

**CHILD LABOUR: A CHALLENGE TO THE NATION****Dr. Narayana Rayadurgam, Ph.D. (Law)**Principal, Shahaji Law College, Kolhapur.
Chairman, BOS in Law, Shivaji University, Kolhapur**ABSTRACT**

Child is the inspiration of today and the aspiration of tomorrow. A Child is very important segment of human society. Love to him is a measuring means of our gratitude to God. The problem of Child Labour in India is quite high and abnormal. Various studies have shown that the large number of children in different age group has been employed in various industries, hotels, cycle shops, welding, scooter mechanic and other places on account of poverty. They are deprived of education, proper health and basic amenities of life. The Constitution protects the child. The Convention of the Rights of the Child has been ratified by India. Child Labour is protected by Statute and yet millions and millions of Children in India are employed in hazardous industries. Half of the nation's decision Child Labour, Child Abuse and Child Trafficking is continue to unabated.

Hence, the attempt of this article is to identify some issues of Child, Child Labour, Child Acts, Children's Rights, Role of Courts and to find out some solutions if at all present.

Key Words: Child, Child Labour, Child Exploitation, Children's Rights**INTRODUCTION**

The significance and importance of the Child lies in the fact that the Child is the Universe. If there was no child, there would be no humanity and there cannot be a Universe without humanity. Every society must, therefore, devote full attention to ensure that children are properly cared.¹ As you read this, 168 million Child Labourers are losing their Childhood to exploitation and abuse across the globe. This is certainly not the world that we would like to leave for our Children. Children constitute one third of the Indian Population and of them over 50 per cent live in poverty, ill-health and exploitation.

The Problem of Child Labour in underdeveloped and developing countries is quite high and abnormal. Various studies have shown that Children of various age groups have been employed in large number of industries, cottage industries, carpets, matches, firecrackers, brassware, diamond glass, hosiery, hand loomed cloth, embroidery, leather goods, plastic, bangles and sporting goods and many establishments on account of poverty.² The highest number of children are found working in the agricultural sector. The working conditions of children are pathetic, inhuman and their incomes are very meager. They are deprived of education, proper health and basic amenities of life. At a young age, they are driven to work in difficult and hazardous fields simply to sustain their own lives and that of the family which entirely depends on them. They are foregoing their precious childhood and often abused or beaten by the owners of the establishment. They are paid low wages for long hours than adults. It may be true that much attention is being paid to improve the working

¹ Vishnu Murthy, k., Child Labour and the Social Security Law in India Problems and Prospectives, Ed.P.K.Padhi., Child Labour Retrospect and Prospect, Cuttack: The Law House 1998, p.140.

² Mehta P.L., 'Child Labour and the Law', Deep and Deep Publications, New Delhi, 1997.



conditions of Child Labour through enactment of various laws, holding of seminars, conferences at national and international levels but practically the magnitude of this problem has not been set aside.

Under the Constitution, they are entitled to all Fundamental Rights, Directive Principles of State Policy and more. As vulnerable group depending on Adults for securing justice, they are given certain special privileges and entitlements. However, even for assessing these benefits, Children have to depend on the good sense and humanism of adults in the family. When Parents become indifferent to their obligations to Children, they become exploitative due to many reasons.

At this juncture, an attempt is made in this paper to expound a precise concept of childhood, meaning of child Labour, various modes of exploitation, causes for exploitation and the consequences thereof. The present work is also bring forward some of the aspects of this multidimensional problem and to give some suggestions for mitigating the acuteness and gravity of this evil.

PHILOSOPHY OF CHILD, CHILD LABOUR AND EXPLOITATION

A) Who is Child?

A Child is the highest, latest and greatest conscious of the perennial, creative, super-conscious expression of all the pervasive, primordial inscrutable natural resource of this Universe. A Child is the most innocent and helpless human creature incapable of either exercising or enforcing the conferred legal rights.³ A Child is very important segment of human society. The term child is used for a person who, on account of his tender age, is considered to be in nature, intellect and imperfect discretion, unable to comprehend the consequences of his own act. A child is considered an incarnation of innocence and an object of adoration. Love to him is a measuring means of our gratitude to God. A child is a young future administrator, architect of the nation and he deserves to have all protective and developmental opportunities in the areas of his own interest. It mirrors the socio-economic condition of a country and its potentiality for development.⁴

When we look into a child's eyes you expects to see hope , trust and innocent but when these signs of childhood are replaced by betrayal, hunger, fear and suspicion.⁵ Children are considered the supreme important national asset and its living a malleable potential. The future of any nation is largely determined on how its children grow and develop. The issue relating to rights of child, care and welfare have been constantly engaging the attention of the Universe.⁶

B) What is Child Labour?

³ Koteswara Rao, P., “ Child, Constitution and Reality in India:Scio-Legal Study”, The Kurukshetra Law Journal, Vol. 8 & 9, 1982, p.1.

⁴ Nayak, R.K., “Shaping the Future by Law, Children, Environment and Human Health”, The Indian Law Institute, 1997, P.xxxix.

⁵ Arimpoor Joe, “Profile of the Child Worker”, Social Action, Vol.44, No.3, 1994, p.59.

⁶ Sarma Pawan, “Child Labour : A Socio-Lgal Study,” Journal of the Indian Law Institute, vol.36, No. 2, 1994, p.211.



It is significant to note that the study of the Constitutional Provisions in respect of Child Labour are important in two aspects. Firstly, it provides protection to the Child Labour and secondly it serve as a ‘beacon light to India, on her march towards the temple of socio-economic justice. Justice Subba Rao, the former Chief Justice of India remarked that **“Social justice must begin with child unless tender plant is properly nourished, it has little chance of growing into strong and useful tree. So, first priority in the scale of social justice should be given to the welfare of children”**.

The rights against exploitation were mentioned in drafts prepared by Dr. B. R. Ambedkar under Articles 23 and 24 have been put together under the caption, “Right against Exploitation”. Article 24 prohibits the employment of children below the age of 14 years in factories, mines or hazardous employment.

The legal definition of child generally refers to a minor, otherwise known as a person younger than the age of majority. A generally valid definition of Child is presently not available either in the national or international context. The universally accepted method of dividing age group is 0-14 years. Thus, it is easier for numerical and comparative measures to define a child to the age of 14 years and an adolescent from 15 to 19 years. The reason for taking a child only up to 14 years is that the full time participation in economic activity below this age is in violation of Article 45 of the Constitution of India, which states that **“The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, free and compulsory primary education for all children until they complete the age of fourteen years”**. Article 24 lays down **“No Child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment”**. Keeping in this view, the age group 0-14 is hereby called Child.

The problem of Child Labour has been a worldwide Problem. It is anathema. It is a shame. It is a blot on the society. It is blatant degradation of human society. It must be condemned in the strongest terms. A generally valid definition of Child Labour is presently not available in the national and international context. Any definition turns upon the precise meaning we attach to two components of the terms of the term “Child Labour”, i.e. Child in terms of chronological age, and Labour in terms of its nature, quantum and income generation capacity.

According to Alakh Narayana Sharma, “Child Labour” means the employment of children in gainful occupations which are injurious to their physical, mental, moral and social development. Thus, the term includes wage labour as well as self-employed children working independently. Child Labour, therefore, can be defined in such works undertaken by children below 14 years as are injurious to their health, and harmful to their harmonious, physical, mental development.⁷

C) What is Exploitation of Child Labour ?

Exploitation of Child Labour is a global phenomenon and is quite over time and space. However, it is more concentrated in developing countries as compared to developed countries in the world. India has the largest number of world’s working children. Most of these children are subjected to the worst forms of exploitation and abuse.

⁷ Sharma, B.K., Child Labour in India, Ashish Publishing House, Delhi 1990, p.9.



Exploitation means “a person or body of persons in a position to take undue advantage over the other by the reason of the power or position”.

According to UNICEF Report “State of World Children 1997,” Child Labour is exploitative

- *full time work at too early age;
- *too many hours spent working;
- *work that exerts undue physical, social or psychological stress;
- *work under life on the street in bad conditions;
- *inadequate pay;
- *too much responsibility;
- *work that hampers access to education;
- *work that undermines children’s dignity and self-esteem such as slavery, bonded labour or sexual exploitation;
- *work that detrimental to social and psychological development.⁸

It is to be noted that the working children are suffering from multi exploitations like economic exploitation, physical exploitation, social exploitation and psychological exploitation. Different empirical studies conducted so far have come to the conclusion that there are several reasons why children are force to work. Abysmal poverty, non-compulsory education system up to certain age, illiteracy, lack of awareness and care for children leads them to enter into the working field. Though the government is undertaking legislative as well as other measures to protect the child, these measures are not effectively implemented.

RIGHTS OF CHILDREN- INTERNATIONAL TO NATIONAL PROTECTION

Each day, countless children around the world are exposed to dangers, that hampers their growth and development. They suffer immensely as casualties of war and violence, aggression, foreign occupation and annexation, as refugees and displaced children, forced to abandon their homes and their path of life as disabled. They become victims of neglect, cruelty and exploitation.⁹ Each day millions of children suffer from the scourges of poverty and economic crisis- from hunger and homelessness from epidemics and illiteracy from degradation and affected environment. Each day many children die of malnutrition and various diseases including AIDS, from the lack of clean water and inadequate sanitation and from the effects of the drug problem. These are the challenges that have to be taken into consideration.¹⁰

Abuse, neglect and exploitation hamper the growth and development of the child. In order to prevent child abuse, neglect and exploitation, the international.¹¹ This declaration made under the auspicious of the League of Nations should be binding on the peoples of

⁸ Tilak Raj, “Child Labour in India,” Social Change Issues and Perspective-A Journal of Council for Social Development, Vol.27, No.3 & 4, 1997, p.188.

⁹ Extract from the “World Declaration on the Survival, Protection and Development of Children as quoted in Conventions on the Rights of Child,” Published by Governemnt of India,” 1991, p.1.

¹⁰ Ibid

¹¹ Balu. N., “Child Labour,” SBRRM Journal of Madras, Vol.5, No.1, March 1996, p.25.



world even after the end of Second World War. The five points that were adopted by the League of Nations in the form of 1924 are as follows:

- The child must be given the means for its normal development, both materially and spiritually.
- The child that is hungry must be fed, the child that is sick must be helped, the child that is backward must be helped, the delinquent child must be reclaimed, and the orphan must be sheltered.
- The child must be first to receive relief in times of distress.
- The child must be put in a position to earn a livelihood and must be protected against every form of exploitation.
- The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men.

A) Role of United Nations: The idea of human rights for children is earlier than the formation of the United Nations. When the United Nations was formed in 1945, there was overwhelming consensus among the participating member nations at San Francisco Conference for the establishment of a general organization of states to safeguard peace and promote international cooperation. The Atlantic Charter, the United Nation Declaration, the Moscow Declaration, Dumbarton Oaks Conference, Yalta Conference of February 1945, San Francisco Conference were responsible for shaping the form of the United Nations.¹² The fact that the United Nations is seriously concerned with the well-being of man cannot be over emphasized. The World body has been aware of the fact that children's rights attention need special protection and a call for continuous improvement of the children all over the world. The United Nations has proclaimed that childhood is entitled to special care and assistance. The objects of the United Nations are set-forth in the preamble of U.N. Charter. In order to achieve these objectives, the United Nations has been striving since its inception six principle organs i.e. the General Assembly, Secretariat, Security Council, Economic and Social Council, Trusteeship Council and International Court of Justice.

B) Role of United Nations through Specialized Agencies: The Specialised Agencies, affiliated to the United Nations through agreements entered into between them, have their own constitutional structure and mandates. The agencies which have broadly classified as the International Labour Organisation (ILO), the United Nations Educational Scientific and Cultural Organisation (UNESCO), the World Health Organisation (WHO), the Food and Agriculture Organisation (FAO). These Specialised Agencies have developed procedures and programmes for implementation of human rights and fundamental freedom within their jurisdiction. The significance of these agencies lies in the fact that they complement in the efforts of United Nations bodies to promote human rights of children.

¹² Parimal J Shah, "Public International Law," Jamnadas & Co., Bombay, 1976, p.226.



- C) Role of International Institutions to Eliminate Child:** The task of eliminating child labour is very complex and tough. No single agency can claim to do it to the satisfaction of all the concerned. It could be made possible only if both the governmental and non-governmental agencies work to complement and supplement each other's efforts. In this regard, the National and International machinery have greater responsibility than anybody else in eliminating the evil of child labour. A few international initiatives are The International Union of Child Welfare (IUCW), The Food and Agriculture Organisation (FAO), The International Telecommunication Union (ITU), The United Nations Development Programme (UNDP), The United Nations Environment Programme (UNEP), The World Food Programme (WFP), The International Bank for Reconstruction and Development (IBRD), Campaign against Child Labour (CACL), International Programme for Elimination of Child Labour (IPEC), South Asian Association for Regional Cooperation (SAARC) and Amnesty International.
- D) Role of Covenants and Conventions:** The Universal Declaration of Human Rights was adopted by the General Assembly on 10th December, 1948. This Declaration, though a 'Soft Law' was a basic international statement of the inalienable and inviolable rights of all members of the human family. It thereby covered children within its purview. The declaration stated in Article 25(2) Childhood is entitled to special care and assistance. At the International level, the concept of children's rights got covered for the first time under the generic category of human rights.
- E) The International Covenant on Economic, Social and Cultural Rights 1966** states in Article 10 (3) Special measures of protection and assistance should be taken on behalf of children and young person without any discrimination for reasons of parentage or other conditions. Children and young person should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of Child Labour should be prohibited and punishable by law. The Declaration on the Rights of the Child was adopted in 1959, soon after the Universal Declaration of Human Rights. The Geneva declaration was used as basis for formulating this document but yet, the 1959 proclamation was more specific by mentioning the different rights that the children held on account of their status as children. It contained ten principles which include the children's rights to health, family, education, recreation, nutrition, housing, equality as well as protection from exploitation, neglect, cruelty and form of discrimination. In the preamble, it called upon all those concerned with children to recognize these rights and ensure their implementation. However, the Declaration being "soft law" and very little there is direct impact on the state policies.
- F) The Convention on the Rights of the Child, 1989** came up on account of Polish initiative, which had fought for a separate binding treaty for children from the time of the Universal Declaration on Human Rights. The Convention was unanimously adopted on 20th November, 1989 and it was ratified by India in 1992. Being a hard



law it imposed and obligation on the Indian State to review its existing policies and programmes for the children and bring them to standards laid by the Convention. Protection of basic human right is now recognized as a primary obligation of every society. Specifically, children have special human rights, which adults do not have and these rights should at any cost be availed of by the children. The basic human rights in relation to the child labourers may be classified as Civil and Political Rights of Children, Economic Rights of Children and Social and Cultural Rights of Children.

United Nations through its Convention on the Rights of Child, 1989 provides the inherent right to life and States obligation to ensure to child's protection, survival and development. Similarly, Indian Constitution through its fundamental rights tries to give maximum protection to all citizens including children. Right to equality states that the State shall not deny to any person equality before law or the equal protection of laws, is proportionately applicable to the children also. Right to life enshrined in the Constitution under Article 21 is basically meant to ensure a life with human dignity. The State is also empowered to make certain special provisions for their safeguards by which the tender aged children can enjoy the minimum human dignity.

Economic Rights of Children are the most important rights for the child labourers, which they must avail, otherwise a major protection of the child population will be neglected to a great extent. Considering the essence of these rights, UN as well as the Indian Labour Legislations tried a lot to give protection to the child labourers. Indian Constitution, Articles 23, 24, 39(e) and (f), provides the safeguards relating to employment of children. Besides the constitutional safeguards, various labour welfare legislations also protect the Child's economic rights with an aim to dissuade the children to join the labour forced at such a tender age.

Social and economic factors have made child labour as universal phenomenon. Under the group, social rights of the 1989 Convention seek to provide for with an aim to give full protection and overall development of the child. Constitution of India under Article 41 and 42 provide the right to education, right to work and this work must be within just and humane conditions. These are rights which enable children to seek their development in appropriate environment in their own societies.

LEGAL MECHANISM TO COMBAT CHILD LABOUR

To protect childhood is nothing but to make the child enjoy the period of childhood without any fears or burdens upon him and to provide a healthy environment giving educational and recreational facilities. In order to provide all these facilities, Government of India has adopted a number of policies aimed at eradication of child labour completely.

- a) **National Policy on Child Labour:** To be in consonance with the constitutional provisions and the UN Declarations on Rights of Child, the Government of India adopted the National Policy for Children in August, 1974. It emphasizes the children should find a prominent place in our national plans for the development of human resources so that our children grow up to become robust citizens. The National Policy for Children set out a policy frame work and listed measures to provide the required service for children. The policy does seem to admit that child is entitled to enjoy his childhood through play learning, getting parental emotions, love and nutritional and



health care. Towards this end, the National Policy envisaged the need for 'free and compulsory education for all children up to the age of 14, provisions for health and nutritional programmes and services, providing alternative forms of education for children unable to take full advantage of formal school education for whatever reasons, and measures for protection children against neglect, cruelty and exploitation.

- b) **Three Pronged National Policy on Child Labour:** In the year 1987, the Government of India announced three pronged National Policy on Child Labour aiming to prevent exploitation of children as well as to ensure their suitable rehabilitation in case of their withdrawal from prohibited areas of employment. This policy was mainly intended to ensure effective and meaningful implementation of Child Labour (Prohibition and Regulation) Act, 1986 and other relevant provisions of the labour legislation dealing with child labour under the legal action plan. The basic objective of the programme had been to improve the health, nutritional status working conditions, qualifications and professional skill of the child labour.
- c) **Reports on Child Labour:** Government has always made efforts to understand the problem of child labour. Various Committees have been set up from time to time to look into the extent, distribution, working conditions and the related problems of the working children. A brief resume of some of the reports of these committees have been mentioned below.

Report of the Royal Commission on Labour in India, 1930

Report of the Labour Investigation Committee, 1946

Report of the National Commission on Labour, 1969

Report of the Harbans Singh Committee, 1977

Report of the Committee on Child Labour, 1979

Report on Child Labour in India Industries, 1981

The Reports states that the majority working children has come from poor families to supplement their family income. They are compelled to discontinue their studies as there is no provision for night schools for those who want to continue studies. The report emphasizes on bringing about a change in the social attitude towards child labour, besides tightening on bringing the laws and activating the enforcement machinery.

- d) **Role of Judiciary:** The judiciary is an important component of the trinity of the State. In our Constitutional scheme, the judiciary has been assigned the role of ensuring and enforcing social justice in accordance with the commitment envisaged in the preamble, part-III and part-IV of the Constitution. Exploitation of Child Labour is one such aspect which has received the judicial attention. The cases, which came before the court involving child labour were very few and in all cases the judiciary took has played an activists role and made all its efforts to protect the rights of unfortunate children. The courts sufficiently broadened the horizon of right to life and personal liberty by creating new dimensions to Article 21. It is not merely confined to physical existence but it includes within its ambit right to life with human dignity and decency. Human dignity is an important aspect of the Right to life guaranteed under Article 21.



Recently, the courts are showing a pragmatic approach towards the welfare of child labourers. **Lord Denning** once opined “**the law was locked in the breast of the judges ready to be unlocked whenever the need arises**” According to **Cardozo**, “**there is in each of us a stream of tendency, whether you choose to call it philosophy or not, which give coherence and direction to thought and action**”. **Justice V.R. Krishna Iyer** has said that, “**it becomes a democratic obligation to make the legal process a surer means to social justice.**” The general trend of judiciary is to uproot child labour and to rehabilitate the child labour in the main stream of the society. Courts are very eager to ensure that legislative provisions meant for protection of children are properly enforced. Regarding the enforcement labour laws relating to working hours, courts follow a very strict interpretation of the provisions of statutes. In **M.C. Mehta Vs State of Tamil Nadu and Others**,¹³ the Supreme Court examined the problems of Child Labour in all its perspectives and tried to sort out a possible solution for its prohibition after reconciling all the conflicting interests in the area. Their Lordships have awarded this decision giving emphasis to the fact that total abolition of child labour without an effective uplift is practically impossible.

In 1992, the Supreme Court in the case of **Mohini Jain Vs State of Karnataka**¹⁴ held that right to professional education is a fundamental right. This was followed by a series of cases filed by private and state aided medical and engineering colleges seeking review of this decision. Obviously, their main source of income, capitation fees, was being threatened. The Supreme Court was constrained to constitute a special bench to hear the case of the private colleges. After four weeks of arguments, the apex court passed the judgement in **Unnikrishnan and others Vs State of Andhra Pradesh and others**.¹⁵ It was held that the Right Education understood in the context of Articles 45 and 41 every child /citizen of this country has a right to free and compulsory education until he completes the age of 14 years, and after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development. Be that as it may, we must say that at least now the State should honour the command of the Article 45. It must be made a reality at least now. Indeed, the National Educational Policy 1986 says that the promise of Article 45 will be redeemed before the end of this century. Be that as it may, we hold that a child (citizen) has a fundamental right to free education up to the age of 14 years.

Unnikrishnan¹⁶ was followed in **N. Kunhichekku Haji Vs State of Kerala and Others**¹⁷ When the court in a case pertaining to question of providing upgradation of a school held that children have a fundamental right to education and therefore larger interest of young

¹³ 1991 (1) SCC 283

¹⁴ 1992 (3) SCC 666

¹⁵ 1993 (1) SCC

¹⁶ Supra

¹⁷ 1995 Supp (2) SCC 382



children should be taken into consideration in meeting the procedural cobweb and the technicalities should not subsume substance.

This was acknowledged again in **State of Orissa Vs Dipti Paul**,¹⁸ When the court while deciding on the case of salaries of teachers appreciated the important of universalisation of primary education. In **L.Muthukumar and others Vs State of Tamilnadu and others**¹⁹ the court held that there was a responsibility on the State to ensure that before teachers are allowed to teach innocent children, they must receive appropriate and adequate training in a recognized training institute satisfying the prescribed norms, otherwise the standard of education and careers of children will be jeopardized. It further held that interest of individuals cannot be placed above or preferred to the larger public interest.

In **Rohit Singhal and Others Vs Principal, Jawahar N. Vidyalaya and others**,²⁰ the court held that: Children are not only the future citizens but also the future of the earth. Elders in general, an parents and teachers in particular, owe a responsibility for taking care of the well- being and welfare of children. The world shall be a better or worse place to live according to how we treat the children today. Education is an investment made by the nation in it children for harvesting a future crop of responsible adults, productive of a well-functioning society.

The observations of the courts in the above cases are true spirit to the neglected constitutional dictates relating to overall development of children. The Courts always regarded it as a duty to rescue the deprived and vulnerable sections of the society in order to help them and realize their economic exploitation. The strategy of Public Interest Litigation has been evolved by the court to bring justice within the easy reach of the poor and the disadvantaged sections of society.

In 1986 When the Child Labour (Prohibition and Regulation) Act was passed, almost all the child rights groups working throughout the country felt let down by the government. Everybody was expecting a comprehensive law to address and combat the gigantic problem of child labour. However, what was got in return of years of labour towards a legislation was an act which classified work conditions on a totally illogical basis, legitimized child labour, forgot about domestic labour which forms the largest number of working children and established institutions with no teeth. Today, there is a system with no redressal. Obviously when the statute has so many faults, the enforcement would be poor to say the least. The issue of child labour has been raised before the Supreme Court on many occasions. In fact, in almost every case relating to construction workers, migrant workers, bonded labour, children do find mention.

However, one of the stark cases, on this issue is the case pertaining to children working in the cracker industry in Sivakasi, Tamil Nadu. There are two leading judgments relating to children working in this industry. One on 1990 and the other in 1996. In the first case (1990), the court held: *We are of the view that employment of children within the match factories*

¹⁸ 2000 (10) SCC 413

¹⁹ (2000) 7 SCC 618

²⁰ 2003 (1) SCC 687



directly connected with the manufacturing process up to final production of match sticks or fireworks should not at all be permitted. Article 39 (f) of the Constitution provides that ‘the State should direct its policy towards securing 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.

Strangely after appreciating the problem child labour as above, the court sanctified the practice by saying that children can be employed in the process of packing and went on to say that 60% of the minimum wage paid to an adult may be an adequate wage. It may have been a positive step towards improving their conditions. But it was definitely not what was expected of the Court in a case for protection of children working in dangerous and exploitative conditions.²¹

The 1986 Act addresses only two specific issues i.e. ‘**prohibition**’ and ‘**regulation**’. Ironically, these two words have diametrically contradictory meanings, and seem to subvert the very purpose for which the Act was enacted. What is required in the law is to address the entire issue of child labour from the perspective of prevention, prohibition, regulation and rehabilitation, all of which are not mutually exclusive but complementary to each other as also to the final objective of elimination of child labour of facilitating withdrawal from employment.²²

The Act is not unmixed blessing for child workers. By fixing the age at 14, the Act denies benefits to a number of ‘children’. Furthermore, no minimum age for employment is set thereby allowing children of 4 or 5 also being employed in permissible occupations while regulating many types of work where children are employed, many others particularly in the unorganised sector including domestic work are left unregulated. Most important of the regulations do not apply when the child works for his or her family. There are number of hazardous occupations, which employ children, which are not yet listed so by the Act. It is surprising how the hazardous work will become less not yet listed so by the Act. It is surprising how the hazardous work will become less so when it is performed in aid of his family or carried on in a school. Legal regulations sometimes add to the problems of child workers and tend to increase exploitation. They are forced to work for small-unregistered establishments, which escape government control. There is little effort in the law to improve basic needs of child workers to enhance their educational level and secure equal pay for equal work principle in their favour. Child’s Rights to development, dignity and care require a more dynamic policy than what is reflected in the Act of 1986.

CABINET APPROVAL TO AMEND THE CHILD LABOUR LAW

The cabinet approved a proposal to amend the Child Labour Law to impose stricter punishment on those employing children below the age of 14 but allowed minors to work in non-hazardous family enterprises, a move that has been criticized by child rights activists. If

²¹ Research Edited & Compiled by Aparna Bhat, “Supreme Court on Children,” Published by Human Rights Law Network, New Delhi, 2015, p.55.

²² Ramachandran Sadhana & Joseph Pookkatt, “Child Labour in India: Law, Advocay and Judicial Intervention,” “Journal of commemorating 50 Years of Indian Constitution, Vol.7, November 1999, p.126.



the amendments to the law are approved by Parliament, children younger than 14 can work in family enterprises and arms after school hours and during holidays. The cabinet also doubled the fines and the hail term for people employing minors.

Realizing the need to strike a balance between the need for education for a child and the reality of socioeconomic condition and social fabric in the country, the cabinet has approved that a child can help his family or family enterprise, which is other than any hazardous occupation or process, after his school hours or during vacation.

Children working as artists in the audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activist, except the circus, have also been granted exemption, provided the work does not affect their school education. The 2001 census counted 12.6 million child workers between the ages of five and 14 in India. In 2011, this number fell to 4.35 million. The National Sample Survey Officer's survey of 2009-10 put the number at 4.98 million. The cabinet also barred the employment of adolescents (14-18 years of age) in hazardous occupations and process such as chemicals and mines. The Child Labour (Prohibition and Regulation) Amendment Bill is now in sync with the Right to Education Act that guarantees all children between 6 and 14 to go to schools. Also, offences under the Child Labour Act have been made a cognizable offence, and companies deploying child labour shall get stringent punishment ranging from six months in jail to three years, besides fines depending on the magnitude of the offence.²³

Right to have a Childhood : The Union Cabinet's approval of a set of amendments to the Child Labour (Prohibition and Regulation) Act, 1986 raises serious doubts and concerns. One of these proposes to ban the employment of children below 14 years in all occupations except family enterprises and the audio-visual entertainment industry, on a condition that such work does not interfere with their education. One amendment proposes to regulate "adolescents" in the 14-18 age group by prohibiting their employment in hazardous occupations unsuitable to their age. There is no doubt that the 1986 Act itself needs to be amended. First, the law has proved to be weak and ineffective in curbing child labour. Secondly, it is in contradiction with Article 21-A of the Constitution and the Right of Children to Free and Compulsory Education Act, 2009 that makes schooling compulsory for all in the age group of 6 to 14 years. Third, the 1986 Act does not regulate adolescent labour as mandated by ILO Conventions 138 and 182.

Although the government's intention to amend the Act is to be appreciated, what is deeply problematic is its intention to exempt from the ban employment in family enterprises. It is suggested that poverty and socio-economic conditions in India justify children helping their families in certain occupations where the possibility of any harm coming upon them does not exist, provided that they balance the work with schooling. This may sound reasonable but may prove unworkable. The law potentially opens loopholes that will sustain or even encourage child labour, creating a regulatory nightmare. Here the government fails to recognize that family enterprises can also prove to be exploitative and oppressive for children. 'Family enterprises' fall in the unorganized sector, making them an amorphous

²³ Cabinet Clears Bill to Check Child Labour, The Hindu, Hubballi Edition, May 2015, p.10.



legal category that is hard to govern. Such a law will adversely affect girl children who are often forced into domestic work, or Dalits and those from the minorities who work out of dire poverty but are ultimately denied the joys of childhood. Moreover, instead of just tinkering with the 1986 Act, the government needs to comprehensively overhaul it, focusing on the rehabilitation of children rescued from traumatic working conditions. This requires an interlinking of ‘rescue, rehabilitation and schooling’ through greater coordination among Ministries and organizations, and the inter-locking of the provisions of existing laws such as the RTE Act, the Bonded Labour System (Abolition) Act, 1976; the Factories Act, 1948; the Beedi and Cigar Workers Act, 1996 and so on. It is meanwhile also disheartening that the budget allocation for the Ministry of Women and Child Development has been reduced from Rs.18,588 crore to Rs.10,382 crore.

CONCLUSION

From the above study it may be concluded that the problem of exploitation of child labour has been continuously growing all over the world. “Today’s Children will be the tomorrow citizens”. Children are supremely important national asset. Children cannot raise their voice against those who injure them or deprive them of their rights. The problem of exploitation of child labour is a result of the various reasons, poverty, illiteracy and ignorance of parents, family tension and so on.

Law is not the total solution for this socio-economic problem. Strict implementation of legislation’s are needed. And it is the duty of all concerned employers, trade unions, society, government and voluntary organizations to achieve this objective. After all, public awareness against the social evil is important.

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