

LEGALFOXES LAW TIMES

CHILD LABOUR - A FAILURE OF GOVERNMENT?

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Child labour - A failure of government?

Abstract

The term “child labour” can only be depicted and described as work deprives the children of their childhood. The work which actually affects them mentally, physically and could be nothing but harmful for their future as well as the country . As per the 2011 census , there are 10.1 million working children between the age group of 5 - 14 years . The child labour protection laws of India states that the minimum age at which a child can start working cant be below the compulsory schooling age of 14 yrs. It also states the age group of a children between 14-18 yrs as an "Adolescent". This allows the age group to be employed except in the listed hazardous occupation.

The 2008 International Labour Organisation study suggests that illiteracy resulting in a child going to work, rather than a quality primary and secondary school. it limits the child's ability to get a basic educational grounding , which would in normal situations enable them to acquire skills and improving their prospects for a decent adult working life.

Child labour is both the cause and consequence of poverty. Children think its fit to work and support their families financially by supplementing income. There are laws to prevent child labour or forced labour, however the question is are we actually helping them? According to UNICEF, India ranks high on the list of countries with large number of labourers in the world under 14 yrs of age. It also points out the shortage of schools, classrooms and teachers particularly in rural areas where 90% of child labour problem persists . Isn't this a failure of government ?

These children are the future of the country who are involuntarily working at the cost of their freedom and education .The purpose of this study is to furnish a clear understanding of the child labour laws in India and highlight the failure on part of the government as well the country as a whole. Through this research paper I would also like to examine the nature of the work for the age group of 14 -18yrs and justify its nature. Does child labour improve the socio economic

condition of the country or even that of the family ? Or is it possible to justify child labour under any circumstances? Do we need child labourers when there are millions of jobless adults? It is hoped that this paper will develop a limpid understanding and knowledge about the current scenario of child labour and to what extent the laws of India are useful to its society.

Chapter 1 - INTRODUCTION

“The children are the rock on which our future will be built, our greatest asset as a nation.”¹

Child labour, a failure of government ? If we look at these two word “child labour” there is no possibility to link these words in a positive way. But what if we separate these two words and then try to look at a totally different meaning they bring to us. As the quote above states that children are the future of our country and the greatest asset for the nation as well as for their families. But can we say that our future generation is safe?

Well! There are many possible answers to this single question. If one of the answer is that, there are n number of child protection laws in India and there are laws to prevent forced labour as well. But the whole conversation will come to and end if we try to find out the answer to this simple question i.e. “Are we actually helping them?”

Child labour has been a significant worry in the world since it affects the children both intellectually and truly and it likewise decimates the eventual fate of those children. Child labour is one of the most sensitive issue in India as well as in other creating nations. It is generally common in creating nations in light of poverty. It is an extraordinary social issue since children are the expectation and fate of any country. There are numerous laws sanctioned to deny child labour however they are insufficient. As per 2017 statics, India is one of the main nations in Asia, having an astounding 32 million childrenutilised in different types of child labour.

¹ Quote by Nelson Mandela.

In child labour (prohibition and regulation) Act 1986 , “child” is defined as a person who has not attained 14 years age . In other words we can say that child labour is basically children working in factories and industries who are below the age group of 14 yrs which is against the law. Every child has its own dreams and expectations from the outer world but unfortunately the children are forced to work in factories, industries, hotels etc, due to the social economic problems. If we look at it closely child labour is not the main problem but what causes child labour. In order to vanish child labour first we need to focus on socio economic problems of the society at large.

Child labour is a frightening reality of India and it can only be vanished through political will, aggregate activity/collective action and a feeling of compassion towards the children who are deprived of their childhood. In this research paper we will discuss about some of the causes of child labour. Hunger works as one of the biggest enemy for these children, also the burden to support their families economically. As compared to the cities, the wages vary in the remote areas . Also this is the major reason why there is a great shift from states like Bihar, Jharkhand, Patna, Chhattisgarh to big metropolises like Delhi, Mumbai, and all other cities with industries and commercial work. So far poverty is the main reason, as in search of food and better living, the only option they see is to work in factories and industries so that they can support their families. This not only results in child labour but also frame their future at stake . These child are literally struggling for every mouthful of food each day. Also it is due to lack of wages in the backward areas, that these children are encouraged to participate in the industries and factories work in metropolitan cities which can help them earn little more money.

If we look at all the laws and protections which are provided to the children, can we say that its enough to eradicate the child labour practices prevailing in India ? Well if we try to look into this matter than we can easily examine that its not the laws but the poor implementation of these laws which needs to be kept in highlight.

There are quite a number of times we see people talking about their rights. Children are for the most part truly, intellectually and monetarily unprotected. In this time of globalization, dealing with child's privilege/rights at each stage has taken a secondary lounge. This influences the entire worth framework, yet in addition their current social and financial needs. Almost certainly the eventual fate of humankind relies upon children to a huge degree, and still, after all that an extremely halfway and restricted methodology has been taken into consideration forembacing

these children on the level of social and political motivation. This underestimation is much worse when the child is either vagrant, a dejected, a destitute, a child labour, a fortified labour, a residential assistance, a road kid, a genuinely or a slow-witted children. In such conditions, they remain for the most part in uncared state and turned out to be exceptionally defenceless against wrongdoings which are executed against them. Infringement of Child Rights are snared to social wrong. It ranges from real wrongdoings to disregard by society and unsuitable child rearing, guiltlessness, inability, inappropriate consideration, absence of good direction and non presence of good government managed savings framework are a portion of the significant purposes behind youngsters' proceeded with powerlessness and abuse.

Chapter 2 - ANALYSIS OF LAWS AND POLICIES FOR PROTECTION OF INTEREST OF CHILDREN IN INDIA

The term 'Child' isn't defined in the Indian Constitution. As per Article 1 of the UNCRC, 1989, 'a child implies each individual beneath the age of 18 years except if, under the law relevant to the child, majority is accomplished earlier'. The lawful meaning of child in general rely on the reason. There are number of enactments in India which characterises the term 'child' contingent on the reason. Under the IMA, 1875 the period of majority is eighteen years² and if there should be an occurrence of a minor for whom a guardian is appointed or whose property is under the supervision of the Court of Wards the age of majority is 21 years.

If we look at the CLA, 1986, child is who has not attained the age of 14 years.³ Also if we talk about the definition of child given under JJA, 2000, 'juvenile' or 'child' is the one has not attained the age of 18 years.⁴

The UNCRC⁵ is an extensive, universally official concession to the rights and privileges of children, embraced by the UNGA⁶ in 1989. It provides children's considerate and political rights,

² The Indian Majority Act, 1875

³ The Child Labour (Protection and Regulations) Act, 1986

⁴ Juvenile Justice (Care and Protection Act), 2000

⁵ United Nations Convention on the Rights of the Child

social, monetary and cultural rights (like a satisfactory way of life) and the rights to protect themselves from misuse and abuse. A Child is defined in TheUNCRC as a person under 18 years of age.

The children are the best endowment of God to man, our generally valuable and significant resources. The government assistance and improvement of any network relies to a great extent upon the wellbeing and prosperity of its children. It has been said 'who hold spirits of the youngsters

holds the nation'. The physical and emotional wellness of a country is resolved generally in the way where it is moulded in beginning times. Justice V.R. Krishna Iyer⁷ says it is our duty to open the doors of possibilities for these young children, so that their future is safe, healthy and bright.

India has additionally taken compelling measure under national level. In order to put a stop on child labour, there has been a lot of statutory advancement measures and protective laws in India. The constitution of our country has deliberately combined arrangements to make sure about mandatory rudimentary command just as the work security for the youngsters. A lot of proposals and recommendations have been made by the Law Commission in India, considering the sensitive. The COI⁸, also provide definite rights to children and to prevent child labour practices such measures are given below :

1. No child who is below 14 years of age shall be employed in any factory, plant or mine or occupied with any unsafe and hazardous work.
2. Its the responsibility of the State to coordinate its approach towards making sure about the wellbeing and quality of labourers, men and women and make sure that the young children are not mishandled and also to keep a check that these young children are not forced by their needs to sign up for jobs which are not suitable for their age and for their future.

⁶ UN General Assembly

⁷ Justice V.R. Krishna Iyer

⁸ The constitution of India

3. Facilities and opportunities are provided to these children so that they can grow themselves in a healthy manner where there is freedom and dignity and that childhood and youth are protected against any kind of abuse and exploitations.

4. The state will give free and mandatory education for all the children until they complete the age of 14 years.

5. The state will give free and mandatory education to all children between the ages of 6 to 14 years as such a way as the state may by law decide.

There are many constitutional provisions which are related to children , because the ones who framed the Constitution were totally aware about the fact that the growth of the country or the nation is in the hands of the children of the country. And the significant growth of the country can be attained only by the advancement and growth of its children , keeping this in mind it becomes very important to safeguard the children of the country from being exploit and abused.

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There are many provisions of Indian Constitution which are related to children:

Under Article 21A , it states that it is the duty of the state to provide free and compulsory education to all the children who fall under 6 to 18 years of age.⁹

Whereas Article 24 provides that no child who is below the age of 14 years shall be employed to work in any factory ¹⁰. Also the age group of a children between 14-18 yrs is an "Adolescent". This allows the age group to be employed except in the listed hazardous occupation.

Article 39(e) provides policy towards securing that the health and strength of workers. Its the responsibility of the State to coordinate its approach towards making sure about the wellbeing and quality of labourers, men and women and make sure that the young children are not

⁹ Article 21 A (Indian Constitution)

¹⁰ Article 24, (Indian Constitution)

mishandled and also to keep a check that these young children are not forced by their needs to sign up for jobs which are not suitable for their age and for their future¹¹

Article 39(f) provides strategy towards making sure that the children are given chances and facilities to create in a solid way and in states of opportunity and pride and that children and youth are secured against abuse and against good and material surrender.¹²

Article 45 provides that the state shall provide education and childhood care for all the children until they attain the age of 6 - 14 years.¹³

Besides this, the children also have rights which are equivalent to all the citizens of India. Article 14 of the Indian Constitution states that the state has the responsibility to treat every person equally and to protect all its citizens which also includes foreigners. It also states that there will be no discrimination between the people since everyone is equal in the eyes of law and will be treated equally and protected by the law equally in similar circumstances.¹⁴

Article 15 Right against discrimination.

Article 21 is one of the most important articles whose scope has widen with time. It says that every citizen has a right to live and right to personal liberty. The scope of this article is very large since it includes a lot more rights for the citizens to live their life with dignity and not just like mere animal existence.

Article 23 of the constitution provides protection from dealing and trading in something illegal and protection from being forced into bonded labour.

Article 29 states that the interests of the minorities will be protected.

¹¹ Article 39(e) Constitution of India

¹² Article 39(f) Constitution of India

¹³ Article 45 ,Constitution of India

¹⁴ Article 14, Constitution of India

Whereas Article 46 states that it is the responsibility of the state to protect the weaker section of the society from any form of injustice and abuse .

Article 47 states that it is the responsibility of the state to maintain the level of nutrition and look after the health of the publicans the living standards.¹⁵

Apart from the COI, there are many legislations and acts which protects the children our country. Let us discuss few of them:

The ECA, 1938

This is the soonest unrepeated enactment on the rule book controlling the work of under matured people in particular kinds of occupation. It gives: No child who has not finished 15 years old can be employed in any occupation associated with transport of travellers, merchandise or mail by railroads, or a port authority inside the constraint of a port. Restricted security to the children who are inside 15-17 years old. This protection isn't pertinent to children who are employed as either students or are getting professional training.¹⁶



The FA, 1948

The primary Welfare Legislation passed by the Britishers was Factories Act,1881. The execution of the Act was limited: The Act was again revised in 1948 and the key highlights are as per the following Prohibits the work of children underneath 14 years old in factory. Manufacturing plant covers the foundation, which employs at least 10 labourers with the guide of intensity or at least 20 specialists without the guide of power.

People who are between the 14 and 15 years, they can be employed under after limitations given under Section 68, 69 and 71 of the Act. Such people ought to have testament of wellness i.e certificate of fitness gave by a Surgeon and should carry a token giving a reference to such certificate.

¹⁵ Article 15, 21, 23, 29, 46, 47 Constitution of India.

¹⁶ The Employment of Children Act, 1938

The affirming Surgeon ought to follow the system set down in Section 69. They ought not work around evening time for example 12 back to back hours including the period from 10 PM to 6 AM.¹⁷

The MA, 1952

The extent of MA,1952 is constrained. Applies to unearthing where activity to look for or acquiring minerals has been or is conveyed out. Not just precludes the work of any 'child' yet even nearness of a child in any piece of mine which is subterranean or in any open cast working in which mining activity is conveyed on. Adolescent who has finished the age of sixteen years is permitted to work just in the event that he has a clinical testament of qualification for work. Certificate is substantial for a year i.e 12 months only.¹⁸

The CLA, 1986

The Act is a result of different suggestions made by a progression of Committees. There was a consistent interest for a uniform far reaching enactment to preclude the commitment of children in certain different vocations to accomplish this objective, parliament sanctioned the Child Labor (Prohibition and Regulation) Act, 1986.

The CLA which came into power on 23 December 1986. The goals of CLA, 1986 are:

1. Banning the work of children for example the individuals who have not finished their fourteenth year, in determined occupation and procedures.
2. Laying down techniques to conclude alterations to the timetable of prohibited occupation or procedures.

¹⁷ The Factories Act, 1948

¹⁸ The Mines Act, 1952

3. Regulating the states of work of children in employment where they are not disallowed from working.

4. Laying down improved punishments for employment of children disregarding the arrangements of this Act and different Acts which deny the employment of children.¹⁹

JJA 2000

This Act manages the law identifying with juveniles in strife with law and children needing care and insurance, by accommodating appropriate consideration, assurance and treatment by taking into account their improvement needs and by receiving a child benevolent methodology in the settling and attitude of issues to the greatest advantage of children and for their definitive restoration through different foundations set up under the Act.²⁰

RTEA, 2009

Free and mandatory instruction to all children of India in the 6 to 14 age gathering.²¹ No youngster will be kept down, ousted or required to breeze through a board assessment until the culmination of rudimentary education. If a child over 6 years old has not been conceded in any school or couldn't finish their basic instruction, at that point the person in question will be conceded in a class suitable to their age. In any case, if a case might be the place a youngster is legitimately conceded in the class fitting to their age, at that point, so as to be at standard with others, the person will reserve an option to get extraordinary preparing inside such time restricts as might be recommended. Given further that a youngster so admitted to rudimentary instruction will be qualified with the expectation of complimentary training till the finishing of basic training considerably following 14 years.

Evidence old enough for confirmation: For the motivation behind admission to rudimentary instruction, the age of a child will be resolved based on the birth declaration gave as per the Provisions of Birth. Passings and Marriages Registration Act 1856, or based on such other record

¹⁹ The Child Labor (Prohibition and Regulation) Act, 1986

²⁰ The Juvenile Justice (Care and Protection of Children) Act 2000

²¹ Right to Education (RTE) Act, 2009

as might be endorsed. No child will be denied affirmation in a school for absence old enough confirmation A child who finishes basic training will be granted an endorsement. Call should be taken for a fixed understudy educator proportion. Improvement in the nature of education is significant.

Chapter 3 - CURRENT SCENARIO OF CHILD LABOUR

In the previous chapter, we have already discussed the rights of children under national laws, the legislations and the protection given to the children under the Indian constitution. After such long list of Acts and legislations trying to protect the interest of the children, the results are unexpected and really shocking. Well we can say that this is the ugly truth of our society where we have sufficient laws and protection still the problem is prevailing in its strongest form.

There are 33 million children working in different types of child labour in India. It is shocking to know that India is one of the leading countries in Asia where children are employed in child labour in different forms. As per UNICEF, 150 million children are working as child labour worldwide. ²²Then again Article 2 of the Minimum age (industry) show of the ILO, 1919 which has been confirmed by India doesn't permit children under 14 to be employed in any public or private modern endeavour/industrial undertaking, doesn't have any significant bearing for India.

As indicated by a Live-mint report ,the government revised the laws to permit children underneath 14 years of age to work in privately-run companies & media outlets (barring circuses). Not just that revision additionally adjusted the meaning of adolescents - to children between the range of 14 and 18 years old and banished them from working in any dangerous enterprises only.

Current status of Child Labor:

²² A survey by UNICEF, <https://www.unicef.org/india/>

Out of eleven children, there is at least one child in India who try to earn a livelihood ,as indicated by measurements by activity Aid India . There are 5 states in India , that are greatest managers of child labour, that is Bihar, UP, Rajasthan, MP and Maharashtra, according to information provided by save children NGO. And Delhi being the national capital is answerable for a portion of 1M children below the age of 14 yrs, who are working in factories.

An investigation by CRY of evaluation information in the nation shows that the general reduction in child labour is just 2.2 percent year on year, in the course of the most recent ten years. Likewise it has uncovered that child labour has developed by in excess of fifty percent in urban regions.

There are thirty three million labourers between the ages of 5 - 18 yrs in India according to enumeration 2011 information and 10.13 M between the ages of 5-14 yrs.As on average there are four forty four million children in India below 18 years of age group,that consists of thirty seven percent of the total population of the country.²³

The problem is in the proper implementation of laws and abiding the rules related to child labour and their protection. Children till the age 14 yrs have right to education , and according to factories act the age group of 14 - 18 can work in factories but with certain limitations and rules.

But there are children below the age of 14 years who are working in the industries and factories, acting totally ignorant of their future as well as the wellbeing of the country. The only problem or the cause of child labour in such a situation is poverty, debts, professional needs.

Poverty is one of the fundamental driver of child labour. In developing nations poverty is one of the significant disadvantage and the children were considered as assistance to take care of their families, to help their families and to help themselves. Due to poverty, lack of education and joblessness guardians can't send them to schools, rather the children were approached to help them in running a family with the goal that the poor guardians send their children for work in cruel conditions at lower compensation.

²³ <http://www.legalserviceindia.com/legal/article-92-child-labour-in>

The poor financial states of individuals in India compel them to obtain cash. The uneducated look for obligation from cash loan specialists during crisis circumstance .At later purpose of time they get themselves troublesome in repaying the obligations and enthusiasm, subsequently the indebted individuals were made to work for cash banks and afterward borrowers drag their kids also in helping them with the goal that the obligations could be paid off.

There are a few enterprises, for example, the bangle making industry, where fragile hands and little fingers are expected to accomplish exact moment work with outrageous greatness and accuracy. A grown-ups hands are typically not all that fragile and little, so they expect children to work for them and do such a hazardous work with glass. This regularly brought about eye mishaps of the children.

These are just few of the causes which are highlighted in this research paper but possibly there are many more than we can think. These children prefer to work and employ themselves as labourers at such an early stage than going to school.

The primary driver of child labour is higher poverty level .These children have no choice other than working as a labour in the factories child labour for these children is survival. On the off chance that they don't work they will bite the dust of neediness and appetite. They are the eventual fate of India .None of these kids have the benefit to going to class and having the option to go to a house by the day's end. The child labour is common at an enormous scope in the nation. In Punjab it is found in inns, café, tea stalls, for which the regulatory specialists, guardians, educationalist, police authorities and businesses of open authority is dependable. There is absence of usage of child laws. Since legislators and different specialists overlook it and the different offices for the work laws neglects to execute the laws appropriately .Laws remain simply on the paper for which the absence of control of populace and expanding joblessness are the significant causes and lawmakers dread to handle these issues taking into account their vote banks.

Chapter 4 - LANDMARK JUDGEMENT AGAINST CHILD LABOUR IN INDIA

- MC Mehta vs State of Tamil Nadu

The judgement given in this case has become the landmark judgement on child labour, which highlights the picture of child labour in India. It also talks about the important aspects of the Indian constitution in relation to children. This historic judgement also mentioned about the link between child labour and poverty.

Our constitution has tried to protect the children of our country and keeping in mind the future of these children. Our constitution makers were well informed of the situation of the children of India at the time of drafting of the constitution. And the result being that the COI forbid young children from being employed in factories below the age of 14 years under Article 24. Also Article 45 of the constitution has set a responsibility to deliver free and mandatory schooling of children. After the decision of Unni Krishnan, Article 45 of COI has obtained the position of a fundamental right.

In this judgement the court observed that even after protecting the children with such strong laws included in the COI , these children are still oppressed and abused, even after 73 years of free-spirited India. In this case, Young children were employed in its factories in Sivakasi. The court realised that these children were working in such hazardous situation which may increase the number of accidents and harm to these young children. The court provided some effective ways by depending upon Article 39(f) and Article 45 of the COI to improve life of these young children who are being employed in the factories and workplace which are not suitable for them and dangerous to their health as well. Also a committee was formed to review the judgement passed by the court. The committee also provided its report which suggested many commendable recommendations.

The court also stated that despite these laws and provisions to protect the interest of young children, its heartbreaking how the children are still working and being employed in such hazardous situations. Child Labour in India is a severe problem which is still prevalent even after imposing so many provisions.

There are so many possible causes to this problem, the court also stated some of them:

- Shortage of money
- Insufficient wages to adults
- Out of job/ workless
- No adequate household allowance plan for poor citizens
- Resetting from rural to urban areas
- Big family tree
- High availability of young children at low rates
- Insignificant regulations related to free and mandatory schooling.
- Lack of knowledge and unawareness of parents²⁴

The supreme court also mentioned that the only solution to eradicate child labour is to hold on to the compulsory education. The only problem due to which these children have to work is poverty and this is the reason why their parents insist them to get employment in factories rather than sending them to school. This issue will not be solved until and unless these poor citizens are provided with income resources. That is why it is the duty of the state to provide free education to all the children below the age group of 14, since its very difficult for these parents to provide quality education to their children. It is the responsibility of the Inspectors to look after that Article 45 of the constitution is carried out properly. The court also stated that in the matter if providing employment, the parents and the children should be given employment in the same factory or workplace (where the child is engaged). The parents of the child must get employment. Or the parent of that child must be paid the income where alternative employment can't be made available to them. So, if the parents doesn't sent their child to school for seeking education then the employment given or payment made to them in their favour would stop. The court also instructed to run a survey of child labours so that other source of income could be given to help them in their education.

²⁴ <http://lawtimesjournal.in>

Chapter 4 - CONCLUSION

There are numerous laws and administrative offices for child labour, yet it is incapable in controlling progressing child labour. This is conceivable just when there is a participation of the considerable number of segments of the general public and the law authorisation organisations and by expelling or limiting the causes of child labour. The central purpose ought to be on controlling the number of inhabitants in the nation, education of the children and giving adequate funds for its expulsion from the GDP of India.

The remedy to eradicate child labour is only on the hands of government, it is the duty of the government to reduce poverty by providing employment to the parents of the child labour and also by providing them sufficient wages to run their family.

Spreading awareness about the same and educate the children by taking necessary practical steps. The government should allocate the necessary funds to educate and nurture the poor children. We noticed that there are sufficient laws if implemented properly would result in great results but also there are some violators of child labour laws. This is a serious and a sensitive matter which should be dealt at first. Heavy penalties should be imposed on them.

The nearness of an enormous number of child labourers is viewed as a major issue as far as financial government assistance. Children who work neglect to get necessary education.. As far as the state of being of children , kids are not prepared for long tedious work since they become depleted more rapidly than grown-ups. This decreases their states of being and makes the children increasingly defenceless against ailment.

As per the International Labor Organisation (ILO),²⁵ there are huge monetary advantages for developing countries by sending children to class rather than work. Without education, children don't pick up the important abilities, for example, English education and specialised inclination that will expand their efficiency to empower them to make sure about higher-talented employments in future with higher wages that will lift them out of neediness.

²⁵ As per the International Labor Organisation, *BBC NEWS*. Retrieved 20 September 2011.

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