

Child exploitation in India, its causes and consequences in the society, A socio legal perspective

Mr. Aradhya Pokhriyal

LL.M. from Chaman Lal Law College
Uttarakhand.

Abstract- Childhood is the most important stage in human life that shapes the future individual, through formal education, self-learning through playing and interaction with other children, adults and nurture, into a better person in private and public life who is aware of rights and responsibilities. However, not all children are at advantage to enjoy their childhood. Child exploitation has been the main thrust of universal discussion over a period. Journalists, psychologists, sociologists, politicians, philanthropists and even literary artists have deliberated on and sought for ways of stopping this exploitative and hazardous phenomenon to no avail. The developed, developing and under-developed countries of the world are all guilty of child labour.¹

The issue of child exploitation and several challenges by children, which have emerged as consequence of those issues have been widely researched and debated for decades. In each country child labour is primary form of child exploitation, caused by unique mix of level of economic development in the country, social attitudes towards children, cultural factors, educational quality and quantity, labour laws governing labour markets and the stringency with which they are enforced. It is aptly described, as 'child labour is a symptom and not the problem'. Despite the countless policies and programmes launched against the issue, the resultant dent caused in the numbers is very meager. For the progress of the community at large we need to pay attention towards education of children.

The Child Labour system is in existence in developing and underdeveloped counties. India is one of the Countries where in large number children below the age of 14 years made work voluntary or forcefully in various organizations. As if there is no proper distribution of economy among the society then children are unfortunately forced to do work for their survival like; Unemployment of adult members of the particular family result into Child Labour.

In any country, protection of children and young people is of prime importance. So the responsibility to provide healthy atmosphere to the children to their fullest physical and mental development rests on all the civilized society. Every human being is a social animal. As we are part of the society, the responsibility to take care of the children and young people is on the shoulder on the society.

FOCUS:

This research is a further addition to existing knowledge on child exploitation, with focus on issue of poverty, illiteracy, fatalistic attitude of employer and such other reasons being the main causes of child exploitation and several challenges that have emerged from the consequences of those issues. The research paper also aims to study several legislative and judicial pronouncements in India that directs towards eliminating child labour. Further, an attempt has also been made to look into International efforts of organizations like ILO and UNICEF to control child exploitation.

RESEARCH METHODOLOGY:

The project has been prepared through the doctrinal, descriptive and analytical method of research. Author has referred various sources and taken help of both primary as well as secondary sources such as case laws, books, journals, newspaper articles and internet sources. No empirical data through field work has been used for this project. The author has taken a mono-disciplinary approach. Some of the researcher's own views, conclusions, suggestions and opinions will be brought out. These are not necessarily correct and of authoritative value.

HISTORY OF CHILD EXPLOITATION:

Child labor is prominent form of exploiting child which means "An act of employing children in order to make them work at lower pay". This practice is considered exploitative and harassing. Earlier, child labor was not considered as a threat, as children of age group 4 to 5 years were expected to accompany their parents to aid in agriculture, coal mining, weaving, and other jobs. The Industrial Revolution brought up the dispute over child labor, as schooling became more important, and concepts of laborers and rights of children gained more prominence. The history of child labor skyrocketed with the industrial revolution, as it saw children working in factories, mines, and even having his own small business like selling food, flowers, becoming shoe blacks, matchbox makers, and laundry boys and girls. Some children worked as tourist guides, some set up small shops of their own and some opened up restaurants in their backyards and worked as waiters and cleaners. Some children however, chose to be street actors and singers.²

The term "child labour" coined in Britain during the 19th century, implies that the children involved should not be working. "Youth employment", on the other hand, implies something quite different that young people need appropriate training and support to enter into labour market to find jobs when they leave school. Many languages do not have a phrase that implies that children should not be working and use expressions more similar to "child work". The terminology used is important because it implies what should be done in response: a "child labour" should be returned to school; a "youth" or "adolescent" worker should be assisted in getting a job, with more supervision and protection than adult worker.

After the Civil War, the availability of natural resources, new inventions, and a receptive market combined to fuel an industrial boom. The demand for labor grew, and in the late 19th and early 20th centuries, many children were drawn into the labor force. Factory wages were so low that children often had to work to help support their families. Businesses liked to hire children because they worked in unskilled jobs for lower wages than adults, and their small hands made them more adept at handling small parts and tools. Children were seen as part of the family economy. Immigrants and rural migrants often sent their children to work, or worked alongside them. However, child laborers barely experienced their youth. Going to school to prepare for a better future was an opportunity these underage workers rarely enjoyed. As children worked in industrial settings, they began to develop serious health problems. Many child laborers were underweight. Some suffered from stunted growth and curvature of the spine. They developed diseases related to their work environment, such as tuberculosis and bronchitis for those who worked in coal mines or cotton mills. They faced high accident rates due to physical and mental fatigue caused by hard work and long hours. By the early 1900s, many Americans were calling child labor "child slavery" and were demanding an end to it. They argued that long hours of work deprived children of the opportunity of an education to prepare themselves for a better future. Instead, child labor condemned them to a future of illiteracy, poverty, and continuing misery.³

In the late 1700's and early 1800's, power-driven machines replaced hand labor for the making of most manufactured items. Factories began to spring up everywhere, first in England and then in the United States. The owners of these factories found a new source of labor to run their machines — children. Operating the power-driven machines did not require adult strength, and children could be hired more cheaply than adults. By the mid-1800's, child labor was a major problem.

Children had always worked, especially in farming. But factory work was hard. A child with a factory job might work 12 to 18 hours a day, six days a week, to earn a dollar. Many children began working before the age of 7, tending machines in spinning mills or hauling heavy loads. The factories were often damp, dark, and dirty. Some children worked underground, in coal mines. The working children had no time to play or go to school, and little time to rest. They often became ill. When parents could not support their children, they sometimes turned them over to a mill or factory owner.

Church and labor groups, teachers, and many other people were outraged by such cruelty. They began to press for reforms. The English writer Charles Dickens helped publicize the evils of child labor with his novel *Oliver Twist*. Britain was the first to pass laws regulating child labor. From 1802 to 1878, a series of laws gradually shortened the working hours, improved the conditions, and raised the age at which children could work. Other European countries adopted similar laws.⁴ In the United States, it took many years to outlaw child labor. Connecticut passed a law in 1813 saying that working children must have some schooling. By 1899, a total of 28 states had passed laws regulating child labor.⁵

Many efforts were made to pass a national child labor law. The U.S. Congress passed two laws, in 1918 and 1922, but the Supreme Court declared both unconstitutional. In 1924, Congress proposed a constitutional amendment prohibiting child labor, but the states did not ratify it. Then, in 1938, Congress passed the Fair Labor Standards Act. It fixed minimum ages of 16 for work during school hours, 14 for certain jobs after school, and 18 for dangerous work.⁶

Worst Form of Child Exploitation

ILO has further defined worst form of child exploitation as:

- a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

⁴ Eric V. Edmonds and Nina Pavcnik (Winter 2005). "Child Labour in the Global Economy". *Journal of Economic Perspectives* 19 (1): 199–220.

⁵ Linda Lobao and Katherine Meyer (2001). "The Great Agricultural Transition: Crisis, Change, and Social Consequences of 20th Century US Farming". *Annual Review of Sociology* 27: 103– 124. JSTOR 2678616

- d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.⁷
- e) All children under 15 years of age who are economically active excluding those who are under 5 years and those between 12-14 years old who spend less than 14 hours in a week open their jobs unless their activities and occupations are hazardous by nature or circumstances.

Definition as Per United Nations International Children’s Emergency Fund (UNICEF)

UNICEF considers that child labor becomes exploitation when it implies too young full-time workers, too many hours of labour per day, immoderate physical, social and psychological constraints, dangerous and potentially health-damaging working conditions, insufficient earnings, immoderate responsibilities, and when it constitutes an hindrance to access to education and an infringement of children’s dignity (examples: slavery and sexual exploitation).

India's Census 2001 office defines child labour as participation of a child less than 17 years of age in any economically productive activity with or without compensation, wages or profit. Such participation could be physical or mental or both. This work includes part-time help or unpaid work on the farm, family enterprise or in any other economic activity such as cultivation and milk production for sale or domestic consumption. Indian government classifies child labourers into two groups: Main workers are those who work 6 months or more per year. In addition, marginal child workers are those who work at any time during the year but less than 6 months in a year.

According to author, M.C Naidu, K. Dasaratha “any child out of school is a child labor” Child Welfare Commission, Bangalore based organization, described, "a person who has not completed 15 years of age and who is working with or without wages either on a part-time or full-time basis". The CWC estimates the figure of child labor to be a hundred million which seems to include all children below 15 years of age who are not going to school.

THE CHALLENGE OF TOTAL ELIMINATION OF CHILD LABOUR AND IMPLIMENTATION OF RTE:

One of the challenges that the country is facing today is that a large number of children are out of schools and engaged in work. The current emphasis of focusing on children engaged in the 65 processes and 18 occupations prohibited under the Child Labour (Prohibition and Regulation) Act 1986 (CLA) is limited. There are a number of loopholes, which makes the law ineffective. For instance, a child working as part of family labour does not come under its purview. Given the increasing informalisation of the labour market with more and more sectors using the sub-contract modality, work is being given to workers at home. The provision is widely abused by employers who are passing of child labour as family labour. Thus the challenge is in going beyond the CLA to include the most deprived children – where girls, scheduled castes and scheduled tribes, minorities, and other backward classes would be covered. Since education is a fundamental right, strategy for the elimination of child labour need to be inclusive and a universal approach has to be adopted. Thus there is a need to use other legal instruments as well to effectively abolish child labour. These are mainly the Bonded Labour System Abolition Act and the JJ Act. This enables a systematic process of identification, rescue and rehabilitation of children engaged as child labourers as defined by the CLA on the one hand and, through the effective implementation of the RTE Act, prevention of children from contributing to the labour pool.⁸

CONSTITUTIONAL RIGHTS AVAILABLE:

FUNDAMENTAL RIGHTS	
A. Article 14	EQUALITY BEFORE LAW
Article 14 lays down that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Thus, according to this Article, all children in similar circumstances are required to be treated in a similar manner, and if not so treated, such treatment can be challenged on the ground of discrimination and arbitrariness. ⁹	
B. Article 15	PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELEGION, RACE, CASTE, SEX, OR PLACE OF BIRTH
Article 15(3) provides that the State is empowered to make the special provisions relating to child, which will not be violative of right to equality.	
C. Article 21	PROTECTION OF LIFE AND PERSONAL LIBERTY

As per Article 21, no person shall be deprived of his life or personal liberty, except according to procedure established by law. The Supreme Court held that “life” includes free from exploitation and to live a dignified life. ¹⁰	
D. Article 21A	RIGHT TO EDUCATION
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. Thus where children are allowed to work, in such establishment, it is the duty of employer to make provisions for the education of child labourer.	
E. Article 23	PROHIBITION OF TRAFFICKING IN HUMAN BEINGN AND FORCED LABOUR
Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence punishable in accordance with law.	
F. Article 24	PROHIBITION OF EMPLOYMENT OF CHILDREN IN FACTORIES, Etc.
Directs that 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. The Supreme Court held that “hazardous employment” includes construction work, match boxes and fireworks therefore; no child below the age of 14 years can be employed. Positive steps should be taken for the welfare of such children as well as for improving the quality of their life. ¹¹	
DIRECTIVE PRINCIPLE OF STATE POLICY	
G. Article 39 (E)	CERTAIN PRINCIPLES OF POLICY TO BE FOLLOWED BY THE STATE
Provides that the State shall, in particular, direct its policy towards securing the health and strength of the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.	
H. Article 39 (F)	
Lays that the State shall, in particular, 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.	
I. Article 45	PROVISION FOR FREE AND COMPULSORY EDUCATIONFOR CHILDREN BELOW THE AGE OF 6 YEARS
The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.	
J. Article 47	DUTY OF STATE TO RAISE THE LEVEL OF NUTRITION AND THE STANDARD OF LIVING AND TO IMPROVE PUBLIC HEALTH
It lays emphasis on raising the level of nutrition and standard of living of its people and the improvement of public health as amongst primary duties of the State. These also include children in their purview.	
K. Article 51(K)	FUNDAMENTAL DUTIES
that it shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child or ward as the case may be, between the age of six and fourteen years.	

¹¹ M.C.Mehta v. State of T.N.(1991) 1 SCC 283

CONCLUSION

In conclusion, it can be said, that the problem of Child exploitation is still burning issue in India and even around the globe. The exploitation is spreading day by day and to tackle the problem we have to find proper and effective mechanism to eradicate its root cause. Government of India should form separate mechanism for effective implementation of Education policy in India. The Education policy of Government in existence is not satisfactory not capable to fulfill their economic needs. The picture is clear that the problem of Child Exploitation can only eradicate if there is joint efforts of Governmental agencies and NGOs actively working in the same area.¹²

So I can conclude by stating Child Exploitation is an international evil. It requires cumulative efforts to wipe it out. The government on this front has taken major steps, yet the root causes still exist. The major determinant I could observe of child exploitation would be poverty.

In addition to poverty, even the lack of adequate and accessible sources of survival forces poor parents to engage their children in the harsher forms of child exploitation. Some of the parents does it out of need while others have perspective that education is not enough beneficial, than learning work skills at a young age. And this concludes me to another root cause i.e. lack of access to education, as in some areas, education is not affordable.

Constitution of India clearly states that child labour is wrong and that measures should be taken to end it. Though policies are in place that could potentially reduce the incidence of child Exploitation, but enforcement on ground level is the cause of problem. If child labour is to be eradicated in India, the government and those responsible for enforcement need to start doing their jobs or brings laws into action. Policies can and will be developed concerning child exploitation, but without enforcement they are all useless. In spite of several legislative measures by enactment of statutory provisions to curb employment of children in hazardous places and those injurious to health, the exploitation of children by different profit makers for their personal gains continued unabated in utter disregard of constitutional injunction and statutory prohibition. From the analysis of the relevant statutory provisions of the Indian laws relating to child labour, it has become abundantly clear that the statutes vary as to the age limit of a child employed or permitted to work in various occupations.

It is also pertinent to state that the Judiciary played a significant role in protection of child from being exploited. Many path-breaking judgments of the Supreme Court have done a great deal by expanding the human rights doctrine. It would not be out of place to mention the historic judgment of the Supreme Court on December 10, 1996, *banning child labour in non-hazardous industries*. The judgment specified the hazardous and the most dangerous occupations from where child labour should be eliminated. Penalty to the employer at Rs.20,000/- per child be paid and a corpus to be found through the amount so collected. This was to be spent on education and rehabilitation of the children. The court also ordered that the working hours of a child labour should not exceed 4 to 6 hours a day and not less than 2 hours a day should be set aside for the child's education. The responsibility for imparting this education is that of the employer.