

## LEGAL FOCUS ON PRECLUSION AGAINST CHILD LABOUR

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### Abstract

Children are the future of nation. It is they for whose way forward we build and design the nation. These children who are to be strong pillars of nation are made to become maculated and they are deprived of their childhood as they are forced to work. Not only losing childhood but also affects their physical and mental development, they become unrealised of their ability and the dignity. They are immature enough to participate in excessively long and heavy work. There are many other inter-linked factors contributing to the prevalence of child labour. Child labour is both a cause and consequence of poverty. Household poverty forces children into the labour market to earn money. Some perform child labour to supplement family income while many also are in it for survival. They miss out on an opportunity to gain education, further perpetuating household poverty across generations, slowing the economic growth and social development.

**Keywords:** Child Labour, Labour Market, Decent Work, Poverty.

### INTRODUCTION

Child labour hindering children from gaining the skills and education they need to have opportunities of decent work as an adult. Inequality, lack of educational opportunities, slow demographic transition, traditions and cultural expectations all contribute to the persistence of child labour in India. Age, sex, ethnicity, caste and deprivation affect the type and intensity of work that children perform. Agriculture and informal sector employment continue to be sectors where children end up working. The ILO experience is that stable economic growth, respect for labour standards, decent work, universal education, social protection, recognizing the needs and rights of the children —together help tackle the root causes of child labour.

In 2011 the national census of India found the total no. of child labourers, aged 5–14, to be at 10.1 million, and the total to be 259.64 million in that age group.<sup>1</sup> The child labour problem is not unique to India; worldwide, about 217 million children work, many full-time. Notably, the Constitution of India prohibits child labour in hazardous industries (but not in non-hazardous industries) as a Fundamental Right under Article 24. UNICEF estimates that India with its larger population has the highest number of labourers in the world under 14 years of age.<sup>2</sup>

Children as young as five works for more than twelve hours a day in the silk industry, at different levels of production. They toil for nearly seven days a week, breathing smoky fumes from the silk making machinery. These children squat near cramped looms to help and assist workers in dim and damp rooms. They are required to dip their little hands in boiling hot water that causes blisters and handle dead worms which breed infections. Twisting thread which injure their fingers is also a part of the silk making process. Their attempts to attend school are met with protest and physical violence by their employers. Their adulthood is impoverished, illiterate and damaged by the weight of their childhood.<sup>3</sup> Child labour in India, somehow, has

become a social norm that we accept and tolerate in our society. This exploitative and abusive practice will continue unless society adopts a zero-tolerance attitude towards it.

The cases registered under CLPRA increased by 509 per cent in 2017, in all likelihood, due to amendments that were made in CLPRA in 2016 making child labour a cognizable offence. <sup>4</sup>As per the records, the number was 477 in 2015-16, but by 2016-17, the number has shot up to 5,738. In 2015-16, the major contributors of child labourers were Chittoor, Prakasam and Nellore districts. But by 2016-17, though it was Kurnool which housed the maximum number of child workers with 6,585 Chittoor district is one of the contributors of child labourers.<sup>5</sup>

## **METHODOLOGY**

The researcher adopted descriptive and analytical study, reviewed the existing literature to know the status of child labour and further analysed the legal provisions relating to child labour

## **REVIEW OF LITERATURE**

In the Study of Economics of Sericulture in Raigarh District—Chhattisgarh –India, it was observed that Andhra sees more than threefold rise in child labour in three years. The study is mainly on the economic status of the women in sericulture industry. <sup>6</sup>

In Child Labour in Bidar & Chamarajanagar Districts-A Status Report and Ways Forward the researchers made efforts to study the status of child labourers working at various industries in Bidar& Chamarajanagar Districts.<sup>7</sup>

In an action program, Survey of Child Labour in Slums of Hyderabad was conducted to estimate the magnitude of child labour in slums of Hyderabad.<sup>8</sup>

In Socio-economic empowerment of tribal women, the study was on Sericulture play key role to employment generation.<sup>9</sup>

A situational study of child labour in Chittoor District of Andhra Pradesh is not specific to the sericulture industry. <sup>10</sup>

The study on Poverty Alleviation through Development of Sericulture Sector in Chittoor District (AP, India) has studied about empowerment through development of sericulture industry. <sup>11</sup>

Study of child labour in the Zardosi and Hathari units of Varanasi researchers studied about the child labourers in sericulture industry at two units in Varanasi.<sup>12</sup>

Bonded Child Labour in South Asia: Building the Evidence Base for DFID Programming and Policy Engagement is the study made on bonded child labour in South Asia. The observed the rate of child labour in India is very differentiated, both over space and by social group, with a national estimate of 12% of children age 5-14 in 2005/6. Recent national child labour estimates have not been published for India from 2011/12 and later, although solid survey data exists on child workers, and this area offers good opportunities for further research. <sup>13</sup>

Child Slaves Abandoned to India's Silk Industry is the 85-page report, "Small Change: Bonded Child Labor in India's Silk Industry," calls on the Indian government to implement its national laws to free and rehabilitate these "bonded children."...At every stage of the silk industry, bonded children as young as five years old work 12 or more hours a day, six and a half or seven days a week. Children making silk thread dip their hands in boiling water that burns and blisters them.<sup>14</sup>

The study was made by ILO in India on child labour in silk industries, ILO observed from the study that When families have no source of immediate income, often the only answer the families seem to have is sending their children to work. For generations much of the silk industry has been powered by child labour. For families, it's simply a matter of survival.<sup>15</sup>

The study at Magadi, India revealed that there were 8,000-10,000 children working in silk factories, all below 14 years of age. What's more, most of the children had considerable sums of money dangling over their heads in the form of debt bondage.<sup>16</sup>

Child Labour in a Rural Non-Farm Sector – A Study of the Silk Reeling Industry held that Silk reeling is one of those small-scale hazardous industries in which child labour is dominant in India. A detailed study made in Ramanagaram, a reeling centre in Karnataka, shows that about 50 per cent of the workers are children below 14, working for a pittance, a major human tragedy. The responsibility for this tragedy lies both with the parents and the owners of the reeling units. Most of the children are eager to go to school and with the help of the state government and some NGOs, a bridge course has been started to help them fulfil their desires. Some live case studies document the facts uncovered.<sup>17</sup>

Puppets on Silk Strings: Child workers in the silk reeling industry in Karnataka is the study by researchers on child workers in sericulture industry in Karnataka.<sup>18</sup>

There are extensive studies on child labour the statistics show that there is child labour still existing. Hence it is also necessary to relook the legal entails that protect the children from the shackles of labour. Further the researcher has analysed the International and national provisions in India

**International Parameters:** There are two Core International Labour Organization (ILO) Conventions directly related to child labour are that of ILO Convention 138 and 182. India has ratified both the Core Conventions of Convention 138 regarding admission of age to employment and Convention 182 regarding worst forms of Child Labour.

#### **Convention No.138: (Minimum Age)**

ILO Convention No. 138 concerning Minimum Age for Entry to Employment & Work was adopted by the International Labour Conference at its 58th Session in June, 1973. This Convention is one of the 8 Core Conventions of the ILO being referred to as Fundamental or basic Human Rights Conventions and the ILO has been very active in promoting its ratification.

Each country ratifying this Convention undertakes to:

- Pursue a national policy designed to ensure the effective abolition of child labour;
- Specify a minimum age for Entry to employment or work which will not be less than the ages of completion of compulsory schooling;
- To raise this progressively to a level consistent with the fullest physical and mental development of young people;
- Guarantee that the minimum age of entry to any type of employment or work, which is likely to compromise health, safety of morals of young person's shall not be less than 18 years

### **Convention No.182 on Worst Forms of Child Labour**

ILO Convention No. 182 and the accompanying Recommendation No. 190 concerning Worst Forms of Child Labour was adopted by the ILO in its 87th Session at Geneva in June, 1999. Convention No. 182 is one of the 8 Core Conventions of the ILO being referred to as fundamental or basic human rights Conventions. Main provisions of Convention No 182:

- For the purpose of this Convention, the term child shall apply to all persons under the age of 18.
- For the purpose of this Convention, the term worst forms of child labour comprises:
- 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.
- The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.
- The use, procuring or offering of a child for illicit activities, in particular of the production and trafficking of drugs as defined in the relevant international treaties.
- 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.

### **Constitutional Provisions for Child Protection and Development**

Article 21 A: Right to Education: The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State, by law, may determine.

Article 24: Prohibition of employment of children in factories, etc.: No child below the age fourteen years shall be employed in work in any factory or mine or engaged in any other hazardous employment.

Article 39: The State shall, in particular, direct its policy towards securing

(e) that the health and strength of workers, men and women, and 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.

### **Legislative Perspective on Prohibition of Child Labour in India**

***The Factories Act of 1948:*** The Act prohibits the employment of children below the age of 14 years in any factory. The law also placed rules on whom, when and how long can pre-adults aged 15–18 years be employed in any factory.

***The Mines Act of 1952:*** The Act prohibits the employment of children below 18 years of age in a mine. Mining being one of the most dangerous occupations, which in the past has led to many major accidents taking life of children, is completely banned for them.

***The Child Labour (Prohibition and Regulation) Act of 1986:*** The Act prohibits the employment of children below the age of 14 years in hazardous occupations identified in a list by the law. The list was expanded in 2006, and again in 2008.

- As per the Child Labour (Prohibition & Regulation) Act, 1986 “child” means a person who has not completed is 14th year of age.
- The Act prohibits employment of children in 13 occupations and 57 processes contained in Part A & B of the Schedule to the Act (Section 3).
- Under the Act, a Technical Advisory Committee is constituted to advice for inclusion of further occupations & processes in the Schedule.
- The Act regulates the condition of employment's in all occupations and processes not prohibited under the Act (Part III).
- Any person who employs any child in contravention of the provisions of section 3 of the Act is liable for punishment 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 Rs 10,000 but which may extend to Rs 20,000 or both. ((Section 14).
- The Central and the State Governments enforce the provisions of the Act in their respective spheres.

Part III of ‘The Child Labour (Prohibition and Regulation) Act of 1986 provides for the ‘Prohibition of employment of children in certain occupations and processes’.

The Schedule gives a list of hazardous occupations in two parts, via; A and B

**Part A** provides that, No child shall be employed or permitted to work in any of the following occupations: Handloom and power loom industry

**Part B** provides that, No child shall be employed or permitted to work in any of the following workshop wherein any of the following processes is carried on Sericulture processing, Zari Making (all process)

After amendment in the Act, Government has reviewed the Schedule of hazardous occupations and processes to make it more comprehensive. As per the recommendations of the Technical Advisory Committee (TAC), the Schedule of hazardous occupations and processes of the Act has been divided in two parts namely 'Part A' covering a list of hazardous occupations and processes in which adolescents are prohibited to work and children are prohibited to help in family or family enterprises and 'Part B' covering an additional list of occupations and processes where children are prohibited to help in family or family enterprises (in addition to 'Part A').

**Child Labour (Prohibition & Regulation) Amendment Act, 2016:** Government has enacted the Child Labour (Prohibition & Regulation) Amendment Act, 2016 which came into force w.e.f. 1.9.2016. The Amendment Act completely prohibits the employment of children below 14 years. The amendment also prohibits the employment of adolescents in the age group of 14 to 18 years in hazardous occupations and processes and regulates their working conditions where they are not prohibited. The amendment also provides stricter punishment for employers for violation of the Act and making the offence of employing any child or adolescent in contravention of the Act by an employer as cognizable. In order to achieve effective enforcement of the provisions of the Act, the amendment empowers the appropriate Government to confer such powers and impose such duties on a District Magistrate as may be necessary. Further, the State Action Plan has been circulated to all the States/UTs for ensuring effective implementation of the Act.

Subsequent to the amendment in Child Labour Act, Government has framed the Child Labour (Prohibition & Regulation) Amendment Rules, 2017. The Child Labour (Prohibition & Regulation) Amendment Rules, 2017

**Legislative Action Plan** for strict enforcement of Child Labour Act and other labour laws to ensure that children are not employed in hazardous employments, and that the working conditions of children working in non-hazardous areas are regulated in accordance with the provisions of the Child Labour Act. It also entails further identification of additional occupations and processes, which are detrimental to the health and safety of the children. Government has accordingly been taking proactive steps to tackle this problem through strict enforcement of legislative provisions along with simultaneous rehabilitative measures. State Governments, which are the appropriate implementing authorities, have been conducting regular inspections and raids to detect cases of violations. Since poverty is the root cause of this problem, and enforcement alone cannot help solve it, Government has been laying a lot of emphasis on the rehabilitation of these children and on improving the economic conditions of their families.

Child Labour (Prohibition and Regulation) Amendment Rules, 2017: Government of India has notified the amendment in the Child Labour (Prohibition and Regulation) Central Rules after extensive consultation with the stakeholders. The Rules provide broad and specific framework for prevention, prohibition, rescue and rehabilitation of child and adolescent workers. It also clarifies on issues related with help in family and family enterprises and definition of family with respect to child, specific provisions have been incorporated in rules. Further, it also

provides for safeguards of artists which have been permitted to work under the Act, in terms of hours of work and working conditions. The rules provide for specific provisions incorporating duties and responsibilities of enforcement agencies in order to ensure effective implementation and compliance of the provisions of the Act.

***The Juvenile Justice (Care and Protection) of Children Act of 2000:*** This law made it a crime, punishable with a prison term, for anyone to procure or employ a child in any hazardous employment or in bondage. This act provides punishment to those who act in contravention to the previous acts by employing children to work.

***The Right of Children to Free and Compulsory Education Act of 2009:*** The law mandates free and compulsory education to all children aged 6 to 14 years. This legislation also mandated that 25 percent of seats in every private school must be allocated for children from disadvantaged groups and physically challenged children.

**Hours of Period and Work:** No child shall be required or permitted to work in any establishment in excess of number of hours prescribed (Section-7). The period of work on each day shall not exceed three hours and no child shall work for more than three hours before he has had an interval for rest for at least one hour. No child shall be permitted or required to work between 7 p.m. and 8 a.m. No child shall be required or permitted to work overtime. (Section-7).

**Penalties:** Violations under Section-3 shall be punishable with imprisonment which shall not be less than three months 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. Continuing offence under section (3) shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years. Any other violations under the Act shall be punishable with simple imprisonment, which may extend to one month or with fine, which may extend to ten thousand rupees or with both.

### **Efforts of Government through Policy Framework to Control Child Labour in India**

**National Policy on Child Labour:** The National Policy on Child Labour, August 1987 contains the action plan for tackling the problem of child labour. It envisages:

- A legislative action plan
- Focusing and convergence of general development programmes for benefiting children wherever possible, and
- Project-based action plan of action for launching of projects for the welfare of working children in areas of high concentration of child labour.

In pursuance of National Child Labour Policy, the NCLP Scheme was started in 1988 to rehabilitate child labour. The Scheme seeks to adopt a sequential approach with focus on rehabilitation of children working in hazardous occupations & processes in the first instance. Under the Scheme, after a survey of child labour engaged in hazardous occupations & processes has been conducted, children are to be withdrawn from these occupations &

processes and then put into special schools in order to enable them to be mainstreamed into formal schooling system.

The child labour (Prohibition and Regulation) Act 1986 prohibits the employment of children below the age of 14 years in 16 occupation and 65 processes that are hazardous to the children's lives and health. Many states including Haryana have constituted the child labour rehabilitation –cum-welfare funds at district level and separate labour cells are being formed to address the issue. National child labour projects have been implemented by the central government in states from 1988 to provide non-formal education and pre-vocational skills. From 2001, Sarve Shiksha Abhiyan has been launched to educate poor and employed children in all states. Ministry of women and child development has been providing non-formal education and vocational training. Establishment of Anganwadi's is also a big step by the government for the welfare of children and their physical, mental and educational development.

## CONCLUSION

Children work because their parents are poor; they have to supplement the family income. Various causes of child labour like the curse of poverty, lack of educational resources, Social and economic backwardness, Addiction, disease or disability, The lure of cheap labour, Family tradition, Discrimination between boys and girls. Policy and law changes can only be brought about by changes in perspective.

Besides the legal enactments, there are various other schemes under the government specifically for rehabilitation of children withdrawn from work. The Integrated Child Protection Scheme (ICPS) of the Government of India, aims to provide a safe and secure environment for the overall development and children in need of care and protection, and children in conflict with law.

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