

## **Human Rights of Children: An Indian Perspective**

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### **ABSTRACT**

A child is an invaluable asset of any society and has a definite role to play in the development of the nation. The future of a country depends on how its children are being nurtured to become the future citizens of the country. Some of the children, forced by their socio-economic conditions, take up work at a crucial formative age. Poverty is the major cause of children being sent to work. The hardships arising out of abject poverty coupled with vices like drugs and alcoholism compel illiterate families, especially in rural areas, to initiate their children into back-breaking work under tiring and sometimes dangerous conditions. Abject poverty and the lack of social security network systems are the basis of an even harsher type of child labour - bonded child labour. Therefore, against this rationale and background, this paper is guided by the principles enshrined in the ILO's Minimum Age Convention No. 138 and the Worst Forms of Child Labour Convention No. 182, the ILO In Focus Programme on Child Labour (IPEC) which works to achieve the effective abolition of child labour, aims to portray the gaps and opportunities to reform the "Legislation, Systems and Mechanisms" pertaining to curbing "Child Labour in India" and calls for partnership for development towards this malignant issue.

### **INTRODUCTION**

According to the International Labour Organisation (ILO), a whole new generation of children are being deprived of the chance to take their rightful place in the society and economy of the 21st century. The ILO has proposed that 'child labour' will disappear in a decade. But in reality the situation is alarming and in fact, one in every eight children in the world is exposed to the worst forms of child labour which endanger children's physical, mental health and moral wellbeing. Though there are clear provisions in our Constitution to safeguard the interest of children by ensuring that they receive education and are not forced to work for a living, it is unfortunate that the problem of child labour exists to a large extent in our country.

### **Over Arching Issue**

In many countries children's lives are plagued by armed conflict, child labour, sexual exploitation and other human rights violations. Children living in rural areas have fewer opportunities to obtain good quality education. They have less access to services than children living in cities. The UN Convention on the Rights of the Child (CRC) (Article 38) has explicitly prohibited persons under age of 18 being recruited into the armed forces or directly participating in hostility. In spite of this special provision under CRC, many countries still involve children below 18 years in hostilities. Child labour keeps children out of school and is a major barrier to development. To make the anti child labour law a reality, poverty and unemployment need to be eliminated. Unless the standard of living improves at the lower levels of the society, children will be forced to work. Many middle and upper class families do not hesitate to engage young boys and girls to help them with household chores as they believe that by employing a child below 14 years they are helping poor families to increase their earnings for daily livelihood.

### **Definition of “Child” in Conventions and Law**

Article 1 of the United Nations Convention on the Rights of the Child defines “the child” as “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”. Other definitions of a “child” under various Indian legislations include the following:

- The Indian Penal Code, 1860 defines the child as being 12 years of age.
- Immoral Traffic (Prevention) Act, 1956 defines a “Minor” as a person who has reached the age of 16 years.
- Section 376 of the IPC which punishes the perpetrators of the crime of rape defines the age of consent to be 16 years of age.
- Section 82 and 83 of the IPC state that a child under the age of 7 years cannot be guilty of an offence and further a child under 12 years is not considered to have attained sufficient maturity to have an understanding of the nature of the Act and the consequences of his conduct.
- The Juvenile Justice Act, 2000 defines a male minor as being below 16 years and a female minor as being below 18 years of age.
- Juvenile Justice (Care and Protection of Children) Act 2015 has been passed by Parliament of India. 1) It replaced the Indian Juvenile delinquency law Juvenile Justice (Care and Protection of Children) Act 2000 and allows for Juveniles in conflict with law in the age group of 16-18 involved in Heinous offences to be tried as adults. 2) The act also sought to create universally accessible adoption law for India. The act came into force on January 15<sup>th</sup>, 2016.

From the above definitions, it can be seen that in the Indian context, the age of an individual in order to be determined as a “child” is not uniformly defined. The consequences of this are that it offers various gaps in legal procedures which are manipulated by the guilty to escape punishment.

## **Child Labour: The Indian Scenario**

According to the UN Study, about 150 million children in age group 5- 14 years are working in various industries in India. They are found working inroad-side restaurants, tea stalls and shops, at construction sites and in factories. Girls suffer labour exploitation to such a degree that millions of girls die before they reach the age of 15.They are paid a pittance which is as low as Rs.20 per day and many live in shops or work places where they are subjected to various forms of exploitation. Besides the work they are abused physically, mentally and sexually by the scurrilous task masters.

Begging is being perpetuated as a common profession by antisocial elements who force children into begging, which is prohibited in some cities of India by local governments. Mafia gangs bring children to urban cities for “begging”. A child beggar aged between five and ten collects themaximum. With a burn scar or decapitation they can earn even more. As they grow older their earnings decrease. As a consequence they grow upto be big -time traders involved in drug peddling, pick pocketing, robbery and prostitution. A child beggar will only be paid 10% of his earnings of Rs.300 to 500 a day. If he fails to meet the target fixed by the contractor he is punished brutally. The girls, by the time they reach 13 years of age, switch over to prostitution.

The Indian government ratified the UN Convention on the Rights of the Child in 1992 and introduced various pieces of legislation to curb child labour. The Labour Ministry of India has imposed a ban on children under age of 14 from working as domestic help in hotels. Under this law any employment of children under 14 will invite imprisonment up to two years and a fine of Rupees twenty thousand. India has also banned employment of children in hazardous industries including themanufactureoffire crackers, carpet making, glass making etc. under Child Labour Act, 2002. However, although India has the second largestchildpopulation in the world, there is no single unified separate legislation to deal with all the offences against children. Therefore, it is high time India introduced an all encompassingcommonlegislation to safeguard the rights of a child.

### **Effect of Child Exploitation**

Employing children for labour is an actthatendangers a child's physical/ emotional health and development without giving the child an opportunity ofgood education, food and shelter. Of the four major types of child abuses, physical, sexual, emotional and neglect, child labour falls under neglect exploitation and emotional abuse. Childlabour is the exploitation of children for commercial reasons.

Neglect is a different concept of exploitation and constitutes a failure to provide for a child's basic need. The forms of neglect include physical, educational and emotional. Physical neglectincludes inadequate provision of food, housing and clothing, denial of medical care and inadequate hygiene. Educational neglect is the failure to enrol a child at a mandatory schoolage inschool. Emotional neglect is the lack of emotional support such as

the failure to provide psychological care, domestic violence and allowing a child to participate in drugs and alcohol abuse.

A child worker becomes alienated from the rest of the family, has low self esteem, and is likely to engage in self destructive behaviour. He or she is likely to have impaired psychological development and develop anti social behaviour including lying and living with fear complex.

### **Law and Public Policy Pertaining to Child Labour**

As per Article 24 of the Constitution of India, no child below the age of 14 years is to be employed in any factory, mine or any hazardous employment. Further, Article 39 requires the States to direct its policy towards ensuring that the tender age of children is not abused and that they are not forced by economic necessity to enter avocations unsuited to their age or strength. Recently, with the insertion of Article 21A, the State has been entrusted with the task of providing free and compulsory education to all the children in the age group of 6-14 years.

Consistent with the Constitutional provisions, Child Labour (Prohibition and Regulation) Act was enacted in 1986, which seeks to prohibit employment of children below 14 years in hazardous occupations and processes and regulates the working conditions in other employments. Realizing the multifaceted and complex nature of this problem, Government had embarked on a holistic and a multi-pronged programme to eliminate child labour from the country in a phased manner beginning with children working in hazardous occupations and progressively covering the children working in other occupations also. The National Policy on Child Labour announced in 1987, emphasizes the need for strict enforcement measures in the areas of high child labour concentration along with appropriate rehabilitative measures to curb this menace.

Although Government is committed to the task of elimination of child labour in all its forms, considering the nature and magnitude of the problem, gradual and sequential approach has been adopted to withdraw and rehabilitate children, beginning with those working in hazardous occupations and processes. Government strategy is multi-pronged, which involves strong enforcement of the existing Act with simultaneous efforts towards rehabilitation of both parents and children through linkages with the poverty eradication and income generation programmes of the Government. This is because working children are from extremely poor families and are contributing to the meagre income of their families. Therefore, a blanket prohibition on all kinds of child labour without providing an alternate means of financial support is likely to punish parents who are already living in abject poverty.

In order to translate the above policy into action, the Government of India initiated the National Child Labour Project Scheme in 1988 to rehabilitate the working children starting with 12 child labour endemic districts of the country. Under the Scheme, working children are identified through child labour survey, withdrawn from work and put into the

special bridge schools, so as to provide them with enabling environment to join mainstream education system. In these Special Schools, besides formal education, they are provided stipend H Rs.100/- per month, nutrition, vocational training and regular health check-ups. In addition, efforts are also made to target the families of these children so as to cover them under various developmental and income/employment generation programmes of the Government. The Scheme also envisages awareness generation campaigns against the evils of childlabour and enforcement of child labour laws.

The NCLP Scheme is implemented through a district level Project Society, headed by the District Collector. This Project Society, includes prominent NGOs and Trade Unions of the district, in addition to the State Government officials from Education, Health, Rural Development, Labour, Social Welfare and Women & Child Development Departments, etc. The involvement of different departments in the Project Society is to ensure better convergence with these Departments for implementation of the Scheme. As far as possible, running of Special Schools for childlabour is entrusted to NGOs. It may, however, be taken up by the Project Society itself, if competent and experienced NGOs are not available in the district for this purpose. The Scheme offers lot of flexibility and decentralization, wherein based on the broad guidelines laid down by the Government of India, all decisions concerning running of the schools or selecting the NGOs etc. are taken at the level of Project Society. The funds under the Scheme are sanctioned by the Ministry directly to the District Collector, who in turn, disburses them amongst the NGOs for running these Special Schools for working children. The funds are also provided under the Scheme for conducting regular childlabour surveys, awareness generation programmes and training of instructors/teachers, etc.

The coverage of the NCLP programme, which started with 12 districts has been thereafter progressively increased to cover much larger number of districts in the country. In fact, major thrust to the programme came with the landmark judgement of the Hon'ble Supreme Court in December 1996 in the case of M.C. Mehta v. State of Tamil Nadu. The Hon'ble Supreme Court gave certain directions regarding the manner in which the children working in the hazardous occupations were to be withdrawn from work and rehabilitated, as also the manner in which the working conditions of the children employed in non-hazardous occupations were to be regulated and improved upon. The Hon'ble Court specifically ordered withdrawal of children working in hazardous industries and ensuring their education in appropriate institutions. It also prescribed employment of at least one adult member of the family of the child so withdrawn from work; a contribution of Rs.20,000/- per child was ordered to be paid by the offending employer into a corpus of fund set up for the welfare of child labour & their families, failing which, the State Government to contribute to this Welfare Fund Rs.5,000/- per child. The interest earnings of this corpus were to be used for providing financial assistance to the families of these children. The Hon'ble Court also ordered regulation of working hours for the children engaged in non-hazardous occupations, so that their

working hours did not exceed 5-6 hours per day and that at least two hours of education was ensured. It further directed that the entire expenditure on education of these children were to be borne by their employers.

In pursuance with the directions of the Hon'ble Court, fresh child labour surveys were conducted in childlabour endemic districts of the country and the States were directed to step up enforcement measures. The Supreme Court is monitoring the directions issued in this judgment continuously since then. Based on the reports received from the State/U.T. Governments, the Ministry of Labour & Employment has been regularly filing Affidavits to apprise the Hon'ble Court of the progress in this regard.

The progress of implementation of the NCLP Scheme is monitored by the Ministry through the prescribed periodical reports & regular visits from the officials of the Ministry, State Government and audit departments. A Central Monitoring Committee on Child Labour headed by the Union Secretary (Labour & Employment) and consisting of State Labour Secretaries and representatives from various Ministries connected with the implementation of the project has been set up to look into the important issues faced in implementing the Scheme. The Central Monitoring Committee had recommended setting up of State Monitoring Committees for monitoring the implementation of the Scheme at the State level, which are yet to be setup in most of the States. However, as per the directions of Hon'ble Supreme Court in 1996, in M.C. Mehta case, a Child Labour Cell has been formed in most of the States to implement the directions of the Hon'ble Supreme Court. This Cell has also been instrumental in monitoring the scheme.

With the enactment of Child Labour (Prohibition and Regulation) Act, 1986 and enunciation of Child Labour Policy in 1987, the Government has been following a sequential approach towards elimination of childlabour in the country. While it is committed for elimination of child labour in all its forms in the country, the focus is on elimination of hazardous forms of child labour in areas of high concentration. With this approach, the NCLP Scheme, which was launched in 1988 in 12 districts of the country, has gradually been expanded to cover 250 districts as per the endemicity of childlabour. The list of hazardous occupations and processes are also being progressively expanded to cover more and more sectors. At the time of enactment of Child Labour Act, 1986 there were 6 occupations and 13 processes, where employment of children was prohibited. The list has been expanded to include 13 occupations and 57 processes at present. In addition, Government has recently also included domestic servants and children working in dhabas, hotels etc. in the list of hazardous occupations, which cover a large number of working children in the country.

As per Census 2011, there are 8.4 Crore children that do not go to school which include about 7.8 lakh children working in hazardous sectors. The NCLP Scheme in the present form covers children working in hazardous occupations/processes in the age group of 9-14 years limited to the districts where it is being implemented. The scheme at its

inception covered children in the age group of 5-14 years. But with the launch of SSA in 2001-02, under the 10 Plan, it was decided to confine the focus of NCLP Scheme to the older children in the age group of 9-14 years, leaving the younger children to be directly covered under SSA. The Scheme was expanded from 100 to 250 districts in the 10th Plan. However, it failed to bring more than half of the country under its ambit.

Considering the demand from various states for expansion of the Scheme to larger number of districts and the objective of the Government to progressively cover more and more working children under rehabilitation measures, there is a need to cover all the children engaged in hazardous sectors spread over in the country under the NCLP Scheme during the 13th Plan. This would also be in line with ILO Convention No. 182, which recommends urgent measures to be taken for eliminating worst forms of child labour. While ILO Conventions prescribe these actions for children up to the age of 18 years, considering the large number of working children below the age of 14 years in India, and also because of the socio-economic realities the age criteria for child labour will remain at 14 years. This is also in consonance with the Constitutional provisions under Article 21A and Article 24, which target children up to 14 years of age.

Child Labour being essentially a result of poverty, the Government's approach for their rehabilitation, apart from education also included providing vocational skills to these children which could help them to earn livelihood later in their lives. The well-planned pre-vocational skilled education can help the children to link up with vocational training programmes being run in the district once they have completed their education. This is more suitable for those children who, once over 14 years of age would not necessarily exercise the option to be mainstreamed to the formal system of education.

The pre-vocational training being imparted in the NCLP schools at present is not based on the market demand and the Vocational Instructors are also not so well trained in newer and innovative vocations which could be a very important factor for enabling the retention of these children in the special schools. The pre-vocational education in the special schools need to be upgraded to enable the children withdrawn from work to be equipped to retain traditional skills with an added emphasis on theory. The children who do not have any particular skill should receive a first level of sustained exposure to possible trades, which they could link into once they completed education and are of the appropriate age. Therefore in the NCLP schools the focus must move on from education per se to a greater synergy between basic education and well-rounded planned vocational training which would adequately equip them with the requisite skills to enter the job market and thereby generate sustenance income for themselves and for their families at the earliest.

Experience of implementing the INDUS Child Labour Project has shown that there is also a great need to provide employable vocational skill training to adolescents to prepare them to enter the world of work with skills and attitude. It has also shown that

providing vocational skills to this age group would also attract child labour families to positively change their behaviour in withdrawing their young children from work and motivate them to complete the primary education and then acquire technical skills. Providing vocational skills to working adolescents would also largely improve the access of vulnerable families to vocational education.

## **Proposed Macro-Level and Institutional Measures to Curb Child Labour**

This is a million dollar question with no specific solution. All sections of the society need to work together to stop misuse and abuse of children. Stakeholders to tackle these issues include:

- National Governmental agencies
- Non-Governmental Organisations (NGOs)
- People's Forums
- Corporate entities
- Individual Social Responsibility/Activism

## **Role of Stakeholders in Mitigating Child Labour**

### **1. National Government Agencies**

- National Agencies need to ratify the UN Convention on the Rights of the Child (CRC).
- An effective legal system needs to be introduced to check employment of children below 14 years through proper legislation.
- Economic sanctions to be enforced on countries that allow the employment of children for the manufacturers of export products.
- Proper monitoring and implementing authorities to be set up to implement various acts passed by the National Government.
- National Social Welfare schemes to be introduced to supplement income for poor families whose children are removed from work sites

### **2. NGOs**

- NGOs have a key role in raising awareness and informing people about the misuse of children, denial of their fundamental rights of shelter, food and education. UNICEF has clarified the role of NGOs as essential players in many of the intervention stages with direct involvement in identification and rescue operations.
- Assist governmental agencies in implementing various pieces of legislation
- Identify areas where child labour exists and bring to the notice of Government.
- Undertake advocacy with national governments for the implementation of strict legislation to ban child labour.
- Organise rehabilitation centres to shelter children removed from work sites.

### **3. Civil Society /Peoples' Forum**

- Civil society can play an active role in identifying and alerting authorities to child labour sites.
- Create awareness among parents and the public about the effect of child labour on children.
- Motivate parents to send their children to school
- Organise counselling sessions for children and parents
- Organise joint protests, rallies, hoardings etc. against employing children below the age of 14.

### **4. Corporate Entities**

- Include banning of child labour in their mission.
- Introduce welfare schemes for children.
- Allot separate welfare funds as part of Corporate Social Responsibilities (CSR) to help organisations working for the cause to ban child labour.
- Put up hoardings giving messages on the benefits of banning child labour

### **5. Individual Social Responsibility & Activism**

- Resist any form of child labour.
- Openly oppose child labour activities which come to their notice without any fear.
- Be very assertive in expressing displeasure to shop owners and organisations that employ children for labour.

It is worthy to note that in India there are several international and national NGOs campaigning for the abolition of child labour.

### **Proposed Reforms**

Tracking is an important tool to record the progress of the Project beneficiary right from the time of his/her identification as child labour in the survey to his/her enrolment in the special schools, through his/her stay therein and up to mainstreaming. In fact, this monitoring needs to be continued even beyond mainstreaming to determine if the child is continuing with his/her studies in the regular schools or has dropped out. Once a child is rehabilitated under the Project, it is an important follow up step to check if he/she is faring well in the mainstream school. Such a monitoring would ensure that the child does not relapse back to exploitative work. A well-designed Tracking & Monitoring (T&M) system would, therefore, ensure that the beneficiary has been effectively rehabilitated. An effective web-based monitoring would also benefit in keeping track of migrant child labour from one NCLP district to another and would help in continuation of their schooling and rehabilitation in spite of their movement.

This process of Tracking & Monitoring is, therefore, important in determining the real success of the Project in terms of children's actual mainstreaming and continuation in schools thereafter. It would also provide credibility and authenticity of the efforts made under the Project.

While Tracking & Monitoring is possible through Index Cards too, the more efficient and modern way of doing so is through web-based electronic system, particularly since provision has been made for a computer in every NCLP district in the 11th Plan. These computers can be made use of for the purpose of Tracking & Monitoring too with a bit of computer training of the Project Staff. A provision of Rs. 20,000/- for capacity building of the staff in this regard is proposed in the first year of the Plan period for every existing NCLP district or in the first year of their operation in case of new NCLPs. The web-based Monitoring & Tracking software developed under INDUS Project or under the UNICEF Child Protection Programme or that developed by the Government of Tamil Nadu could be utilized for this purpose, depending on the ease and efficacy of any of them. The customization and trial runs of these softwares are under way.

### **Convergence**

The National Policy on Child Labour enunciated in 1987 recognized the need to focus Government action programmes on income and employment generation to the families of child labour in order to supplement the resources of these hapless families which depended on their children to supplement family income. The scheme of NCLP, therefore, always recommended convergence of efforts with other developmental schemes to help the families of childlabour being targeted under the Project. This was emphasized again in the 10th Plan strategy. However, such dovetailing of schemes has been inadequate so far and hence, the imperative need is to have specific component or built-in explicit provision for the families of childlabour in these schemes of the Government so as to adequately cover these families and raise their family income in various forms.

This requirement has assumed still greater importance in view of the Government's decision to prohibit employment of children as domestic servants or in dhabas, teashops, restaurants, hotels and recreation centres, where the incidence of childlabour is quite widespread and visible. A meeting on the issue of convergence was called to discuss these issues with the Ministries/Departments of Rural Development, Elementary Education & Literacy, Women & Child Development, Housing & Poverty Alleviation and Social Justice and Empowerment. They have also been addressed to take appropriate steps in this direction. The Planning Commission may also insist on inclusion of such provisions in the schemes of these Ministries and Departments in the 13th Plan, so as to maximize the impact of Government intervention in a concerted manner. The efforts towards educational rehabilitation of these working children need to be supplemented by economic rehabilitation of their families, since a boost in their family income will be critical for the success of Government interventions in elimination of childlabour from the country.

Some of the prominent schemes of these Ministries/Departments, which could have an explicit component for child labour and their families are given below and could be utilized for supporting Government's intervention for elimination of child labour. This is however, only an indicative list and could be extended to other programmes too.

### **I. Schemes of the Department of Elementary Education**

- SarvaSikshaAbhiyan(SSA)
- Vastishala
- ShikshaMitraYojana
- Mid Day MealScheme

### **II. Schemes of Ministry of Women & Child Development**

- Anganwadi Centre/Day Care Centre
- Extension Services of Anganwadi Workers
- BalikaSamridhiYojana
- Swavalamban
- MahilaSamakhya (Assistance to Voluntary agencies with MahilaSamakhyaWomen)

### **III. Schemes of Ministry of Rural Development**

- Swamjyanthi Gram SwarozgarYojana(SGSY)
- SampornaGrameenRozgarYojana(SGRY)
- IndiraAwasYojana(IAY)

### **CONCLUSION**

All stake holders should jointly resist any form of child labour using what ever means available. A networking of international NGOs working in this field has to be created for advocacy with various departments to ban child labour. International funding organisations have to identify a contact organisation in each country to help NGO's who are working in this field undertaking activities for the banning of child labour and identify national projects to be implemented in a transparent manner with good stewardship.

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