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AN ANALYSIS ON CHILD LABOUR, HUMAN RIGHTS AND LAW

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ABSTRACT

Persons below the age of 18 are considered as children. There are numerous rights for the children under national and international point of view. The Human Rights considers child rights as its eminent part. In many parts of the World the children are often exploited. Such exploitations are mainly in case of employment. Children are forced to work at a very less wage in many of the nations. There are several national and international laws specially framed for the protection of child. The child rights are remaining on paper in many of the cases. Children should get all the basic rights that an adult has. There are several rights that are offered to children it includes right to education, right to health, right against exploitations etc. The poverty of the child often acts as the basis of child exploitations. Lack of proper mechanisms for the implementation of law is one of the major problems faced by us. In many of the cases proper authorities are not even informed about the child right violations. The most serious problem faced by children with regard to child labour and exploitations of workers below 18 years of age.

Keywords: Hazardous work, insurance, exploitations, Child right

DEFINITION TO CHILD LABOUR

Child labour is hard to define and harder to measure, today's children are tomorrow's future, child labour destroys a child mentally and physically this make child labour a human right issue. According to the ILO, Child Labour refers to work that deprives children (any person under 18) of their childhood, their potential and their dignity, and that is harmful to their physical and/or mental development. It refers to work that is mentally, or morally dangerous and harmful to children.¹ worst forms of child labour involves slavery, trafficking of children, offering a child for prostitution, offering a child for illicit activities etc.² ILO also defines hazardous work it includes

¹ Definition of ILO

² Article3 of ILO Convention No. 182

work underground, work at dangerous heights, work with dangerous machines, work for long hours during night.³

WHAT IS HUMAN RIGHT?

Human rights are minimum rights entitled to individual by virtue of being a human. State has duty to recognize and protect the human rights. The oppressed sections of the society are more prone to human right violations. Children are vulnerable section of society therefore they are more prone to exploitations and abuses therefore they need special attention and protection. Chief Justice of India J.S. Verma has rightly stated that 'Human dignity is the quintessence of human rights.'⁴ The rights which are very basic in nature are something that should be protected for the betterment of the society and child right plays an eminent role.

WHY CHILD LABOUR IS A THREAT TO THE SOCIETY?

Child labour is a threat to children as they are tender it creates health issues, mental stress and hinder overall development of a child. It is not an issue just in India, it is a great social problem faced by the world and India is more vulnerable to it. The states like Bihar, Uttar Pradesh, Rajasthan, Madhya Pradesh, and Maharashtra are more prone to child labour. Delhi the capital city alone has 1 million child labourers. Law defines a person below the age of 14 as child in India.

DIFFERENCE BETWEEN CHILD LABOUR AND WORKING CHILD

Child labour and working child are 2 different concepts. UNICEF defines child labour as "children who have been economically active for an hour or more each week or done over 28 hours of household chores". Law says no child below 14 could work unless for family business. A child working for a family business can be termed as a working child. It is definitely a positive term and denotes

³ Article 3 of ILO Recommendation No. 190

⁴ The New Universe of Human Rights. p.3

the child as productive and efficient. Several studies and surveys show an increase in the rate of child labour shedding light to the failure of the authorities. The government and authorities should take proper steps to erase poverty from the society.

LEGAL FRAMEWORK

World leaders and authorities understood child labour as an offensive and harmful activity. So as to deal with it there are legislations to protect children and to prohibit child labour, based on the concept that children require special care and assistance. They are future assets of the world, the legislations in connection with children are as follows:⁵

1. *The Apprentices Act 1861*
2. *The Child Labour Act 1986*
3. *The Child Marriage Restraint Act 1929*
4. *The Children (Pledging of Labour) Act 1929*
5. *The Children Act 1960*
6. *The Guardian and Wards Act 1890*
7. *The Hindu Minority and Guardianship Act 1956*
8. *The Hindu Adoption and Maintenance Act 1956*
9. *The Immoral Traffic (Prevention) Act 1956*
10. *Juvenile Justice Act 1986*
11. *The Orphanages and Other Charitable Homes (Supervision and Control) Act 1960*
12. *Probation and Offenders Act 1858*
13. *Reformatory Schools Act 1857*

⁵ Child Labour in India by Kabishna, www.legalserviceindia.com

14. *The Women's and Children's Institutions (licensing) Act 1956*

15. *The Young Persons (Harmful Publications) Act 1956*

16. *Child Labour (Prohibition and regulation) Act 1986.*

Other protection under National law

*Constitution provides for compulsory elementary education child below 14 years' of age, labour protection

*Many statutory developmental laws to protect child nationally.

*National Commission for Protection of Child Rights

*Labour commission

Constitutional laws

Constitution is the bible of every democratic country. There are Constitutional rights specifically meant for the protection of children and child rights are as the follows:⁶

*Article 21A provides for the Right to free and compulsory elementary education for all children between the age group of 6-14.

* The right to be protected from any hazardous employment of the children up to 14 years of age is provided under Article 24 of the Constitution.

* Article 39(e) speaks about the Right to be protect a child from being abused and protect themselves from entering into occupations unsuited to their age or strength.

*Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and ensured protection of childhood and youth against exploitation and against moral and material abandonment is mentioned under Article 39 (f).

*Article 45 speaks about the Right to early childhood care and education to all children below six years of age.

⁶ The Constitution of India 1950

Besides, Children also have rights as equal citizens of India, just as any other adult male or female:⁷

*Right to equality and equal protection of law (Article 14)

*Right against all forms of discriminations (Article 15)

*Right to personal liberty and procedure established by law (Article 21)

*Right against human trafficking and forced labour (Article 23)

*Protection of rights and interests of minorities (Article 29)

*Protection of right of weaker sections of the people from social injustice and all forms of exploitation (Article 46)

*Right to nutrition and standard of living and improved public health (Article 47)

International legislations

There is international and national approach towards this evil that has been spread internationally.

In UDHR 1948, under Article 28 and in the 2 covenants namely International covenant for civil and political right under Article 23 and 24 and Article 10 of International covenants for economic social and cultural rights lays down provisions for child care and protection. UDHR study child labour as a human right issue. This declaration is the first instrument that strengthened the human rights. The main object of the declaration is to promote human rights and individual freedom. Article 14 of the UDHR lays down abolition of slavery as a right child slavery and slave trade is considered action against human rights Article 26 ensure right to education which makes elementary education compulsory as a result children are send to school rather than sending them for work to earn living.

The universal declaration has exercised a great influence on the laws and works of governmental as well as non-governmental organizations internationally and nationally. Its provisions influenced many Constitutions.

⁷ The Constitution of India 1950

Many provisions of The Indian constitution like fundamental right (part III - Articles 12-36) gave due recognition to the provisions of UDHR. Fundamental rights ensure human rights and protection of children. Under this provisions they are prohibited from exploitation abuse and child labour.

conventions on right of child- this is aimed at protection of child under international labour organization (ILO).

UN convention on the rights of the child 1989 brought together children human rights for their development.

JUDICIAL APPROACH

Judiciary is also playing a vital role in child right protection. The court has issued directions related to child labour, it also protects child from bonded labour, sexual exploitation, slavery etc. Compensation, rehabilitation, rescue and eradication of child labour through compulsory primary education to the children. Judiciary considers these as a crime against basic human rights.

In the case of *People's Union for Democratic Rights v. Union of India*⁸, the Supreme Court observed that it was a clear breach of Article 24 of the Constitution to employ children below the age of 14 in construction work. The court proceeded to prohibit any kind of violation of Articles 23 and 24 and further laid emphasis on strict observance of fundamental rights by private individuals and spoke strongly against any form of forced labour. The Supreme Court, in the case of *Bandhua Mukti Morcha v. Union of India & Others*,⁹ took into cognizance the employment of children in the carpet manufacturing industry in Mirzapur, Uttar Pradesh. It instructed the District magistrate to conduct raids, and subsequently got 144 children, who were under the forced custody of the owners, released. In the case of *Sheela Barse & Others v. Union of India*,¹⁰ under the direction of the Supreme Court, children who were being exposed to chemical fumes and coal dust from working near furnaces in the glass industry were released from their employment. In the

⁸ 1982 AIR 1473, 1983 SCR(1)456

⁹ 1997 10 SCC 549

¹⁰ 1986 SCALE (2) 230

landmark case of *M.C. Mehta v. State of Tamil Nadu*,¹¹ the Supreme Court gave directions to the government to eliminate child labour, which included the conducting of surveys for the identification of working children, ensuring the withdrawal of children working in hazardous industries and ensuring their education in appropriate institutions.

AUTHORITIES FOR CHILD RIGHTS

*Human rights commission was established under the protection of human rights Act 1993.

*National Human Rights Commission.

*They ensure human development through protection of human rights, it has a chairperson and 4 other members and it has power of a civil court.

*state human rights commission

*State government constitute this it is composed of Chairperson and four other members, similar functions of NHC

*Human Right Courts

REASONS FOR CHILD LABOUR

Reasons for child labour are socio-economic situations, poverty, unemployment, under employment, debts, illiteracy etc. These cause forces a child to work and earn themselves following their survival instinct. There are many legislations and conventions nationally and internationally to abolish child labour. But this does not seem to be effective in the unequal distribution of resources across the world. In underdeveloped and developing countries there exist a lot of socio-class differences. Even the legal literacy on human rights is absent there.

If this is the social side of the issue child trafficking is another consequence of child labour. According to IMO statistics in 2011 35% of the trafficked people were minors and victims of

¹¹ AIR 1991 SC 417

greedy crime. They are usually found to undergo humiliation and suffering working in dangerous sites like mines.

CURRENT SCENARIO

Surveys conducted on 2017 reveals that 33 million child labourers are there in India. This means that more than 30% of our children are deprived of their basic recognized rights. A child between 14-18 is legally allowed to work for family business and household chores. But investigations reveal that they are rendering services in hazardous working conditions as well. Statistics provided by action aid India shows that one in every 11 children works to earn living.

Millennium development has shown a decline in child labour from 246 million to 168 million. By 2000 various measures took by government to eradicate poverty, increase the health-education standards and empowering women proved to be fruitful leading to such decline. But still there is a long way to go and it is not at all easy in a country with such severe class distinctions. UN sustainable development goals 2015-2030 are focusing on poverty eradication, decent work & economic growth, peace & justice. Through proper implementation of an action plan to acquire these goals child labour can be abolished by 2030.

CONCLUSION

The main reason for the increasing child labour is poverty. Most of the children are not having another option other than work for their survival. They are fighting to exist and the glory of education and a high profile job does not seem to be accessible for them. There are numerous legislations confronting the issue seriously but the legislations can only be effective if the authorities are taking steps to reduce poverty. Underdeveloped economies often show up into a team of rich and powerful people regulating everything. The most practical and sensible way to fight child labour is by providing free and compulsory education. It can break their chains forever. More over the children must get a support from the public and NGO's to overcome their extreme poverty only then the child labour can be eliminated from the society. The nation is affected so badly because of child labour. The strength of India is the future generation they must be provided

with proper education and proper standard of living. Without considering the issues of children and the problems associated with child labour, India's future will be on trouble. As responsible human beings and as responsible citizens of our nation it is necessary for each one of us to join hands against child labour.