

## **Poverty and Child labour in India: Socio-Legal Perspective**

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Poverty in India can be defined as a situation when a certain section of people are unable to fulfill their basic needs. India has the world's largest number of poor people living in a single country. Out of its total population of more than 1 billion, 350 to 400 million people are living below the poverty line. Nearly 75% of the poor people are in rural areas, most of them are daily wagers, landless laborers and self employed house holders. There are a number of reasons for poverty in India. Poverty in India can be classified into two categories namely rural poverty and urban poverty<sup>2</sup>.

The World Health Organization has described poverty as the greatest cause of suffering on earth. Poverty and Social Exclusion in India focuses on social exclusion, which has its roots in India's historical divisions along lines of caste, tribe, and the excluded sex, that is, women. These inequalities are more structural in nature and have kept entire groups trapped, unable to take advantage of opportunities that economic growth offers.

Sociologist offers two definitions of poverty, absolute and relative property-

Absolute poverty refers to lack of basic necessities such as food, shelter and income.

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<sup>2</sup> <http://www.tradechakra.com> (Accessed on 16<sup>th</sup> Jan 2013)

Relative poverty refers to a situation in which some people fail to achieve the average income or lifestyle enjoyed by the rest of the society<sup>3</sup>.

Over 61 % of parents of child labourers are illiterate. The causes of child labour in India are that, most of parents put their children to work due to poverty, acquisition of skills in traditional family arts, overpopulation, lack of quality education and the inaccessibility of schools<sup>4</sup>.

Extreme poverty, lack of opportunity for gainful employment and intermittency of income and low standards of living are the main reasons for the wide prevalence of child labour. Though it is possible to identify child labour in the organized sector, which form a minuscule of the total child labour, the problem relates mainly to the unorganized sector where utmost attention needs to be paid. The problem is universal but in our case it is more crucial.<sup>5</sup>

**Objective:-**

1. To critically analyse how the poverty give rise to child labour in India
2. To study role of Constitution in eradicating Child Labour in India
3. To study the Judicial scenario relating to Child Labour
4. To make recommendations to reduce Child labour in India

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<sup>3</sup> Anna Leon-Guerrero, *Social Problems Community, Policy & Social Action*, Ed 3 (2005), Prime Forge Press, P-224

<sup>4</sup> A 2009 study conducted by the Central Asian studies department at the University of Kashmir

<sup>5</sup> Report of Labour Ministry, 1981 Ch- III as a part of observance of The International Child Year Programme

## **I] Introduction**

Children of the world are innocent, vulnerable and dependent. They are all curious, active and full of hope. Their life should be full of joy and peace, playing, learning and growing. Their future should be shaped in harmony and co-operation. Their childhood should mature, as they broaden their perspectives and gain new experience. Abandoning the children, excluding good foundation of life for them, is a crime against humanity. The children cannot wait till Tomorrow; they grow everyday; along with them grows their sense of awareness about the surroundings. Tomorrow is no answer; the goal of their present care, protection and rehabilitation is the need of the hour. We have already dealt with the rights assured to them by the Constitution, the Directive Principles and the Convention on the Right of the Child.<sup>6</sup>

Poverty dumps a crowd of problems onto a child. Not only do these problems cause immediate suffering, they also conspire to keep the child poor throughout his/her life. In order to survive, a poor child in India will probably be forced to sacrifice education and training; without skills the child will, as an adult, remain at the bottom of the economic heap.<sup>7</sup>

Poverty and lack of social security are the main causes of child labour. The increasing gap between the rich and poor, privatization of basic services and the neo-liberal economic policies are causes major sections of the population out of employment and without basic needs. This adversely affects children more than any other group. Entry of multi-national corporations into industry without

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<sup>6</sup> *Gaurav Jain Vs UOI*, AIR 1997 SC 3021

<sup>7</sup> <http://www.i-indiaonline.com> (Accessed on 17<sup>th</sup> Jan 2013)

proper mechanisms to hold them accountable has led to the use of child labour. Lack of quality universal education has also contributed to children dropping out of school and entering the labour force. A major concern is that the actual number of child labourers goes undetected. Laws that are meant to protect children from hazardous labour are ineffective and not implemented correctly.<sup>8</sup>

## **II] Child labour**

Child labour refers to any work that subjects a child to economic exploitation or is hazardous, or interferes with the child's education, or is harmful to the child's health or physical, mental, spiritual, moral or social development.

### **Child labour means<sup>9</sup>-**

- Work that harms children's well being and hinders their education, development and future livelihoods.
- Work which, by its nature and the way it is carried out, harms, abuses and exploits the child or deprives the child of an education.

There are various types of child labour as follows<sup>10</sup>:-

**Self-employment activities**-which include activities such as working on one's own farm, conducting one's own business, tailoring at home, and so on);

**Wage-employment activities**- which include activities such as construction work, road building, making incense sticks, agricultural labour, and so on, in exchange for a wage;

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<sup>8</sup> <http://www.childlineindia.org.in> (Accessed on 17<sup>th</sup> Dec 2013)

<sup>9</sup> Eliminating Child labour in Tobacco-Growing (ECLT)

<sup>10</sup> Magnitude of Child labour in India an Analysis of official Sources of Data, available at <http://ncpcr.gov.in/Reports/Magnitude> (Accessed on 23rd Jan 2013)

**Domestic tasks**-which include washing, cleaning, cooking, child-care, fetching drinking water, shopping, making purchases at the fair-price shop, going to the rice mill, splitting wood, and so on;

**Non-domestic, non-wage activities**-which include cattle-rearing, gathering of fuel, fodder and forest produce, guarding the field from birds and animals, kitchen gardening, marketing and post-harvest processing, making payments at or transacting with the electricity board and other government offices, working without payment on the family farm or other family enterprise, and so on and

### **III] Legal Protection of Child Labour**

#### **A) International Labour Organization (ILO)-**

India was one of the founder members of the ILO and was a signatory to the first Convention on the Prohibition of Child labour in 1919. The ILO has adopted 18 conventions and 16 Recommendations with regard to Child labour.

Legislation relating to the regulation of Child labour concentrates on four basic issues, which are:-

- 1) Minimum age for employment of children,
- 2) A maximum period of work per day and forbidden work at night,
- 3) Prohibition of certain types of work for children, and
- 4) Medical examination of all working children.

#### **B) Provisions under Constitution of India**

Article 39 (f) of the Constitution of India states 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.

Right against exploitation is a fundamental right engrafted in Articles 23 and 24 of the Constitution of India. While Article 23(1) interdicts traffic in human being and Begar and other similar forms of forced labours and postulates further that 'any contravention of this provision shall be an offence punishable in accordance with law. Article 24 albeit prohibits engagement of any child below the age of 14 years in any factory or mine or employment of hazardous nature, is mired in silence as to civil and or criminal liability of the person, engaging a child below the age of 14 years for its infringement.<sup>11</sup>

Art-14 provides for equality in general. Art-21 guarantees right to life and liberty. Art-15 prohibits discrimination on the grounds of religious race, caste, sex or place of birth, or of any of them. Art-15(3) provides for special protective discrimination in favour of woman and child relieving them from the moribund of formal equality. It slates that "nothing in this article shall prevent the State from making any special provision for women and children".

Art- 38 enjoins the State to secure and protect, as effectively as it may, a social order in which justice - social, economic and political, shall inform all the institutions of national life. It enjoins, by appropriate statutory or administrative actions, that the State should minimize the inequalities in status and provide facilities and opportunities to make equal results.

Art-39(0) provides that the children should be given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity; and that childhood and youth are protected against exploitation and against moral and material abandonment.

Art- 46 directs the Slate to promote the educational and economic interests of the women and weaker sections of the people and that

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<sup>11</sup> *Anil Kumar Agarwal Vs. Assistant Commissioner, Mathura and others*, MANU/UP/0556/1998

it shall protect them from social injustice and all forms of exploitation.

Art- 45 makes provision for free and compulsory education for children, which is now well settled as a fundamental right to the children upto the age of 14 years; it also mandates that facilities and opportunities for higher educational avenues be provided to them. The social justice and economic empowerment are firmly held as fundamental rights of every citizen.

### **C) Child Labour (Prohibition of Regulation) Act. 1986**

Objective of this act is to prohibit engagement of children in certain employments and regulating the 'working conditions of children in certain other employments.

Sec 3 of the Act which forbids employment of children in certain occupations and processes reads as under:

Sec 3- Prohibition of employment of children in certain occupations and processes.- "No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on :

Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from Government."

Section 10 of the Act visualizes that if any question arises between Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the Prescribed Medical Authority, be referred by

the Inspector for decision to the Prescribed Medical Authority. The contravention of the provisions of the Act, it is prescribed, will manifest itself in penalties of law in the manner provided in Sec-14 of the Act which is excerpted below to elicit instant recognition:

Sec 14. Penalties.--(1) Whoever employs any child or permits any child or permits any child to work in contravention of the provisions of Section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

(2) Whoever, having been convicted of an offence under Section 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

#### **D) The Factories Act, 1948:**

The Act prohibits the employment of children below the age of 14 years. An adolescent aged between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorized medical doctor. The Act also prescribes four and a half hours of work per day for children aged between 14 and 18 years and prohibits their working during night hours.

#### **Judicial Scenario -**

*Sheela Barse v. Union of India*<sup>12</sup> the Supreme Court observed: If a child is a national asset, it is the duty of the State to look after the child with a view to ensuring full development of its personality. That is why all the statutes dealing with children provide' that a child shall

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<sup>12</sup> A.I.R. 1986 S.C. 1773



not be kept in jail. Even apart from this statutory prescription, it is elementary that a jail is hardly a place where a child should be kept. There can be no doubt, that incarceration in jail would have the effect of dwarfing the 'development of the child, exposing him to baneful influences, coarsening his conscience and alienating him from the society.

In *Bachapan Bachao Andolan Vs. U.O.I & Ors.*<sup>13</sup>, SC held that, No child shall be deprived of his fundamental rights guaranteed under Constitution of India and bring to child traffic and abuse. Articles 23, 39, 14 and 21 of the Constitution of India guarantee every child to be freed from exploitation of any form. There was violation of various laws concerning Child Labour and their abuse and traffic. Concerns of child and the paradigm of child rights had been addressed suitably in various international conventions and standards on child protection including the UN Convention on the Rights of the Child (UNCRC), 1989. India has ratified the UN Convention on the Rights of the Child in 1992. Convention prescribes standards to be adhered by all state parties in securing the best interest of the child. Integrated Child Protection Scheme seeks to create database and knowledge base for child protection services; it needs to strengthen child protection at family and community level.

Government of India was fully aware about problems of children working in various places particularly in circuses. Right of children to free and compulsory education had been made fundamental right under Article 21A of the Constitution. Hence, every child of the age of 6 to 14 years has right to have free education in neighborhood school till elementary education. Therefore, Court in order to implement fundamental right of children under Article

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<sup>13</sup> AIR 2011 SC 3361

21A directed that Central Government must issue suitable notifications prohibiting the employment of children in circuses and also directed Respondents to conduct simultaneous raids in all circuses to liberate the children and check the violation of fundamental rights of children. They were also directed to frame proper scheme of rehabilitation of rescued children from. Petition was directed to be listed for further directions.<sup>14</sup>

In *Bandhua Mukti Morcha v. Union of India*<sup>15</sup>, the petitioner was an organization solely devoted to the cause of bonded labourers in the country. The petitioner made a survey of some of stone quarries in Faridabad District near Delhi and discovered that a number of labourers from different states of the country were working in those stone quarries under inhuman and intolerable conditions and the majority of them were bonded labourers. A letter was addressed to one of the judges of the apex court containing signatures and thumb marks of the alleged bonded labourers. The petitioner alleged violations of the provisions of the Constitution and non-implementation of the laws relating to the labourers working in these stone quarries. It was revealed that all these workers were bonded labourers who were not permitted to leave the job. Most of the labourers complained that they got very little wages from the mine lessees or owner of the stone crushers because they were required to purchase explosives with their own moneys, the report concluded by saying that these workmen, “presented a picture of helplessness, poverty and extreme exploitation at the hands of moneyed people” and they were found living a most miserable life and perhaps beasts and animals could lead more comfortable life than these helpless labourers”

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<sup>14</sup> Supra 13

<sup>15</sup> AIR 1984 SC 802.

## **Suggestions**

### **1. Social Mobilization**

One of the major preventive strategies, which must feature in any national child labour eradication policy, is the role of social mobilization and community participation. It is vital to ensure that children stay at home and go to formal government schools rather than leave home to work full time.

Child labourers are spread across the country; working in dispersed villages and slums. The eradication of child labour cannot be done by the labour department alone, as it is so under-staffed. Labour department needs to have a cadre of youth volunteers who can be trained as 'Social Mobilizers' who will be responsible for withdrawing children from work as well as monitoring school dropouts and children with irregularity of attendance. It is understood that if such children are not tracked they would join the labour force as child labour.

### **2. Duty of Labour department**

The department of Labour's function is to identify and rescue child labour and ensure that all the children who are out of school in an area are covered; Enforce law- and action against employers of children; Counsel rescued children and mainstream them into formal schools; Coordinate all the concerned departments of education, police, youth, welfare panchayat raj, and women and child development and establish protocols for collaborative action to rescue children from labour.

### **3. Role of Education Authorities**

The department of education has the task of integrating all out of school children which includes child labour and school dropouts into the school system and ensure that children enjoy their right to education. Their function is to prevent children from joining the labour force. The education department must ensure that all children in the 5-8 years age group are enrolled and retained in schools; pay attention to children in the 9-14 age groups like child labour, migrating children, street children, domestic child workers and school dropouts and never enrolled children and provide for residential and non-residential bridge courses, seasonal hostels, mobile schools and work-site schools for children who migrate with their families must from the very beginning be linked to a formal government school.

### **4. The role of police**

The role of the police is, booking the right cases under the Child Labour Act and all other relevant Acts; take complaints all missing children and track them and follow up in the best interest of the child and their right to education.

### **5. The role of Panchayat Raj**

The Ministry for Panchayat Raj /Rural Development is to ensure that all gram panchayats fully monitor the status of children in their area. It must also provide training for the gram panchayats to track children and protect their rights.

At the level of gram panchayats, children would not be statistics but will have specific names. If children are not found in the village or with their family, there must be an immediate enquiry into their whereabouts. As a first step they must lodge a police complaint and pursue the matter till children are found and rescued from whatever location they might be in. A list of all such children who are not in the families must be drawn up and consolidated at

the mandal/block/ and district level. It must be monitored at the State level and reviewed systematically.

#### **6. Involvement of Judiciary**

There has to be an orientation for the judiciary and establishment of procedures for making the courts child friendly. Children must not be allowed to make forays to the Court till they turn hostile. There is a need to also establish mobile courts for quick and timely action to rescue children and book cases.

#### **7. Vocational Training for children in 15-18 years age group**

The Labour Department should assist children who have completed Class X to get vocational training by linking them up to local NGO run vocational training programmes and private sector initiatives. They should not run vocational training centers as the track record of vocational training centers set up by the labour departments is extremely poor. The labour department should instead help older children to get placements in the job market.

#### **Conclusion**

Child labour is both an economic practice as well a social evil. It has existed in some form from time immemorial. But it was only after the advent of factory type units in the middle of the 19<sup>th</sup> century that children began employed in the industries where they worked for long hours<sup>16</sup>. Poverty compels the low income poor households to depend primarily on children's work. The absence of social safety nets increases the dependence on child labour. A number of careful attempts need to be taken to provide opportunities to students to avail education.

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<sup>16</sup> M.Mustafa and Onkar Sharma, *Child labour in India: A Bitter Truth*, Deep & Deep Publications Pvt. Ltd. (2008)

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