

Child Labour in India: The Genesis and the Prognosis

“Everything that was to be said has been said As no one listens, let us say it again”.

GIGO

Child Labour is not a recent phenomenon and again, not confined to a particular State. According to 1996 UNICEF and ILO sources, the number of child Labourers in India may be anywhere between 14 to 100 million out of approximately a total 246 million Child workers in the World. Thus, one out of every six children in the world today is involved in child Labour.

Inclusive Definition of Child Labour: Conceptually Child Labour should have a wider construct and the artificial distinction between “Child Labour” and “child work” should be done away with¹. Those who support the narrower definition do it in order to reduce the size of Child Labour. However, the distinction is essentially misplaced because children play a major role in the economy in a variety of ways. Traditional connotation of Child Labour is that it includes all those children who are all “economically active” in the age group of 5 years to 14 years if they work regularly and receive payment for it in cash or kind.

According to U.N.O and I.L.O, child Labour is to be considered if “State parties recognize the Right of the Child to be protected against economic exploitation from performing any work that is likely to be hazardous and interferes with Child’s education or to be hazardous to Child’s Health or physical, mental, spiritual, moral or social development”. Child work is a wider concept and includes Child Labour as well. It is inclusive of all work whether paid or unpaid, domestic or non-domestic work, full-time or part-time work. ILO does not exclude work in House-holds or family farms from Child Labour.

***** Prof. Veer Singh, Vice-Chancellor, NALSAR University of Law, Hyderabad (India)

¹ Work may be defined as participation in any economically productive activity with or without compensation and such participation could be physical and / or mental and direct or indirect including work in family enterprises or work by way of self-employment like begging, rag-picking etc.

Thus, it is any kind of work children are made to do that harms or exploits them physically, mentally, socially or by preventing access to education. However, one must understand that all work is neither bad nor exploitative. Voluntary part-time jobs like Newspaper delivery, summer jobs to earn some pocket money or work voluntarily undertaken to earn and enhance skills do not interfere with their normal mental and physical growth and schooling.

Broader analysis of the data shows that largest number of children (about 70%) are working agriculture, commercial hunting, fishing and forestry. About 8% work in whole sale and retail trade , restaurants and hotels and another 8% work in manufacturing. Majority of children work in informal and unorganized sectors which are beyond the Legal Prohibition, abolition and regulation both in theory and / or in practice. This leads to the worst forms of child Labour, Child abuse and exploitation. According to U.N. estimate, there could be 20 million bonded Child Labourers world-wide. About 2 million children are trafficked each year across international borders. Some one million children enter the sex trade. At any time, more than quarter million children under the age of 18 years, both girl and boys, fight as soldiers in Government and Non-Government Armed Forces in more than 30 countries. Domestic work is the largest employment category for girls under the age of 16 years in the world. 73 million working children are less than 10 years old. Added to that, 22,000 children die every year in work related accidents.

Position in India: India has the dubious distinction of being a nation with largest number of Child workers in absolute terms. The statistics on number of Child Workers in India in different age groups has not been collected systematically and thus, no authentic figures are available. Estimates differ by wide margins from 14 million to 40 million. In India, the official statistics shows that only 11.28 million children are Child Labourers whereas out of a population of 203 million children in the age group of 5 years to 14 years, almost 100 million children are out of school system. Thus, most of them are working in and out of House holds in rural areas and are kept out of official statistics on Child Labour. They are employed in some of the most hazardous occupations like

cracker-making, diamond polishing, glass and brass-ware, carpet-weaving, bangle-making, lock-making, mica-cutting, artillery shell-collection from firing ranges, smuggling of Narcotics, illicit liquor, child Sex trade, labour bondage, pesticide spraying on farms and plantations, Hotels and eateries and domestic work.

The first step in the direction of abolition and Prohibition of child Labour in India is to understand the causes of child labour in a complex socio-legal context.

- **Poverty is one of the causes of Child Labour:** The unrelenting poverty forces parents to pledge and sell their children into labour bondage. A study reveals that child's income accounts for 34 to 37 percent of total House-hold income. Child Labour Bondage refers to the phenomenon of children working in conditions of total serfdom so as to pay debts incurred not by them but their parents. Poorest of the poor among lower castes and tribal are more vulnerable to labour Bondage. In many cases, children are sexually abused by some one at home, by rich paedophiles, fake adoptive parents, brothel keepers. Child prostitution which was not very prevalent in India earlier, has now grown to dangerous magnitude. In absolute terms, India may have the largest number of Child prostitutes today and many Paedophile-rackets have been exposed in some of the sea-resorts in India. On account of poverty, some children are given in adoption who later on are abused sexually and exploited as hard manual labour. A number of child girls are trafficked into commercial prostitution. Many are married to rich old people in sham marriages and all such girl ultimately end up in brothels or harsh domestic employments.
- **Inadequate schools:** complete lack of schools and even the expense of schooling lead to Child labour. Children who have no access to schooling are forced to do work so as to fill their idle time and to contribute to family income. The hierarchial feudal social order ensures the social stratification in terms of different classes, even castes and it is further strengthened by lack of education which undermines the capabilities of the poor vulnerable sections of people. Education system has been highly elitist and it limits social mobility of the lower

- **Social attitudes:** The attitude of parents also promotes Child Labour. Children are seen as economic assets and a source of income-earning for their parents as one of their pious duties. Moreover, many parents feel that children should work in order to develop skills useful in their job market. Many children are put on job as apprentices in unorganized and informal sectors like Hotels, auto-repair shops, hair-cutting saloons. They are mostly unpaid during the period of apprenticeship and devoid of all legal protection, they are exploited, abused in variety of ways.

Emerging International Legal Regime on Child Labour:

Every year, the world community celebrates June 12 as the Anti-Child Labour day. With the establishment of I.L.O; efforts were made to evolve legal standards on various Labour issues including child Labour. Some of the main International Instruments include:

- Adoption of minimum Age (Industry) Convention (No.5) 1919.
- Adoption of First Forced Labour Convention (No.29) 1930.
- Adoption of Minimum Age Convention (No.138) 1973.
- Adoption of U.N. Convention on Rights of the Child 1989.
- Establishment of the International Programme on Elimination of child Labour (PEC) 1992.
- Stockholm Declaration and Agenda for Action 1996.
- Adoption of Declaration on Fundamental Principles and Rights at Work 1998.
- Adoption of Worst Forms of Child Labour Convention (No.182) 1999.
- Adoption of 12 June as World Day Against Child Labour 2002

- First Global Economic Study on the Costs and Benefits of Elimination of Child Labour.

India: The National Policy and Laws on Child Labour:

Over the years, India has evolved a very comprehensive Legal framework, although largely ineffective, with the ultimate objective of total elimination of child Labour in all its forms. The objective calls for a comprehensive legal policy, statutory laws and child welfare programmes.

The Indian Constitution contains the main policy postulates:

- Article 24 of the Constitution provides that no child below the age of 14 years shall be employed in any factory, mine or any hazardous employment.
- Article 39(f) enjoins on the state to ensure that the tender Age of children is not abused and that childhood and youth are protected against exploitation and against moral and material abandoement.
- Article 45 mandates the State to provide for early Childhood care and education for all Children until they complete the age of six years.
- Article 51-A(K) makes it fundamental duty of every citizen who is parent to provide opportunities for education of his Child between the age of six and fourteen years.
- Article 21-A (added by 86th Amendment 2002) provides for Right to Education: The state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may, by Law, determine.

Child Labour has emerged as an increasingly important issue in the national context, reflecting heightened sensitivity to the problem at all levels. Since child Labour is a complex socio-economic problem and therefore, it demands a holistic approach. The plethora of Laws enacted over the years have a twin focus – one, to enact Child Labour specific Laws which abolish, prohibit and regulate Child Labour and second, to tackle

poverty and other causes which lead to Child Labour. The second category of Laws include employment generation and income security law as also laws which make education of Children free and compulsory under right to education as fundamental rights. The important statutes include:

- Children (Pledging of Labour) Act 1933
- Bonded Labour system (Abolition) Act, 1976.
- The Child Labour (Prohibition and Regulation) Act 1986.
- National Rural Employment Guarantee Act 2005
- Right of children to free and Compulsory Education Act 2009
- Proposed Food Security Bill 2010

In 1979, Government of India constituted Gurupadswamy Committee to study the issue of child Labour in India. It recommended that as poverty continues, it would be difficult to eliminate Child Labour altogether and therefore, the alternative was to prohibit Child Labour in Hazardous Occupations and to regulate conditions of work in other occupations. A multiple policy approach is needed. As a consequence, the Child Labour (Prohibition and Regulation) Act 1986 was enacted. The enforcement of Child Labour Legislation has faced number of hurdles, mainly because:

- Employers, Parents, Law enforcers do not perceive Child Labour as something undesirable.
- Informalization of Child Labour: Lack of statistics on Child Labour, on mobility of Child workers from informal to formal sectors' and vice-versa and lack of efficient enforcement machinery.
- Low conviction rate: Long delays in filling of cases, corruption of enforcement machinery, lack of evidence as to age of Children and other technical reasons virtually lead to a situation where conviction of offenders becomes impossible and employers of Child Labour violate the laws with impunity.

The Supreme Court in numerous cases observed that all laws on Child Labour including the constitutional mandates have been violated with impunity and state system has failed

to do its duty in enforcement of these laws. One of the important Judgement (**M.C.Mehta V. State of Tamil Nadu and others.**, AIR 1997, SC 699) directed that

- (1) Offending employer must be asked to pay Rs.20,000/- as compensation to every child employed in violation of CLPR Act 1986.
- (2) A Child Labour Rehabilitation-Cum-Welfare Fund was to be established in every district
- (3) Employer should be asked to recruit any adult suggested by parents of children who are removed from work.
- (4) Where alternate employment could not be made available, parents of the child concerned would be paid Rs.25,000/- from the corpus provided the parent sent the child to school.

Numerous Supreme Court Judgements during the period 1986-1997 generated a renewed interest in Child Labour issues in India. A number of NGOs and social action groups emerged like Child Relief and You (CRY) and others to pressurise the Government to fulfill the constitutional mandates of abolition of Child Labour and providing for compulsory and free education of children.

The National Policy on Child Labour (NPCL) 1987 suggests a gradual and sequential approach to

- Eliminate Child Labour Bondage in all its forms
- Completely prohibit employment of children in ever expanding list of hazardous occupations.
- Implement various Poverty alleviation, employment generation programmes and schemes
- Provide for rehabilitation of Child workers
- Provide for their free and compulsory education.

Some of the poverty alleviation Schemes launched already include Nehru Rozgar Yogna (1989), Integrated Rural Development Programme (IRDP) (1978). In recent years, Government has played a very pro-active role towards the final goal of elimination of

Child Labour in India. The National Rural Employment Guarantee Scheme (NREGA) launched in 2005 has been a rare success in most of the States. It has secured minimum of one hundred days of paid work to the rural unemployed poor. This has a considerable impact in checking migration of poor workers to other areas in search of work and livelihood. Consequently, their children have fair chance of stable and uninterrupted schooling. Their Children now are less prone to labour bondage, exploitation as Child workers on account of extreme poverty. NREGA is perhaps the first major rural development programme which seeks to deliver its benefits with in-built safe-guards against leakages through a right to information on the programme, provisions for social audit and social accountability.

Another powerful legislative response for abolition of Child Labour in India is the recent enactment of The Right of Children to Free and Compulsory Education Act 2009.

The Act makes the guarantee of Fundamental Right to Education for children in the age group of six to fourteen years a reality. The main features of the Act include:

- Compulsory Education casts an obligation on the appropriate (Central and State) Governments to provide and ensure admission, attendance and completion of elementary education.
- The compulsory education shall be totally free and parents shall not be required to pay any fee, expenses or charges
- The Compulsory Free Education shall be satisfactory and of equitable quality in the formal school system with prescribed standards.
- The duties, responsibilities of the appropriate Governments, local authorities, parents, teachers and schools have been provided for in the Act.
- A system for protection of the right of the Children and a decentralized grievance redressal system is in-built in the Act.

There is a proposal that even private schools which are not supported by Government shall have the obligation to fill twenty five percent seats from amongst Children from disadvantaged and weaker sections and expenses incurred on such children by such

private school shall be re-imbursed by governments. The scheme on Compulsory Free Education shall make a major impact in elimination of Child Labour.

Another major initiative in the direction of abolition of Child Labour through alleviation of extreme poverty is the proposed bill on Food Security for all families below the Poverty Line (BPL). About 38% of the population is estimated to qualify for BPL status. Every BPL family is guaranteed food grains of 25 to 30 kg per month at a highly subsidized rate of Rs.3 per kg. It is also proposed to provide them cooking oil and pulses at subsidized rates. Earlier, the scheme Antyodaya Anna Yojna (AAY) launched in 2000 aimed at food security for all and creating a hunger free India in the next five years could not achieve the deserved results on account of inefficient and corrupt management of the Public Distribution System (PDS). If the scheme is implemented with a clear funding model and efficient delivery system, children of vulnerable groups like Dalits, Tribals, house-holds headed by women and old persons, shall have an opportunity to escape Child bondage, forced Child Labour and to get Compulsory Free Education at formal schools.