

CHILD LABOUR IN INDIA: A STUDY

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Introduction:-

The Nations future depends upon the child who becomes a youth of that country. If he develops then ultimately Nation also develops. Child is the assets of Nation and is always happy, tensionless and doing activities with full power and concentration. But in current era there is a threat to children they are exploited by others as they are the easily vulnerable section of the society. Child Labour is universal phenomenon; it is associated with socio-economic problem of people. So the Child Labour existed since time immemorial. A Child Labour is nothing but the blot and slur on modern and welfare society which seeks to promote the welfare, development of every citizen. India being the topper in the world for having highest number of Child Labour, it has been constantly drawing the attention of legal and social thinkers, economist, politicians as well as researchers from time to time as this evil thwarts the development the development of society and the society as well.

Indeed child labour is the curse upon the society, disgrace for the world of mankind, a malady that may wreck the backbone of the country. The future and the fate of the every civilized state depend on the protection and welfare of the children.¹

Concept of child labour:-

Child Labour means any mental or physical work done by the children that disturb their overall development, opportunities for education and needed recreation. The children are to be found in doing of work in family farm or working in workshops, factories, dhabas etc. outside home for wages constitute Child Labour. Means it is not only confined to work on family farms or in traditional family jobs but it has also extended to other fields like agriculture or other allied pursuit, unorganized small scale sector and even in organized industries.

Definition of child labour:-

Under Factories Act, 1948, “Any physical labour undertaken by child below 15 years either under compulsion or voluntarily in an organized or unorganized sector, qualifies to be called as Child Labour.”

New Encyclopaedia Britannica (1978) “Child Labour means the employment of child under a specified legal age.”

Encyclopaedia of Social Science (1959) “When the business of wage earning or of participation is self of family supports conflicts directly or indirectly with business of growth and education, the result is child labour.

Categories of Child Labour:-

Child Labour is a term that needs unpacked. It cannot be used in sweeping manner but covers a range and variety of circumstances in which children work.

a) General Child Labour:-

Those children who are doing paid or unpaid work in factories, workshops, establishments, mines and in the service sector, such as domestic labour. The Ministry of Labour Government of India has employed the term Child Labour only in context of children doing hazardous work. By implication children who are not doing hazardous work are not considered to be Child Labourer and are said to be doing child work. The consideration of this narrow definition of Child Labour is that, only includes a very small percentage of children who are in the work force and leaves out millions of children who require policy and programmatic support from the Government.

b) Street Child Labour:-

“Children living on and off the street such as a shoeshine boys, rag-pickers, newspaper vendor, beggars etc”. The street Child Labour is very harsh one because one time children who work in factories, farms, dhabas etc. are back to their homes at night but the street children are completely at the mercy of employers. They live on the pavements, in the Bus stop, railway station. They are at the mercy of urban likewise if the middle class house wife has paid for them they cannot run away.

c) Child Labour in Family Unit:-

Children who are working as a part of family labour in agriculture and in home based work. If children are working 12 or 14 hours of day along with their parents at the cost of their education, their situation is similar to that of children working for their employers. In fact children particularly girls are expectable to take on work burdens by parents in complete disproportion to their strength and abilities. This is the largest category of children who are

out of school and working full time.

d) Child Labour for Sexual Exploitation:-

Many millions of young girls and boys serve their sexual appetites of men from all social and economic backgrounds. Directs links the commercial sexual exploitation of children and other forms of exploitative Child Labour are numerous. Factories, workshops, street corners, railway station, bus stop and homes where children work are common sites of sexual exploitation. Children are especially powerless to resist abuse by employers, either as perpetrators or intermediaries. Village Loan sharks often act as procure of city brothels, lending money to the family which must be paid back through the daughters work. Almost all such children are betrayed by those they trust and end up with their trust abused. The physical health danger of (HIV/AIDS sexually transmitted disease) and psycho-social damage inflicted by commercial sexual exploitation makes it one of the most hazardous forms of Child Labour.ⁱⁱⁱ

e) Migrant Child Labour:-

In India millions of children are the victims of child labour because of the seasonal migration in unorganized sector like in brick making industries and in agriculture. Because of unemployment in their areas the head of the family migrated with their wife and children for seasonal works in search of foods in various sectors. This migration is nothing but the dropout of children from the school. Sometimes most of children migrate independently and it is the reason behind it for their exploitation easily by employer and other persons in the society.

Reasons behind Child Labour:-

The reasons behind Child Labour are generally socio-economic and the prime factors leading to this miserable situation are poverty, ignorance, illiteracy of parents and children, low family income, low wage, adult unemployment, large family, bonded labour system among the tribal predators as also the police. They have no permanent base and or often move so their problems are more acute than that of children working in the factories and living at home.

f) Bonded Child Labour:-

“Children who have either been pledged by their parents for paltry sums of money or those

who working to pay the inherited debt of their fathers.” Bonded child Labour is an acute problem in some states. Bonded children are many ways the most difficult to assist because they are inaccessible. If the carpet owner has bought them, they cannot escape communities and backward classes, natural calamities like flood, drought and quest of cheap labour is also another forms of Child Labour.^{iv}

Further we also depict that , migration inadequate school facilities and low educational attainment^v, defective plans and programmes of development^{vi}, laws and enforcement are often inadequate, workers rights are repressed, attitude of the employers towards children , traditional craft, over population, orphans and other factors are also the reasons behind the Child labour.^{vii}

Effects of child labour:-

Working long hours, Child labourers are often denied their basic school education, normal social interaction, personal development, and emotional support from their family. Besides these problems, children face many physical dangers and health problem from forced labour. The effects and consequences of Child Labour are as follows

1. Child labour badly affecting the health of the children and they have always risk of rapid skeletal growth, great risk for hearing loss and more accident and injuries.^{viii}
2. Because of long work on regular basis result dropout from school and so it is social and educational developmental harm to working children.
3. Growth deficiency is enhanced in working children who tend to be shorter and lighter than other children, this deficiency also impact on their other life.
4. HIV/AIDS and other sexually transmitted diseases are rife among the million children forced into prostitution every year. Drugs addiction and mental illness are also common among child prostitute.^{ix}

Protective Measures to eradicate of Child Labour in India:-

To protect the children below 14 years of age some constitutional safe guard has been provided under the Indian Constitutional law to reduce a Child labour in some extend. These safeguard as follows:

Article 15 affirms the right of state to make special provisions for women and children.

Article 21A provides that the state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may by law, determine.

Article 24 provides that no child below the age of 14 years shall not be employed to work in any hazardous employment.

Article 39 (e) Directive principles of State Policy provides that children of tender age should not be abused and that they should not be forced by economic necessity to enter vocation unsuited to their age or strength.

Article 39(f) requires children to be given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity, and that childhood and youth be protected against exploitation and moral material abandonment.

Article 45 of the Directive Principle of State Policy provides compulsory education for all children until they complete the age of 14 years.^x

Statutory Protection to eradicate Child Labour in India:-

The regulation of Child labour through statutory means started from Factories Act, 1881. After that various legislations have been passed to prohibit and regulate child labour. Among these enactments some important enactments which protect the interest of child labour are as follows:

1. Children (Pledging of Labour) Act, 1933
2. The Employment of Children Act, 1938
3. The Factories Act, 1948
4. The Minimum Wages Act, 1948
5. The Plantation Labour Act, 1951
6. The Mines Act, 1952
7. The Merchant Shipping Act, 1958
8. Motor Transport Workers Act, 1961
9. The Shops and Establishment Act
10. The Bidi and Cigar Workers Act, 1966
11. Apprentices Act, 1961
12. Child Labour (Prohibition and Regulation) Act, 1986
13. The Juvenile Justice (Care and Protection) of Children Act

The legislation relating to the regulation of Child Labour concentrates on four basic issues which are as following:-

1. Minimum age for employment of children.
2. Maximum period of work per day and forbidding work at night.
3. Prohibition of certain types of work for children and
4. Medical examination of all working children under 18 years of age.

Besides Constitutional provisions regarding protective safeguard for child we have 13 major legislations which provide legal protection to children in various employment. Time to time they have been amended but right now we have masterpiece legislation for protecting of children from Child labour i.e. Child Labour (Prohibition and Regulation) Act, 1986.

The Child Labour (Prohibition and Regulation) Act, 1986:-

It is a scholar attempt of legislature to give more benefit to the child labour but in some extend the act protected to reduce the Child Labour but failed to prohibit or total ban on it. The act has limited purposes like other acts than its long title but some provisions are made to prohibit the children working in various occupations which are badly affecting the physical and mental health of the working children. We shall see some provisions as safeguard to reducing and protecting child labour by concerned Enactments. According to this Act,

- a. Child means a person has not completed his 14 years of age.
- b. Family units and training centres are excluded from the ambit of the Act.
- c. The Acts provide for the setting up of “Child Labour Technical Advisory Committee” for the purpose of addition of occupation and process to the schedule. A notice of at least three months will be given by the Central Government before adding any occupation process to the schedule.^{xi}
- d. The Act clearly lays down that no child will be allowed to work for more than six hours per day^{xii} with a rest of one hour after three hours of work and in every week one holiday must be given.
- e. No children shall be permitted to work at night and no overtime work to be given.
- f. Punishment has been provided for the person who is contravening the provisions of this Act under Section 14 (1&2) which has not been provided by any previous legislation.
- g. In the said Act scope of locus standee has been widened and right to file complaint has been given to any person, Police Officer or inspector appointed under the Act 1986 before the competent Authority.

But when we go thoroughly with this Act the some questions arises in minds that, how the hazardous occupations and processes are safe for children which are performed by family or unorganised sector? How can children be allowed to work anywhere in these occupations and processes? This is the reason that impliedly we can say that it is not protection but license has been given to the family unit and training centres which are excluded from the preview of this Act. For

example many occupations which are hazardous in nature are not included in schedule, i.e. such as glass and bangle factories, the state industries.

National Human Right Commission and protection of child in India:-

The Principles which are protecting the children from exploitation by others are set out by N.H.R.C. and Convention on Child Rights as enumerated.

1. That the children need special safeguard beyond those provided to adult.
2. That the best environment for a child survival and development is within the protective and nurturing family setting.
3. That the Governments and the adult world in general, should be committed to act in the best interests of children.^{xiii}

Contribution of Indian Judiciary to eradicate the menace of Child Labour:-

Supreme Court has given various decisions to reduce a Child labour and protects the rights of children regarding physical and mental health for overall development of them. Some landmark decisions are as follows

Salal Hydro Project v. State of Jammu Kashmir^{xiv} the Court held that, “Construction work is hazardous employment and no child below the 14 years can, therefore, be allowed to be employed in construction work by reason of the prohibition enacted in article 24 and this constitutional prohibition must be enforced by the Central Government. The Central Government would do well to persuade the workmen to send their children to a nearby school and not only for the school fees to be paid but also provide free of charge, books and other facilities such as transportation.

In Asiad Workers Case^{xv}, the Apex Court held that, “Construction work is hazardous employment and, therefore, under Article 24 of the Constitution, no child below the age of 14 years can be employed in construction work.”

In Uni Krishnan V. State of H.P.^{xvi} the Supreme Court held that, “The right to education at level is a fundamental right of citizen. All children up to the age of 14years have a fundamental right to free education.”

In Sheela Barse V. Union of India^{xvii} the Supreme Court found that though several states have enacted children Acts for the fulfillment of Constitutional obligations for the welfare of children under Article 39(f), yet it is not enforced in some states. In view of this it directed that such beneficial legislation be brought into force and administered without delay. Justice Bhagawathi

made a suggestion to formulate and implement a national policy for the welfare of children.

International Provisions for eradication of Child Labour:-

After becoming the signatory to the **U.N. Convention on the Rights of Child** which held in September 1990. The India started to action to protect the Child's rights and focus on three major heads viz.^{xviii}

1. Survival of the child.
2. Protection of the child and
3. Overall development as the basic rights of child.

The United Nations Declaration on the Rights of the Child:-

The Child shall enjoy special protection and shall be given opportunities and facilities, by law and other means, to enable him to develop physically, mentally, spiritually and socially in healthy and normal manner and in conditions of freedom of dignity, in the enactment of laws for this purpose the best interest of Child shall be paramount consideration.

Conclusion and Suggestion:-

The problem of child labour has constantly attracted the attention of all law making bodies at the both International and National level. International Labour Organization has passed various Conventions and recommendations to protect working children worldwide. Indian Government make best affords to prohibits a Child Labour by enacting various legislations. But root out the child labour is not the easiest task but it may be eradicate by proper implementation of law and Government Policies. Current legislations are not sufficient to overcome on this menace because of some drawbacks and loopholes. Even the latest act in 1986 Prohibition and Regulation of child labour does not touch employment of children in agricultural sector.

Suggestions:-

In view of the above discussion we can say that Child Labour is basically social evil and therefore, welfare legislations would not be sufficient to check this social evil. To reduce the Child Labour we have to overcome on the causes of Child Labour i.e. poverty, illiteracy of parents and children. State has to recognise the problem of Child labour with full responsibility and give assurance of basic needs of life to both the parents and children by ensuring the employment to adult and parents. Government should implement suitable family welfare schemes and adapt a suitable

population policy to restrict the family to one child.

It is need of the hour to implement all Child Labour Laws strictly and for that whole hearted co-operation of official staff of labour department and every citizen must be given.

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