNICEF

defines child labour differently. A child, suggests UNICEF, is involved in child labour activities if between 5 to 11 years of age, he or she did 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. UNICEF in another report suggests, "Children's work needs to be seen as happening along a continuum, with destructive or exploitative work at one end and beneficial work – promoting or enhancing children's development without interfering with their schooling, recreation and rest – at the other. And between these two poles are vast areas of work that need not negatively affect a child's development."

2.3 India's Census 2001

office defines child labor 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 laborers into two groups: Main workers are those who work 6

months or more per year. And marginal child workers are those who work at any time during the year but less than 6 months in a year."

2.3 The Factories Act of 1948:

The Act prohibits the employment of children below the age of 14 years in any factory. The law also placed rules on who, when and how long can pre-adults aged 15–18 years be employed in any factory.

2.4 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.

2.5 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.

2.6 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.

2.7 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.

3. CHILD LABOUR RIGHTS IN INDIA

- The Child Labour Act, 1986.
- The Factories Act, 1948
- The Mines Act, 1952
- The Bonded Labour System Abolition Act
- [In constitution of india](#)
- Article 24 provides: strictly prohibits children to work in hazardous environment.
- Article 21, 45 gives the right to education to all the children below the age of 14years.
- Article 39 declares the duty of the State to provide the children a free and facilities to develop in a healthy manner and in conditions of freedom and dignity.
- Child labour in domestic work has been strictly banned by the Government, because of the increased cases of child abuse and sexual abuse of children especially girl child.
- The government has a special cell to help children in exploitive circumstances. These cells comprise of social inspectors, as well as other administrative personnel, employed specifically to deal with child labour issues.
- There are many organization which aims to stop the child

labour on global level such as CRY, UNICEF, ILO etc.

- To stop child labour is not only governments but each individual's social responsibility, as children are assets of a nation.

4 Issue

- Poverty
- child trafficking
- ignorance of parents, discrimination of gender
- children are easily targeted only for the reason that they cannot raise their voice as adults.

5. THE CHILD LABOUR (PROHIBITION AND REGULATION) AMENDMENT ACT, 2016

At first glance, the >Child Labour (Prohibition and Regulation) Amendment Act, 2016, passed last month in Parliament, seems progressive. It prohibits "the engagement of children in all occupations and of adolescents in hazardous occupations and processes" wherein adolescents refers to those under 18 years; children to those under 14. >The Act also imposes a fine on anyone who employs or permits adolescents to work. However, on careful reading, the new Act suffers from many problems. One, it has slashed the list of hazardous occupations for children from 83 to include just mining, explosives, and occupations mentioned in the Factory Act. This means that work in chemical mixing units, cotton farms, battery recycling units, and brick kilns, among others, have been dropped. Further, even the the ones listed as hazardous can be removed, according to Section 4 — not by Parliament but by government authorities at their own discretion.

Two, section 3 in Clause 5 allows child labour in "family or family enterprises" or allows the child to be "an artist in an audio-visual entertainment industry". Since most of India's child labour is caste-based work, with poor families trapped in intergenerational debt bondage, this refers to most of the country's child labourers. The clause is also dangerous as it does not define the hours of work; it simply states that children may work after school hours or during vacations. Think of the plight of a 12-year-old coming home from school and then helping her mother sew umpteen collars on shirts to meet the production deadline of a contractor. When will she do her homework? How will she have the stamina to get up the next morning for school?

5.1 Previous laws

India has passed a number of laws on child labour since Independence. Article 24 of the Constitution prohibits employment of children below the age of 14 in factories, mines, and other hazardous employment. Article 21A and Article 45 promise to provide free and compulsory education to all children between the ages of 6 and 14. In 2009, India passed the Right of Children to Free and Compulsory Education Act (RTE). But the amendments in the new law make it practically impossible to implement the RTE. Its clauses put such a burden on poor low-caste families that instead of promoting education, the Act actually increases the potential for dropouts. And parents, scared of the huge fines that they may have to pay for employing their children, are likely to lie about school attendance and may unwillingly comply with contractors in employing them.

A number of laws have also addressed what to include and omit in the list of hazardous occupations. In 1986, the Child Labour (Prohibition and Regulation) Act had prohibited the employment of children below the age of 14 in hazardous occupations identified in a list by the law. After much discussion and expansion, the list included 83 occupations. The National Policy on Child Labour of 1987, implemented in 1988, adopted a gradual approach that combined the strict enforcement of laws on child labour with development programmes to address the root causes of child labour like caste and poverty. It focussed on the rehabilitation of children working in hazardous occupations. The Central government provided a Rs.6 billion fund for implementing the policy. Unfortunately, this budget has been cut massively in education (28 per cent) and for women and children (50 per cent) in the last two years alone, leading to the the closure of 42,000

schools. The Education for All initiative and the Mahila Samakhya programmes have also been downsized, leading to reports of increased trafficking of tribal and minority girls from Odisha and Jharkhand. Taxes charged for the Beti Bachao, Beti Padhao campaigns have reportedly been misused. The only funds for the rehabilitation of children are through monies and assets seized from convicted employers.

5.2 Reversing gains

Not only do the new amendments reverse the gains of the 1986 Act, but actually contradict the Juvenile Justice (Care and Protection) of Children Act of 2000 that makes it punishable for anyone to procure or employ a child in a hazardous occupation. They also contravene the International Labour Organisation's (ILO) Minimum Age Convention and UNICEF's Convention on the Rights of the Child, to which India is a signatory. According to UNICEF, a child is involved in child labour if he or she is between 5 and 11 years, does at least one hour of economic activity, or at least 28 hours of domestic work in a week. And in case of children aged between 12 and 14, 14 hours of economic activity or at least 42 hours of economic activity and domestic work per week is considered child labour.

The devastating health consequences of the new Act may be the worst blow on India's poor yet. There are 33 million child labourers in India, according to UNICEF. As per the 2011 census, 80 per cent of them are Dalits, 20 per cent are from the Backward Classes. This law will restrict these children to traditional caste-based occupations for generations.

If the amendments intended to preserve Indian art and craft by enabling parents with traditional skills to pass them on to their children, this should be done through reform and investment in education. Slashed budgets should be restored; mid-day meals should re-instituted; and secure housing should be provided through the Sarva Shiksha Abhiyan boarding schools to homeless children. Artisans should be hired as teachers to pass on traditional knowledge and skills to the next generation.

6 CHILD LABOUR CASES BY SC OF INDIA

- **M.C. Mehta vs State Of Tamil Nadu And Others on 10 December, 1996**

The aforesaid would either see an adult (whose name would be suggested by the parent/guardian of the concerned child) getting a job in lieu of the child, or deposit of a sum of Rs.25,000/- in the Child Labour Rehabilitation-cum- Welfare Fund. In case of getting employment for an adult, the parent/guardian shall have to see that his child is spared from the requirement to do the job, as an alternative source of income would have become available to him.

To give shape to the aforesaid directions, we require the concerned States to do the following :- (1) A survey would be made of the aforesaid type of child labour which would be completed within six months from today.

- **Civil Writ Petition No.9968 Of ... vs State Of Punjab on 9 April, 2013**

completed his fourteenth year of age. Thus, virtually there is no prohibition of child labour in case of children who are more than 14 years but less than 18 years of age. Furthermore, this Act focuses on the prohibition of employment of children in certain specified work places, which are harmful for the children, and there is no absolute prohibition. At the same time, now, RTE Act creates an obligation on the part of State to provide free and compulsory education to all children aged between 6 to 14 years. This is now the constitutional obligation as well. As right to education is made fundamental, it would, therefore, follow that as far as children up to the age of 14 years are concerned, since they are to be provided free education, there would be absolute ban/bar and prohibition from child labour.

7 CONCLUSION

In conclusion it can be said that the problem of Child Labour exploitation is still burning issue in India. The disease spreading day

by day to tackle the problem we have to find proper and effective mechanism. Government of India should form separate mechanism for effective implementation of Education policy in India. The Education policy of Government in existence is not satisfactory not capable to fulfill their economic needs. The negligent behavior of parents indulges children in to work which is one of the risks to their socio-economic status. The various organizations in the area of Child Labour, child right violation, child abuse is taking efforts to protect and eradicate the same, and the Parents of the children make aware that temporary gain is not helpful to their family. The efforts shall be taken from the Government with help of NGOs in the area of small family norms, compulsory education, and so on. The picture is clear that the problem of Child Labour can only eradicate if there is joint efforts of Governmental agencies and NGOs actively working in the same area.

REFERENCES

- 1 <https://www.importantindia.com/8734/short-essay-on-child-labor/>
- 2 <https://blog.ipleaders.in/laws-related-child-labour-india/>
- 3 <http://www.indianchild.com/chidlaws/child-labor-laws-in-india.htm>
- 4 <http://www.childlineindia.org.in/pdf/THE-CHILD-LABOUR-PROHIBITION-AND-REGULATION-AMENDMENT-ACT-2016.pdf>
- 5 <http://www.thehindu.com/opinion/columns/A-law-that-allows-child-labour/article14560563.ece>
- 6 <https://indiankanoon.org>