

# Bitter Truth of Child Labour in India

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## Abstract

*Child labour is a complex problem that is basically rooted in poverty. The government is quite committed to the cause of controlling and eliminating child labour from India. India has all along followed a proactive policy with respect to the problem of child labour, and has stood for the constitutional, statutory and developmental measures to combat child labour.*

*Child labour laws and legislations have been enacted in our country, but the condition of child labourers still remains the same. This is because of lack of effective machinery for the implementation of such laws as well as the lack of awareness among labourers and employers about the restrictions on the employment of children as workers.*

**Keywords :** Child Labour Problems, Poverty, Unemployment, Education.

**Classification-JEL :** I 24, I 32, J 21, J 16

## 1. INTRODUCTION

'Child labour' can be defined as the work done by children below the minimum legal age of a country which restricts or damages their physical, emotional, intellectual, social or spiritual growth as children.

An economic definition of child labour is "Any work whether manual or mental which is undertaken for monetary consideration is called labour in economics. Child labour refers to work undertaken by a child who is below 14 years of age for wages or it refers to employment of children in gainful occupations."

This definition emphasises on its economic relevance. As per this definition two

points are very necessary- firstly, there has to be mental or manual fatigue for the purpose of earning money and secondly, the work has to be done by children below the age of 14 year.

After a careful perusal of the above definitions it can be said that child labour means work that is done by children under the minimum legal age of a country or area, which restricts or damages their physical, emotional, intellectual, social or spiritual growth. While not all work done by children is bad, most people agree that when we speak of child labour we mean labour that is intolerable or harmful for children, work that denies them the right to fully develop, play or go to school.

Most people agree that when we speak

of child labour we speak of labour that is detrimental to the development of a child both physically and mentally. However, not all work done by children can be termed as child labour. Sometimes work does not harm the children, rather it enhances their development and makes them responsible. This beneficial work done by children can be termed as 'child work'. As opposed to 'child labour', child work is not harmful for the development of children and forms only a part of the life of a child, giving him or her ample time to be educated and to play. For example; when a child helps in his family work for an hour after school, it is not child labour but child-work even if he gets a little money for it. Therefore, child work is enabling, while child labour is disabling.

## 2. CLASSIFICATION OF CHILD LABOUR

Broadly speaking, child labour is divided into two categories, permanent child labour and seasonal child labour. As the name itself suggests, permanent child labour refers to the work that is done by children on a more or less permanent basis. In this case the children hold a fixed job, with fixed working hours for 10 to 12 months in a year. The only criterion for classifying a particular job into child labour of the permanent kind will be the period of time that the child spends at his or her workplace doing a particular job or jobs.

On the other hand, seasonal child labour will be that in which children are employed to do a particular job for a certain period in the year. Examples of this kind of child labour may be the employment of children in tea stalls and restaurants or their employment at construction sites for the completion of a particular job. Such children usually travel from place to place looking for work or migrate to certain places at the time they feel that it will be most suitable for them to get a job. They have no fixed working hours or places to stay.

A more intensive and narrow distinction of child labour will be on the basis of the jobs that children perform. Now a day, children are

employed in almost every field of work. Sometimes they can be used to supplement adult labour or to completely replace adults. Children are employed as agricultural; workers, domestic workers, coolies, hawkers and peddlers, mechanics, painters, odd job men, in mines and quarries, construction and so on. The list is endless for the various types of jobs that child labourers are performing these days.

## 3. LEGISLATIVE PROTECTION TO CHILD LABOUR IN INDIA

Child labour is a complex problem that is basically rooted in poverty. The government is quite committed to the cause of controlling and eliminating child labour from India. India has all along followed a proactive policy with respect to the problem of child labour, and has stood for the constitutional, statutory and developmental measures to combat child labour.

The first act in India relating to child labour was the Enactment of Children (Pledging of Labour) Act of February 1933. The Government of India has always been rallying for the control and subsequent elimination of child labour in India. The post –Independence era has been one, which provides an unequivocal commitment of the government towards the eradication of child labour and betterment of the children in India through constitutional provisions, legislation, policies and programs.

The Constitution of India in Article 39 of the Directive Principles of State policy pledges, “The State shall, in particular, direct its policy towards securing....that the health and strength of the worker, men and women, and the tender age of children are not abused, and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength, that children are given opportunities and facilities to develop in a healthy manner, and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation, and against moral and material abandonment.”

As a follow-up of this commitment, and being a party to the UN Declaration on the Rights of the Child 1959, India adopted the National Policy on Children in 1974. The policy reaffirmed the constitutional provisions and stated, "It shall be the policy of the State to provide adequate services to children, both before and after birth and through the period of growth to ensure their full physical, mental and social development. The State shall progressively increase the scope of such services so that within a reasonable time all children in the country enjoy optimum conditions for their balanced growth."

India has also ratified on December 2, 1992, the Convention on the Rights of the Child which came into force in 1990. This ratification implies that India will ensure wide awareness about issues relating to children among government agencies, implementing agencies, the media, the judiciary, the public and children themselves. The Government's endeavor is to meet the goals of the Convention and to amend all legislation, policies and schemes to meet the standards set in the Convention.

India is also a signatory to the World Declaration on the Survival, Protection and Development of Children. In pursuance of the commitment made at the World Summit, the Department of Women and Child Development under the Ministry of Human Resource Development has formulated a National Plan of Action for Children. Most of the recommendations of the World Summit Action Plan are reflected in India's National Plan of Action.

India's first act on the subject was the enactment of the Children (Pledging of Labour) Act of February 1933. This was followed by the Employment of Children Act in 1938. Subsequently, twelve additional legislations were passed that progressively extended legal protection to children. Provisions relating to child labour under various enactments such as the Factories Act, the Mines Act, the Plantation

Labour Act etc. have concentrated on aspects such as reducing working hours, increasing minimum wage and prohibiting employment of children in occupations and processes detrimental to their health and development.

The Child Labour (Prohibition and Regulation) Act 1986 of India was the culmination of efforts and ideas that emerged from the deliberations and recommendations of various committees on child labour. Significant among them are the National Commission on Labour (1966-69), Gurupadaswamy Committee on Child Labour (1979), and the Sanat Mehta Committee (1984).

The various laws and legislation with regard to child labour in India can be summarised as follows:

#### **4. CHILD LABOUR (PROHIBITION AND REGULATION) ACT 1986**

The Child Labour (Prohibition and regulation) Act was passed in 1986. In essence the Act itself is in violation of Article 14, 21, 23 and 24 of the Constitution of India. But, instead of ignoring the existence of child labour in India, this act aims at recognition of the problem and taking steps to regulate the employment as well as working conditions of the child workers in India. The main reason for the compilation and enactment of this act was to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments.

It prohibits the employment of children below the age of 14 in factories, mines and in other forms of hazardous employment and regulates the working conditions of children in other employment.

#### **5. SUMMARISATION OF THE ACT**

The Child Labour (Prohibition and Regulation) Act 1986 consists of 26 Sections and 2 Schedules which include extensive information on child labour laws and practice.

A few relevant sections of the Act can be elaborated as under:

**SECTION 2: (Definitions)**

In this Act, unless the context otherwise requires :

- (i) "Appropriate Government" means, in relation to an establishment under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government;
- (ii) "Child" means a person who has not completed his fourteenth year of age;
- (iii) "Day" means a period of twenty-four hours beginning at midnight;
- (iv) "Establishment" includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment;
- (v) "Family", in relation to an occupier, means the individual, the wife or husband, as the case may be, of such individual, and their children, brother or sister of such individual;
- (vi) "Occupier", in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop;
- (vii) "Port authority" means any authority administering a port;
- (viii) "Prescribed" means prescribed by rules made under Sec. 18;
- (ix) "Week" means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Inspector;
- (x) "Workshop" means any premises (including the precincts thereof) wherein

any industrial process is carried on, but does not include any premises to which the provisions of Sec. 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply.

**SECTION 7: (Hours and Period of Work)**

- (1) No child shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.
- (2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.
- (3) The period of work of a child shall be so arranged that inclusive of his interval for rest, under sub-section (2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.
- (4) No child shall be permitted or required to work between 7 p.m. and 8 a.m.
- (5) No child shall be required or permitted to work overtime.
- (6) No child shall be required or permitted to work in, any establishment on any day on which he has already been working in another establishment.

**SECTION 8: (Weekly Holidays)**

Every child employed in an establishment shall be allowed in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

**SECTION 10: (Disputes as to Age)**

If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall,

in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.

**SECTION 13: (Health and Safety)**

- (1) The appropriate Government may, by notification in the official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.
- (2) Without prejudice to the generality of the foregoing provisions, the said rules may provide for all or any of the following matters, namely- (a) Cleanliness in the place of work and its freedom from nuisance; (b) Disposal of wastes and effluents; (c) Ventilation and temperature; (d) Dust and fume; (e) Artificial humidification; (f) Lighting; (g) Drinking water; (h) Latrine and urinals; (i) Spittoons; (j) Fencing of machinery; (k) Work at or near machinery in motion; (l) Employment of children on dangerous machines; (m) Instructions, training and supervision in relation to employment of children on dangerous machines; (n) Device for cutting off power; (o) Self-acting machines; (p) Easing of new machinery; (q) Floor, stairs and means of access; (r) Pits, sumps, openings in floors, etc.; (s) Excessive weights; (t) Protection of eyes; (u) Explosive or inflammable dust, gas, etc.; (v) Precautions in case of fire; (w) Maintenance of buildings; and (x) Safety of buildings and machinery.

**SECTION 14: (Penalties)**

- (1) Whoever employs any child or permits any child to work in contravention of the provisions of Sec. 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten

thousand rupees but which may extend to twenty thousand rupees or with both.

- (2) Whoever, having been convicted of an offence under Sec. 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.
- (3) Whoever – (a) fails to give notice as required by Sec. 9, or (b) fails to maintain a register as required by Sec. 11 or makes any false entry in any such register; or (c) fails to display a notice containing an abstract of Sec. 3 and this section as required by Sec. 12; or (d) fails to comply with or contravenes any other provisions of this Act or the rules made there under, shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

**SECTION 16 (Procedure Relating to Offences)**

- (1) Any person, police officer or inspector may file a complaint of the commission of an offence under this Act in any Court of competent jurisdiction.
- (2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.
- (3) No Court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

This Act further provides 2 schedules with a list of the processes and occupation in which the employment of children is prohibited.

**6. THE SCHEDULE**

**Part A - Occupation:**

Any occupation connected with :

- (1) Transport of passengers, goods or mails by railway;
- (2) Cinder picking, clearing of an ash pit or building operation in the railway premises;
- (3) Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train;
- (4) Work relating to the construction of a railway station or with any other work where such work is done in close proximity too between the railway lines;
- (5) A port authority within the limits of any port.
- (6) Work relating to selling of crackers and fireworks in shops with temporary licenses.
- (7) Abattoirs/slaughter Houses.

#### Part B - Processes

(1) Bidi-making; (2) Carpet-weaving; (3) Cement manufacture, including bagging of cement; (4) Cloth printing, dyeing and weaving; (5) Manufacture of matches, explosives and fireworks; (6) Mica-cutting and splitting; (7) Shellac manufacture; (8) Soap manufacture; (9) Tanning; (10) Wool-cleaning; (11) Building and construction industry; (12) Manufacture of slate pencils (including packing); (13) Manufacture of products from agate; (14) Manufacturing processes using toxic metals and substances, such as, lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos; (15) Hazardous processes as defined in Sec. 2 (cb) and dangerous operations as defined in rules made under Sec. 87; (16) Printing as defined in Sec. 2(k) (iv); (17) Cashew and cashew nut decaling and processing; and (18) Soldering processes in electronic industries.

Other child policies of Indian Government are :

#### 7. THE NATIONAL CHILD LABOUR POLICY

Increasing attention is now being paid to strengthening the enforcement machinery related to child labour. Soon after the enactment of the comprehensive Child Labour (Prohibition & Regulation) Act, 1986, the Government of India adopted a National Child Labour policy in 1987, in accordance with the constitutional provisions and various legislations on child labour. The idea of adopting a separate policy on child labour was not only to place the issue on the nation's agenda, but also to formulate a specific program of action to initiate the process of progressive elimination of child labour. The policy consists of three complementary measures:

- (1) Legal action plan: This policy envisages strict enforcement of the provisions of the Child Labour (Prohibition & Regulation) Act, 1986 and other child-related legislation.
- (2) Focus on general development programs benefiting children wherever possible: The policy envisages the development of an extensive system of non-formal education for working children withdrawn from work and increasing the provision for employment and income generating schemes meant for their parents. A special cell - Child Labour Cell - was constituted to encourage voluntary organizations to take up activities like non-formal education, - vocational training, provisions of health care, nutrition and education for working children.
- (3) Area specific projects: To focus on areas known to have high concentration of child labour and to adopt a project approach for identification, withdrawal and rehabilitation of working children.

#### 8. CENTRAL ADVISORY BOARD ON CHILD LABOUR

The Central Advisory Board on Child

Labour was constituted on March 4, 1981. The following are the terms of reference of the Board:

- (1) Review the implementation of the existing legislation administered by the Central Government.
- (2) Suggest legislative measures as well as welfare measures for the welfare of working children.
- (3) Review the progress of welfare measures for working children.
- (4) Recommend the industries and areas where there must be a progressive elimination of child labour.

The Board was reconstituted last on November 2, 1994. The Union Labor Minister is the Chairman of the Board. The other Members of the Board include representatives from the various sister ministries, Members of Parliament, non-governmental organizations, representatives of major trade unions and employers' organizations.

#### **9. CHILD LABOUR TECHNICAL ADVISORY COMMITTEE**

Under Section 5 of the Child Labour (Prohibition and Regulation) Act 1986, the Government of India is empowered to constitute a Child Labour Technical Advisory Committee for the purpose of addition of occupation and processes in the Schedule to the Act. The Committee consists of a Chairman and members not exceeding ten. The Committee has been reconstituted on February 5, 1996 under the chairmanship of Director General of Indian Council of Medical Research.

#### **10. NATIONAL CHILD LABOUR PROJECTS (NCLP)**

Under the action plan of the National Policy on Child Labour, there has been National Child Labour Projects (NCLP) set up in different areas to rehabilitate child labour. A major activity undertaken under the NCLP is the establishment of special schools to provide non-

formal education, vocational training, supplementary nutrition etc. to children withdrawn from employment. Under the project based action plan of the policy, 12 NCLPs were started in the States of Andhra Pradesh (Jaggampet and Markapur), Bihar (Garwah), Madhya Pradesh (Mandsaur), Maharashtra (Thane), Orissa (Sambalpur), Rajasthan (Jaipur), Tamil Nadu (Sivakasi) and Uttar Pradesh (Varanasi-Mirzapur-Bhadohi,, Moradabad, Aligarh and Ferozabad).

#### **11. REHABILITATION OF CHILDREN WORKING IN HAZARDOUS OCCUPATIONS**

A major program was launched on 15th August 1994 for withdrawing child labour working in hazardous occupations and for rehabilitating them through special schools. Under the program a total of two million children are sought to be brought out of work and put in special schools where they will be provided with education, vocational training, monthly stipends, nutrition and health-checks. As a follow-up, a high powered body, the National Authority for the Elimination of Child Labour (NAECL) was constituted on 26th September, 1994 under the chairmanship of the Minister for Labour, Government of India.

Secretaries to Government of India in the Ministries of Labour, Information & Broadcasting, Welfare, Rural Development, Textiles and the Departments of Expenditure, Education, Health, Family Welfare and Women & Child Development are members of the National Authority for the Elimination of Child Labour.

#### **12. STATUS OF FREE AND COMPULSORY EDUCATION**

India's National Policy on Education, 1986 gives the highest priority to the program of universal elementary education, and recommends that free and compulsory education of sufficient quality be provided to all children up to the age of 14 years. The present thrust is on three aspects, namely, universal access and enrollment, universal retention of

children up to 14 years of age, and substantial improvement in the quality of education to enable all children to achieve essential levels of learning. All these aspects have been incorporated in the various initiatives taken up by the Ministry of Human Resource Development.

### **Supreme Court Directions On Child Labour**

The Supreme Court of India, in its judgment dated 10th December, 1996 in Writ Petition (Civil) Number 465/1986, has given certain directions regarding the manner in which children working in the hazardous occupations are to be withdrawn from work and rehabilitated, and the manner in which the working conditions of children working in non-hazardous occupations are to be regulated and improved. The judgment of the Supreme Court envisages: (a) Simultaneous action in all districts of the country; (b) Survey for identification of working children; (c) Withdrawal of children working in hazardous industries and ensuring their education in appropriate institutions; (d) Contribution of Rs.20,000 per child to be paid by the offending employers of children to a welfare fund to be established for this purpose; (e) 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; (f) Financial assistance to the families of the children so withdrawn to be paid out of the interest earnings on the corpus of Rs.20,000/25,000 deposited in the welfare fund as long as the child is actually sent to the schools; (g) Regulating hours of work for children working in non-hazardous occupations so that their working hours do not exceed six hours per day and education for at least two hours is ensured. The entire expenditure on education is to be borne by the concerned employer; (h) Planning and preparedness on the part of Central and State Governments in terms of strengthening of the existing administrative/regulatory/

enforcement frame-work (covering cost of additional manpower, training, mobility, computerization etc.) implying additional requirement of funds.

### **International Program For The Elimination Of Child Labour (ipec)**

The International Program on the Elimination of Child Labour is a global program launched by the International Labour Organization in December 1991. India was the first country to join it in 1992 when it signed a Memorandum of understanding with the ILO. The long-term objective of IPEC is to contribute to the effective abolition of child labour. Its immediate objectives are:

- (1) Elaboration of the capability of ILO constituents and Non-Government Organizations to design, implement and evaluate programs for Child Labour Elimination;
- (2) To identify interventions at community and national levels which could serve as models for replication; and
- (3) Creation of awareness and social mobilization for securing elimination of child labour.

### **13. CONCLUSION**

The importance of the eradication of child labour from our society was realised as early as 1933 and so effective measures to protect the children of our country from exploitation were taken. However, time and again most of the child labour laws are violated by selfish and immoral citizens. For many decades children all over our country have been exploited. Although numerous Acts have been passed for their protection, yet they remain vulnerable. The main reason for this is the lack of proper implementation of child labour laws and the fact that these laws do not recognise the issue that children are still being employed as labour and they need to be given due importance and protection as workers.



The first violation of the Child Labour law is that of age. The Child Labour (Prohibition & Regulation) Act 1986, clearly states that no child below the age of 14 is to be employed under any circumstances. Through our study itself, we have seen that children below the age of 14 are employed in such occupations that can be detrimental to their physical and mental development. Most of the time; the employers are not checked about the fact that they have employed workers that are below the minimum legal age. Even if they are found out, they produce false medical certificates claiming that the children are older than they actually are.

Secondly, the Child Labour (Prohibition & Regulation) Act, states that no child should work for more than 3 hours without a proper interval and that no child should work between the hours of 7p.m. and 8a.m. However, this clause is frequently violated. Many children also work overtime although this is strictly disallowed by the law. These workers are never paid for the extra time that they put in.

Thirdly, child workers are also unprotected with regard to medical benefits in times of illness and injury. As they are not covered by the Employees' State Insurance Scheme, they do not get any compensation for any illness or injury that they sustain while at their work place.

The Labour Welfare Act, which aims at protection of the rights of workers while at their work place, does not extend its activities to child workers. Though according to the Trade Union Act 1926 – all workers have a right to organise themselves and get their grievances addressed yet this Act does not recognise the fact that child workers also need organisation.

They are also not covered by the Minimum Wage Act as they are minors. Therefore, there is no statutory wage that must be paid to them and they continue working long hours for minimal wages.

Though the Child Labour Act provides a list of hazardous occupations and processes where the employment of children is prohibited yet they spend long hours around open fires and furnaces, or near harmful solvents like petrol and LPG. Coolies and pram-pushers as well as domestic servants are made to carry objects that are extremely heavy. There is no check on the fact that the conditions that they are working in could cause them serious damage.

The Child Labour Act as well as the Supreme Court resolution on child labour lays down very strict penalties for the violation of the child labour laws, yet they are broken every day. This is because such resolutions have no effect on the employers of child workers in India. This is because the machinery for the enforcement of these laws is faulty and inefficient. Most violations go unnoticed and in the rare cases that they are detected, people are usually let off with bribes.

Primary education and supplementary nutrition schemes are also a farce as in most cases employers refuse to allow their child workers to leave their job for a few hours to get an education. The children themselves are unenthusiastic about this as they feel there is no point in getting an education. The governments' schemes to provide children with mid-day meals do not extend at all.

Thus we see that child labour laws and legislations have been enacted in India, but the condition of child labourers still remains the same. This is because of lack of effective machinery for the implementation of such laws as well as the lack of awareness among labourers and employers about the restrictions on the employment of children as workers. So there is a great need of major corrections otherwise the children will continue to operate under conditions of exploitation.

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