

Constitutional and Legal Framework to curb menace of Child Labour in India Nikke

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INTRODUCTION

Child labor has been present throughout history, but its recognition as a global social issue is relatively recent. In earlier times, child labor was intertwined with the collective subsistence model, particularly in rural settings, where children contributed to family occupations under informal supervision. However, with the advent of capitalism and industrialization in the 18th century, the landscape shifted dramatically. Factors such as increased industrial production, commercialization of agriculture, and mechanization led to widespread unemployment among adults, pushing children into the labor market. Industrialization brought about significant socioeconomic changes, including the segmentation of the labor market, which exacerbated exploitation and weakened collective bargaining power. This resulted in the emergence of labor aristocracy and furthered class divisions.

Gravity of the menace of Child Labour in India

As per Hindu Newspaper Article¹, The Centre government of India does not have any data on child labour in the country and a reason for this is the drying up of budgetary provisions meant for the National Child Labour Project (NCLP) scheme, which was monitoring the problem for about three decades. The Labour Ministry is learnt to have told the Parliament Standing Committee on Labour, headed by veteran Biju Janata Dal (BJD) MP, Bhartruhari Mahtab, that since the NCLP was merged with the Samagra Shiksha Abhiyan in 2016, the Ministry has no records of child labour. The currently available data is of the 2011 Census, which says the country has more than a million child labourers. Last year, the panel had pulled up the Centre for lack of data on migrant workers.

¹ <https://www.thehindu.com/news/national/gather-data-devise-strategies-change-policies-and-laws-comprehensively-to-stop-child-labour-parliamentary-panel-to-centre/article67659060.ece>

As per Census 2011, the total child population in India² in the age group (5-14) years is 259.6 million. Of these, 10.1 million (3.9% of total child population) are working, either as ‘main worker’ or as ‘marginal worker’. In addition, more than 42.7 million children in India are out of school. However, the good news is that the incidence of child labour has decreased in India by 2.6 million between 2001 and 2011. However, the decline was more visible in rural areas, while the number of child workers has increased in urban areas, indicating the growing demand for child workers in menial jobs. Child labour has different ramifications in both rural and urban India.

According to the estimates by International Labour Organisation (ILO) Report³, there are about 10.1 million working children between the age of 5 to 14 in India. Maintenance of Child labour can be summarised as following:

- 1. in 10 child labourers worldwide is from India**
- 2. Girls are the most affected**
- 3. few key sectors employ child labourers**
- 4. Child labour is most prevalent in five regions**

Bihar, Uttar Pradesh, Rajasthan, Madhya Pradesh and Maharashtra are the main states in India where child labour is present. This is where over half of the country’s total child labour population works.

VARIOUS PROVISIONS UNDER INDIAN CONSTITUTION

Since India gained independence, various governmental bodies, including commissions appointed by the ruling party, opposition parties, and state governments, have consistently supported the idea of implementing compulsory and universal primary education for all children up to the age of 14. This commitment traces back to the early 20th century when Gopala Krishna Gokhale, then president of the Indian National Congress, advocated for free and mandatory elementary education from the British colonial government, albeit unsuccessfully. Subsequently, in the 1930s, provincial governments, predominantly under the

²https://www.mospi.gov.in/sites/default/files/publication_reports/Children%20in%20India%202018%20%E2%80%93%20Statistical%20Appraisal_26oct18.pdf

³ https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_557089.pdf

Indian National Congress, enacted legislation empowering local authorities to enforce compulsory education measures.⁴

The Indian Constitution of 1950 stipulates that the state must strive to ensure, within a decade of its enactment, the provision of free and compulsory education for all children until they reach the age of 14 (as outlined in Article 45). Legislation regarding the employment of children in mines and factories was initially introduced by the British in the early 20th century, with more comprehensive laws following the recommendations of the Royal Commission on Labour in 1932. The Indian Constitution contains several clauses aimed at safeguarding children, including a strict prohibition (as stated in Article 24) on employing any child under the age of 14 in factories, mines, or hazardous occupations. Additionally, Article 39 (e) and (f) emphasize the prevention of child abuse, ensuring that economic circumstances do not force children into unsuitable work, providing opportunities for their healthy development, and protecting them from exploitation and neglect.

In addition to the constitutional directives, various acts have been enacted by the state over time to address the issue of child labor. These include the Minimum Wages Act of 1946, the Factories Act of 1943, the Plantation Labour Act of 1951, the Apprentice Act of 1961, the Beedi and Cigar (Conditions of Employment) Act of 1966, the Shop and Establishment Act, and the Child Labour (Prohibition and Regulation) Act of 1986.⁵ The latter specifically prohibits the employment of children in certain hazardous occupations such as rail and road transport, Beedi (cigarette) manufacturing, matchstick production, cement, explosives, fireworks manufacturing, and building and construction work, recognizing them as detrimental to children's health, safety, and overall development.

The Child Labour (Prohibition and Regulation) Act of 1986 also sets regulations regarding working conditions, stipulating that children cannot work between 7 pm and 8 am, effectively banning night shifts, and disallowing overtime.⁶ Violations of the Act incur penalties ranging from three months to one year of imprisonment,

⁴ Child Labour in India: Gurchaten S. Sanghera

⁵ Indian Polity: M. Laxmikant

⁶ Child Labour (Prohibition and Regulation) Act 1986

along with fines ranging from Rs. 10,000 to Rs. 20,000. Several articles within the Indian Constitution offer additional protections and provisions aimed at combating child labor.

Articles of Constitution⁷ of India related to Child/Child Labour

Article 15(3) empowers the state to enact special provisions concerning children without violating the right to equality.

Article 21 asserts that no individual shall be deprived of their life or personal liberty except through established legal procedures. The Supreme Court has interpreted life as encompassing freedom from exploitation and the right to lead a dignified life.

Article 21A guarantees the right to education, mandating the state to provide free and compulsory education to all children aged six to fourteen as determined by law. Employers in establishments where children are permitted to work are obligated to ensure the education of child laborers.

Article 23 prohibits human trafficking, forced labor, and similar forms of exploitation, with violations punishable by law.

Article 24 prohibits the employment of children under fourteen in factories, mines, or hazardous occupations. The Supreme Court has clarified that hazardous employment includes construction work, manufacturing matchboxes, and fireworks, hence no child under fourteen can be employed in such roles. The state is urged to take positive measures to improve the welfare and quality of life for these children.

Article 39(e) directs the state to safeguard the health and strength of children, ensuring they are not compelled by economic necessity to undertake unsuitable work.

⁷ Our Constitution: (Subhash Kashyap)

Article 39(f) directs the state to provide opportunities and facilities for children to develop in healthy, free, and dignified conditions, protecting them from exploitation and abandonment.

Article 45 mandates the state to provide early childhood care and education for all children until the age of six.

Article 51 A (e) imposes a duty on every Indian citizen who is a parent or guardian to ensure opportunities for education for their children or wards aged between six and fourteen.

The Child Labour (Prohibition & Regulation) Act of 1986 was enacted to forbid the employment of children under fourteen years of age in factories, mines, and hazardous occupations, and to oversee their working conditions in certain other jobs. According to this legislation, no child can be hired or allowed to work in any of the occupations listed in Part A of the schedule, or in any workshop where processes listed in Part B of the schedule are conducted.⁸ However, exemptions are made for workshops where processes are carried out solely by the owner's family, or for schools established or supported by the government. Additionally, the central government holds the authority to form the Child Labour Technical Advisory Committee through an official notification in the gazette. This committee advises the central government regarding the inclusion of new occupations and processes to the Act's schedule.

The enforcement of this Act falls under the jurisdiction of the Central Industrial Relations Machinery (CIRM) within the Ministry of Labour. CIRM operates as an affiliated office of the ministry and is commonly referred to as the Chief Labour Commissioner (Central) [CLC(C)] organization. The Chief Labour Commissioner (Central) leads the CIRM. Furthermore, a Central Advisory Board on Child Labour has been established under the ministry to assess the execution of current laws and propose initiatives for the well-being of working children. The principal provisions of the Act include:

Children are not to be compelled or allowed to work beyond the designated hours set for a particular establishment or category of establishments. Work hours per day must be arranged so that no period exceeds three hours, and

⁸ <https://clc.gov.in/clc/acts-rules/child-labour-act-1986>

children must have a minimum one-hour rest interval after three hours of work. Overtime work is prohibited for children, as is work in any establishment on a day when they have already worked elsewhere.

Every child working in an establishment is entitled to one whole day off per week, with the specific day determined by the employer and prominently displayed in the establishment. The employer may only change this day once every three months. Employers must maintain a register containing details of all children employed, including their names, dates of birth, work hours, rest intervals, nature of work, and any other prescribed particulars. The government may establish rules through official notification in the gazette to ensure the health and safety of children employed in any establishment or category of establishments.

Violations of the Act, such as employing or allowing children to work in contravention of its provisions, are subject to penalties, including imprisonment, fines, or both. Complaints regarding such offenses can be filed by any person, police officer, or inspector in a court of competent jurisdiction. Only courts equivalent to or higher than a Metropolitan Magistrate or a Magistrate of the First Class have jurisdiction over cases related to this Act.

The primary objective of the Child Labour (Prohibition & Regulation) Act, 1986 is to address social concerns by prohibiting the employment of children under 14 years old in certain occupations and regulating the working conditions of employed children. The Act specifically prohibits child labor in various occupations, including railway transportation, bidi making, carpet weaving, match and explosive manufacturing, soap production, wool cleaning, and building and construction. Additionally, the government has prohibited child employment in specific processes, such as those involving abattoirs, hazardous operations, printing, cashew processing, and soldering in the electronic industry. In total, the Act bans child labor in approximately 17 occupations and about 66 processes.⁹

⁹ https://labour.gov.in/sites/default/files/act_2.pdf

Conclusion:

Child labor is a global issue requiring collective efforts for eradication, and the Indian government has initiated measures in this regard. However, the primary drivers of child labor are socio-economic factors such as poverty and limited access to education. In areas where education is unaffordable or inadequate, children often resort to work due to lack of alternatives. Effective implementation of child labor laws in India is imperative, yet there exists variation in statutory provisions regarding the age limit for employment across different occupations.

Unlike international standards set by the International Labour Organisation (ILO), Indian laws lack uniformity in setting minimum age limits for employment, especially in agriculture where no such law exists. The Factories Act, 1948, stipulates a minimum age of 14, while the ILO Convention prescribes 15 as the minimum age for any form of employment. Inconsistencies are also evident in non-industrial employment, where minimum ages range from 12 to 14 years. India's failure to ratify the ILO conventions on combating child labor and setting minimum age for employment is a concern, as child labor remains pervasive despite numerous legislative measures and enforcement efforts.

Although enforcement mechanisms under specific laws have been criticized for laxity, the Indian judiciary has played a crucial role in safeguarding child welfare by advocating for education and protecting children from exploitation. Judicial mandates emphasize the right to education and the state's obligation to create a conducive environment for children's growth with dignity, aligning with constitutional mandates. Expanding enforcement machinery and providing rehabilitation benefits to liberated child laborers under government schemes are essential steps. However, eradicating child labor requires raising awareness among parents and children, highlighting the joint responsibility of the government and society in ending this pervasive issue.