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## A SOCIOLOGICAL STUDY OF HUMAN RIGHTS PERSPECTIVE (WITH SPECIAL REFERENCE TO CHILD LABOUR IN INDIA)

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### ABSTRACT

*Child labour is the practice of having children engage in economic activity, on part or -time basis. The practice deprives children of their childhood, and is harmful to their physical and mental development. Poverty, lack of good schools and growth of informal economy are considered as the important causes of child labour in India. The 1998 national census of India estimated the total number of child labour, aged 4–15, to be at 12.6 million, out of a total child population of 253 million in 5-14 age group. A 2013-2014 nationwide survey found child labour prevalence had reduced to 4.98 million children (or less than 2% of children in 5-14 age group). The 2014 national census of India found the total number of child labour, aged 5–14, to be at 4.35 million, and the total child population to be 259.64 million in that age group. The child labour problem is not unique to India; worldwide, about 217 million children work, many full-time.*



**KEY WORD:** socio-economic development , educational institutions , agriculture.

### INTRODUCTION

Indian law specifically defines 64 industries as hazardous and it is a criminal offence to employ children in such hazardous industries. In 2001, an estimated 1% of all child workers, or about 120,000 children in India were in a hazardous job. Notably, Constitution of India prohibits child labour in hazardous industries (but not in non-hazardous industries) as a Fundamental Right under Article 24. UNICEF estimates that India with its larger population, has the highest number of labourers in the world under 14 years of age, while sub-saharan African countries have the highest percentage of children who are deployed as child labour. International Labour Organisation estimates that agriculture at 60 percent is the largest employer of child labour in the world,[14] while United Nation's Food and Agriculture Organisation estimates 70% of child labour is deployed in agriculture and related activities. Outside of agriculture, child labour is observed in almost all informal sectors of the Indian economy.

Initially, scholars were unsure over extending human rights to children. For instance, the 1948 Universal declaration of Human Rights (UDHR) emphasises that “everyone is entitled to all rights and freedoms set forth in the declaration...” but makes no age qualification to the same. So it is unclear whether it extends to children. However, Art.4 of UDHR has been interpreted as prohibiting exploitation of child labour by interpreting “servitude” to include child labour.

In addition, Articles 23 and 26 of the United Nations Universal Declaration of Human Rights seek to guarantee “just and favorable conditions of work” and the “right to education,” both of which are violated constantly and globally through the exercise of the worst forms of child labor.

In 1966 the International Covenant on economic, social and cultural rights (ICESCR) and International Covenant on civil and political rights (ICCPR) took significant preliminary steps towards modifying human rights according to age, by defining childhood as a state requiring special protection, with rights distinct to those of adults. Even so it was not until 1989 that the Convention on Rights of Children (CRC) clearly spelt out the rights of the child while giving them a special status apart from the adults.

Thus, it should not be surprising that early international legal efforts to address child labour tended to be abolitionist in tone and treated as an aspect of labour market regulation. Next, a prioritization approach was adopted where concentration was on the more abusive forms of child labour. So the ILO adopted Convention 182 on the Worst Forms of Child Labor, 1999, aimed at the immediate elimination of intolerable forms of child labor. The convention requires signatories to work with business groups to identify hazardous forms of child labor and introduce time-bound programs for eliminating them.

Conventions 138 and 182 are recognised as core International Labour Organization (ILO) conventions but unfortunately human rights groups have done much to criticise it. They argue that this artificial division of hazardous and non-hazardous forms of child labour is artificial and made only for the benefit of labour regulations. Child labour in any form is very harmful and exploitative for the children.

Secondly, child labour, as defined by ILO is work done by children under the age of 12; work by children under the age of 15 that prevents school attendance; and work by children under the age of 18 that is hazardous to their physical or mental health. It is an economic activity or work that interferes with the completion of a child's education or that is harmful to children in any way. Such an age based classification is incongruous and is behind time. The right to a childhood cannot be replaced by placing such age barriers which imply at least some work could be done by children at even age 12! Where is the best interest of child seen in such laws?

Fortunately, a human rights approach to child labour was soon adopted by Convention on Rights of the Child (CRC) in 1989. Such rules focus not only on the avoidance of harm to children but as well, on regulation of employment relationship in which working children find themselves and beyond that, on rights of children to education and to participate in decisions that affect their lives, including those related to their employment. This holistic view of child labour as only a part of a child's life is principally what sets human rights approach apart from the labour regulation approach. However, some critique of CRC feel that categorizing child labour as a special category has trivialized their rights and have made them weak and in need of an adult advocate.

Conversely, the defenders of CRC argue that it is through this classification that children gain more rights with legally recognized interests which are specific to their stage in life cycle. The slavery convention, 1926 and Supplementary convention on abolition of slavery, the slave trade, institutions and practices similar to slave trade, 1956 entered into force in 1957 prohibits slavery like practice under Art 1. In recent times Child labour has been read as a slave like practice as it involves economic exploitation. Since children are more vulnerable than adults and are dependent on their parents, it can be assumed that when they are economically exploited by their parents or by their consent, the degree of dependency necessary for work to be qualified as slavery like practice will be attained in most cases.

In the light of ICCPR (art 8(2)) and Supplementary convention on abolition of slavery, the slave trade, institutions and practices similar to slave trade, 1956, Art.4 of UDHR should be interpreted as prohibiting exploitation of child labour as child labour comes under "servitude".

Child labour also comes under the term "forced or compulsory labour" in Art.8(3) of ICCPR. The obligations of state parties under art 8 are immediate and absolute. Thus state parties have to prevent private parties from violating child labour norms. Art 24, ICCPR obliges the state to protect children from economic exploitation.

### CONVENTION ON RIGHTS OF CHILD

United Nations Convention on the Rights of the Child is the first legally binding international instrument to incorporate a full range of human rights such as civil, cultural, economic, political and social

rights for children. The Convention offers a vision of the child as an individual and as a member of a family and community, with rights and responsibilities appropriate to his or her age and stage of development.

By recognizing children's rights in this way, the Convention firmly sets the focus on the whole child. The Convention under Art.32 speaks of economic exploitation of children by making them perform work that is likely to be hazardous 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. The Convention spells out a child's right to education, as well as identifying the forms of harm to which children should not be exposed. Other rights given to children include right "to the enjoyment of the highest attainable standard of health" and to abolish traditional practices that are prejudicial to children's health (Article 24), a right "to a standard of living adequate for the child's physical, mental, spiritual, moral and social development"; parents have the main responsibility for this, but governments are required "within their means" to assist parents, as well as to provide material assistance and support in case of need (Article 27) and a right "to rest and leisure, to engage in play and recreational activities appropriate to the age of the child". Article 22 specifies that refugee children have the same rights as all other children. Article 6 of the convention makes it the obligation of the governments to ensure that children are able to survive and develop "to the maximum extent possible" while Article 11 urges governments to prevent "the illicit transfer and non-return of children abroad". Under Article 19, Governments must take action to protect children against

all forms of physical or mental violence, injury, abuse, neglect, maltreatment or exploitation, including sexual abuse and must provide special protection and assistance to children who are deprived of their own family environment under article 20. Article 35, requires governments to take action to prevent children from being trafficked while articles Article 36 and 39 requires governments to protect children "against all other forms of exploitation prejudicial to any aspects of the child's welfare" and to help children recover from exploitation, neglect or abuse (particularly their physical and psychological recovery and return and reintegration into the communities they come from).

Two other provisions in the Convention are also vitally important for working children. Article 3 says government agencies and other institutions taking action concerning a child or children must base their decisions on what is in the children's "best interests". Article 12 emphasises that when a child is capable of forming his or her views, these should be given due attention, in accordance with the child's age and maturity.

Other conventions of interest include Optional protocol to the convention on rights of child on sale of children, child prostitution and child pornography and Optional protocol to the convention on rights of child on the involvement of children in armed conflict both adopted in May, 2000.

## INDIA AND ITS INTERNATIONAL COMMITMENTS

India has ratified six ILO conventions relating to child labour but have not ratified the core ILO conventions on minimum age for employment (convention 138) and the worst forms of child labour, (convention 182) recognised as the core conventions at the international labour conference which makes it mandatory for the international community to follow certain standards in their crusade against child labour.

Nevertheless, India has taken commendable steps to eliminate child labour. The recent right of children to free and compulsory education Act, 2009 and the preceding 86th amendment exemplifies the same.

Furthermore, the passing of Juvenile Justice (care and protection) Act, 2006 shows India's commitment to a human rights approach to child labour. The Act emphasises on looking into the best interests of the child and allows for social reintegration of child victims. In such a scenario India not signing the core labour conventions does not make a difference in the fight against child labour. India is a party to the UN declaration on the Rights of the Child 1959. India is also a signatory to the World Declaration on the Survival, Protection and Development of Children. More, importantly India ratified the Convention on the Rights of the Child on 12 November 1992.

Other important international initiatives against child labour include the adoption of the first Forced Labor Convention (ILO, No. 29), 1930, Stockholm Declaration and Agenda for Action: States that a crime against a child in one place is a crime anywhere, 1996, establishment of 12 June as the World Day Against Child Labor in 2002 by ILO and the first global economic study on the costs and benefits of elimination of child labour.

### INDIAN LAWS ON CHILD LABOUR

The present regime of laws in India relating to child labour are consistent with the International labour conference resolution of 1979 which calls for combination of prohibitory measures and measures for humanising child labour wherever it cannot be immediately outrun. In 1986 Child labour (Prohibition and regulation) Act was passed, which defines a child as a person who has not completed 14 years of age. The act also states that no child shall be employed or permitted to work in any of the occupations set forth in Part A or in the process set forth in Part B, except in the process of family based work or recognised school based activities. Through a notification dated 27 January 1999, the schedule has been substantially enlarged to add 6 more occupations and 33 processes to schedule, bringing the total to 13 occupations and 51 processes respectively. The government has amended the civil service (conduct) rules to prohibit employment of a child below 14 years by a government employee. Similar changes in state service rules have also been made.

The framers of the Indian Constitution consciously incorporated relevant provisions in the constitution to secure compulsory primary education as well as labour protection for children. If the provisions of child labour in international conventions such as ILO standards and CRC are compared with Indian standards, it can be said that Indian constitution articulates high standards in some respects. The constitution of India, under articles 23, 24, 39 (c) and (f), 45 and 21A guarantees a child free education, and prohibits trafficking and employment of children in factories etc. The articles also protect children against exploitation and abuse. Equality provisions in the constitution authorises affirmative action policies on behalf of the child.

The National child labour policy (1987) set up national child labour projects in areas with high concentration of child labour in hazardous industries or occupations, to ensure that children are rescued from work and sent to bridge schools which facilitate mainstreaming. It is now recognised that every child out of school is a potential child labour and most programs working against child labour tries to ensure that every child gets an education and that children do not work in situations where they are exploited and deprived of a future. Similarly, there are other programmes like National authority for elimination of child labour, 1994 (NAECL) and National resource centre on child labour, 1993 (NRCCL). Recently, government of India notified domestic child labour, and child labour in dhabas, hotels, eateries, spas and places of entertainment as hazardous under the child labour (prohibition and regulation) Act, 1986, effective from 10-10-2006.

National human rights commission has played an important role in taking up cases of worst forms of child labour like bonded labour. In 1991 in a silk weaving village of Karnataka called Magdi it held an open hearing which greatly sensitised the industry and civil societies. It also gave rise to new NCLP programmes.

### JUDICIAL REFLECTIONS

Judiciary in India has taken a proactive stand in eradicating child labour. In the case of *M.C. Mehta v. State of Tamil Nadu and Ors*, this Court considered the causes for failure to implement the constitutional mandate vis-à-vis child labour. It was held that the State Government should see that adult member of family of child labour gets a job. The labour inspector shall have to see that working hours of child are not more than four to six hours a day and it receives education at least for two hours each day. The entire cost of education was to be borne by employer.

The same was reiterated in *Bandhua Mukti Morcha v. UOI* and directions were given to the Government to convene meeting of concerned ministers of State for purpose of formulating policies for

elimination of employment of children below 14 years and for providing necessary education, nutrition and medical facilities.

It was observed in both the case that it is through education that the vicious cycle of poverty and child labour can be broken. Further, wellplanned, poverty-focussed alleviation, development and imposition of trade actions in employment of the children must be undertaken. Total banishment of employment may drive the children and mass hem up into destitution and other mischievous environment, making them vagrant, hard criminals and prone to social risks etc. Immediate ban of child labour would be both unrealistic and counter-productive. Ban of employment of children must begin from most hazardous and intolerable activities like slavery, bonded labour, trafficking, prostitution, pornography and dangerous forms of labour and the like.

Also, in case of PUCL v. UOI and Ors children below 15 years forced to work as bonded labour was held to be violative of Article 21 and hence the children were to be compensated. The court further observed that such a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights.

However, Human rights experts criticise the scheme of payment of compensation envisage in Child labour act and further adopted by the Judiciary with gusto. They say that monetary compensation is like washing away ones conscious which still believes that if a child labour is sent to school he must be compensated for the amount which he might have got if he had worked instead. This only confuses the already divided opinion of the society today which still thinks that poor and needy children are better off working.

## CONCLUSIONS

India has done well in enacting suitable legislations and policies to combat child labour. Nonetheless, its implementation at grass root level is very much lacking. The child labour laws today are like a scarecrow which does not eliminate child labour but only shifts it geographically to other places, to other occupations like agriculture which may be less paying or it might be still continued clandestinely. The lack of a specialised enforcement officer leads to lesser attention being given to child labour legislations. Furthermore, many of the child labourprogrammes remain poorly funded.

Child labour is a complex problem which cannot be eliminated without first attacking it at the roots. Thus, poverty, unemployment, lack of social security schemes, illiteracy and the attitude of society need to be tackled first before any progress can be made. A starting point can be to treat Child labour as a human rights problem and discouraging its manifestation in any form. If the society as such sees child labour as a social malaise, we will be much closer at achieving success.

Lastly, there is a lot of debate over the age from which child labour should be banned. The ILO conventions do not give a definite age, 14 years seems to be the general understanding but CRC defines a child to be below 18 years. Right to education is for children below 14 years and Child labour is prohibited till age of 14 years. This brings the question as to whether children of age 14-18 years are to be denied basic human rights and are to be left vulnerable.

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