



PURGING OF CHILD LABOUR THROUGH EDUCATION

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“I measure the progress of community by the degree of progress which women had achieved”¹
-Dr.Babasaheb Ambedkar

ABSTRACT

Child labour is a problem existing from before the commencement of Indian Constitution. So the framers of the Indian Constitution have embodied the provisions regarding elimination of the dogma of child labour problem. These provisions make mandates and give directions to the government. Accordingly, the government enacted various legislations to curb the child labour. However the problem the problem is growing day by day, it is shocking one. Why it so? It is due to lack of political and certain elevated class of the society to implement these constitutional mandates properly. Therefore unless and until this orthodox cal view of the existing system in India blown up nothing would be happened positively in the case of child labour. However there is only hope of ray what the Dr. Babasaheb Ambedkar expected that is the proper education to be extended to the children.

INTRODUCTION

Recently the child labour problem is not only alarming threat to the India but it is expanding all over the world. However the problem in India is rather more dangerous than all over the world. The problem of child labour continues to pose a challenge before the nation. Since the commencement of the Indian Constitution Government has been taking various pro-active measures to attempting this problem. In 1979 a Gurupadswamy Committee was constituted to study the issue of child labour and to suggest measures to tackle it. The Committee observed that as long as poverty continued, it would be difficult to totally eliminate child labour and hence, any attempt to abolish it through legal recourse would not be a practical proposition. Accordingly the Child Labour (Prohibition & Regulation) Act was enacted in 1986. The Indian Constitution embodies several provisions regarding the rights of children to comply these mandates the state and the central government passed number of legislations in fever of children to protect their rights and to prevent child abuse. However due to the lack of political will existing worst social system these statutes are not implementing properly. Therefore the problems of child and child labour are mounting.

¹ In historic Mahad Satyagraha Procession on 18th July 1927, an address by Dr. Bbasaheb Ambedkar.
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THE CONCEPT OF CHILD LABOUR

The word ‘child labour’ is a combination of two components, i.e. ‘child’ in terms suggest the age factor and ‘labour’ to indicate terms of its nature² and work, effort, toil, hurt, injury exertion to child. Therefore it is a controversial concept to define especially in the context of child labour and child labour work often used synonymously. However all work is not bad for children because some light work, properly structured and regulated is not child labour or toil. This implies that work which does not detract from other essential activities for children such as leisure, play and education are not child labour. Child labour, therefore, is the work which involves some degree of exploitation namely, physical, mental, economic and social and therefore, impairs the health and development of children.³ It is pointless to try and distinguish between child labour and child work or between hazardous and non-hazardous employment. Work that is seemingly non-hazardous for adults becomes hazardous for children because they have no negotiating power.⁴ With regard to the conceptual and definitional problems concerning child labour there are two schools of thought.

Abolitionist school- According to the first school, education should be made a fundamental human right of every child in 5-14 age groups and any child who is out of school should be treated as a potential working child. They feel that elimination of child labour and attainment of compulsory primary education are two sides of the same coin and one cannot be achieved without achieving the other. According to them the distinction between hazardous and non-hazardous work is immaterial.⁵

Reformist school- According to the second school, child labour is a ‘harsh reality’ which means given the socio-economic conditions of India (like poverty, unemployment and illiteracy) it is impossible to root out the problem of child labour altogether. They feel that elimination of child labour should be viewed as a long-term goal to be achieved progressively. Hence, they advocate a dual approach of prohibition of child labour in hazardous work and regulation of it in non-hazardous work.⁶

DEFINITION OF CHILD

Convention on the Rights of the Child 1989 defines child as every human below the age of eighteen years.⁷ ILO Convention 182 also called the Worst Forms of Child Labor, 1999 defines the term child, as anyone under the age of 18 years.

² P.P. Jayanti, “Child Labour A Socio-Legal Study”, Vol.I (1998) Kerala University Journal of Legal Studies, Department of Law, University of Kerala, Tiruvantapuram, p.143

³ Ibid, p.145

⁴ Neera Burra, “Child Labour: it’s a Reality tale” The Indian Express December

⁵ S. Pandiaraj “Elimination of Child Labour in India: Towards a glorious illusion”? Vol.46, (2006) Indian Journal of International Law, Laxmidhar Mishra, Child labour in India, New Delhi: Oxford University Press, 2000, p.18

⁶ Ibid, p.19.

⁷ Article 1 of Convention on Rights of the Child 1989

According to International Labour Organization (ILO) the term ‘child labour’ is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children and interferes with their schooling by depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work.⁸

In India different acts prescribe different age groups of a child. Indian Penal Code, the minority age is 12 years. The Constitution of India defines child as a person younger than 14 years. Section 2 (2) of Shops and Establishment Act says that child is a person who hasn't completed 15 years of his age. Mines Act – 1952 declares that a child is a person not older than 16 years. According to the Juvenile Justice (Care and Protection of a Child) Act, a child is a person who has not completed 18 years of age. Indian Majority Act, 1875 States that from the age of 18, persons acquire the capacity to exercise all the rights of an individual. According to the Suppression of Immoral Traffic in Women and Girls Act 1956, a child is a person who is not 21 years old. So there is no uniform definition to prescribe the age of the child to apply the laws and make welfare of them.

THE CONSTITUTIONAL PROVISIONS REGARDING CHILD LABOUR

The Indian Constitution is the law of land which is the umbrella legislation. It is applicable to administer the entire framework of the nation. It empowers and controls the legislation, judiciary and execution of entire administrative bodies. To shoulder this nation it is necessary to have responsible people. The children are the assets of nation so they should be developed in proper way. The state has responsibility to take care of the children of the nation. This duty of the state is prescribed in the different articles of the Indian Constitution.

Article 15 (3) The State is empowered to make the special provisions relating to child that shall not be considered as violative of right to equality. That is state can make protective discrimination in favor of the children to provide special treatment so that they can develop in a proper way. Therefore it is the equal protection under Article 14 of the Indian Constitution.

Article 21 No person shall be deprived of his life or personal liberty, except according to procedure established by law. The Supreme Court said that “life” includes free from exploitation and to live a dignified life. If state fails to provide to do so it is the violation of fundamental right. So if children are working as child labor state is responsible to respond to it.

Article 21A 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. The education to be equated with life under Article 21. Without education there is no life with human dignity. So survive as a human being education is the fundamental tool. Therefore

⁸ (Source: <http://www.ilo.org/ipec/facts/lang--en/index.htm>)

state has a primary duty to provide the education to all children in the India. Where children are allowed to work, in such establishment, it is the duty of employer to make provisions for the education of child laborer.

Article 23-Traffic in human beings and beggar and other similar forms of forced labor are prohibited and any contravention of this prohibition shall be an offence punishable in accordance with law.

Article 24 -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.

Article 39 (e)-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.

Article 39 (f)-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.

Article 41 -The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 45-The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years. To comply with the provision of this Article the Indian parliament passed the right to free and compulsory education Act, 2009

Article 51A (e)-The framers of the Indian Constitution also imposes a duty on the parent, as 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.

CHILD LABOR LEGISLATIONS IN INDIA

The Factories Act, 1948

This Act has been made in response of the Article 23 and 24 of the Indian Constitution which prohibits the employment of children below the age of 14 years. It is mandatory that 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 4.5 hours of work per day for children aged between 14 and 18 years and prohibits their working during night between 7 pm-6am hours.

The Minimum Wages Act, 1948

The Directive Principles of State Policy embodied under article 43 of our Constitution narrates about the minimum wages for all employees in all establishments or to those working at home in certain sectors specified in the schedule of the Act. Central and State Governments can revise minimum rates minimum wages specified in the schedule per year or as the state think fit so. Some consider this Act as an effective instrument to combat child labour in that it is being used in some States (such as Andhra Pradesh) as the basis on which to prosecute employers who are employing children and paying them with lower wages.

The Mines Act, 1952

The Act prohibits the employment of children below 18 years of age in a mine. Further, it states that apprentices above 16 may be allowed to work under proper supervision in a mine.

The Child Labor (Prohibition and Regulation) Act, 1986

This Act has a constitutional validity as per the Article 24 of part III of the Indian the Constitution. Act prohibits the employment of children below the age of 14 years in 16 occupations and 65 scheduled processes that are declared hazardous to the children's lives and health. These occupations and processes are listed in the Schedule to the Act. In October 2006, the Government has included children working in the domestic sector as well as roadside eateries and motels under the prohibited list of hazardous occupations. More recently, in September 2008 diving as well as process involving excessive heat (e.g. working near a furnace) and cold; mechanical fishing; food processing; beverage industry; timber handling, loading; mechanical lumbering; warehousing; and processes involving exposure to free silica such as slate, pencil industry, stone grinding, slate stone mining, stone quarries as well as the agate industry were added to the list of prohibited occupations and processes. Ban on employment of children as domestic servants or in dhabas (roadside eateries), restaurants, hotels, motels, teashops, resorts, spas or in other recreational centers is now in force from 10th October 2006⁹. The Union Ministry of Labour had earlier issued a notification giving three-month mandatory notice. The Ministry has warned that anyone employing children in these categories would be liable to prosecution and other penal action under the Act.

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.

⁹ *The Child Labor (Prohibition & Regulation) Act, 1986*
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The Juvenile Justice (Care and Protection) of Children Act, 2000

This Act was last amended in 2002 in conformity with the UN Convention on the Rights of the Child covers young person below 18 years of age. Section 26 of this Act deals with the exploitation of a juvenile or child employee and provides in relevant part that whoever procures a juvenile or the child for the purpose of any hazardous employment and keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to 3 years and shall also be liable for fine. In some States including Karnataka and Maharashtra this provision has been used effectively to bring to book many child labor employers who are otherwise not covered by any other law and to give relief and rehabilitation benefits to a large number of children.

The Right of Children to Free and Compulsory Education Act, 2009

It is the repercussion of new amendment introduced under Article 21 (A)¹⁰, which provides for free and compulsory education to all children aged 6 to 14 years. This Article equates the right to education with right to life. This legislation also envisages that 25 per cent of seats in every private school should be allocated for children from disadvantaged groups including differently abled children.

ELIMINATING CHILD LABOUR THROUGH EDUCATION

It has been observed that “the overall condition of the education system can be a powerful influence on the supply of child labour¹¹. The 1991 Census of India shows that 64% of males and 39% of females were literate¹². India’s primary school completion rate of 38.0% was also lower than China’s rate of 70% and Sri Lanka’s rate of 90.8%¹³. Few students are reaching fifth or sixth grade and the Drops out rates measures by the Department of Education show that 3.5% of males and 39% of females drops out per year.¹⁴

Compulsory Education

The concept of compulsory education where all school-aged children are required to attend school fights the poverty that pulls children out of school. Policies relating to compulsory education not only force children to attend school but also contribute funds to the primary education system instead of higher education. Article 45 of part IV read with Article 21(A) of the Indian Constitution of directs to the government to make this welfare provision for children up to age of 6-14 years. Accordingly, the Free and Compulsory Education Act, 2009 was passed.

¹⁰ Article 21 of the Indian Constitution

¹¹ Grootaert and Kanbur 1995, 193

¹² The World Bank 1995, 113

¹³ UNESCO cited in Weiner 1991, 159.

¹⁴ Government of India cited in the World Bank 1995, 113



An example of a country where compulsory education has worked to reduce child labour is Sri Lanka. The Sri Lankan government decided to enforce compulsory education in the 1920's and 1930's¹⁵. With this compulsory education policy, school participation rates rose from 58 percent in 1946 to 74 percent in 1963. The literacy rate also increased from 58 percent in 1946 to 86 percent in 1984¹⁶. The corresponding result has been that the employment rate of children in the ten to fourteen age group has declined substantially and currently stands at 5.3% for males and 4.6% for females¹⁷.

The Indian state of Kerala distinguishes itself from the rest of India with its educational system; it spends more money on school level education than colleges and universities¹⁸. Kerala's emphasis on primary education has led to a dropout rate of close to 0%, a literacy rate of 94% for males and 86% for females and a low child work participation rate of 1.9% (in 1971). This compares to the Indian average of 7.1% in 1971¹⁹. It also points out that "The Kerala government has made no special effort to end child labour. It is the expansion of the school system rather than the enforcement of labour legislation that has reduced the amount of child labour".²⁰

National Child Labour Project

The most important central government scheme on child labour is the National Child Labour Project (NCLP) scheme. It is for an education project having aim at setting up bridge school for withdrawn child labourers. Most of the NGOs also have education related programs for the elimination of child labour. These programs are generally of Non Formal Education (NFE) nature.

The good thing about this approach is that theoretically a child labor is being withdrawn from labor and is enrolled into a bridge school and later he is mainstreamed into the formal education system. A child is not only rescued but also rehabilitated through her induction into the development process. Secondly, such an approach strengthens the movement for expansion of elementary education through common school system. However, in respect of programs that are formulated for working children in a way that they can combine their work with education, there are two reasons why this cannot be an effective solution eliminating child labour.

Finally, one has to understand that causes of child labour, as well as for illiteracy among children lie in those social, economic and political reasons that get manifested in the structure of economy and production chains, which push families to vulnerabilities. Combating child labour, by keeping education as core initiative, allows the state to ignore the negative impacts of globalization.

¹⁵ Weiner 1991, 173

¹⁶ *ibid*

¹⁷ ILO 1995, 113

¹⁸ *Supra*, 4

¹⁹ Weiner 1991, 175

²⁰ *ibid*



In this particular sense it can be argued that free and universal elementary education cannot be a panacea for the elimination of child labour. Education is one of the many solutions, and for the state, it is a short-term solution. Education system in the present nature unfortunately, is a crucial tool in reproducing socio-economic class structure, especially the sexual division of labour.

Hence, schooling will help the disappearance of child labour only if social relations of production will change²¹. Child labour is required to be addressed by a multitude of policies, especially the policies that could address the structural elements and lead to eliminating demand for child labour in the labour market.

CONCLUSION

No doubt there are several legislative measures have been undertaken to curb problem of child labour in hazardous employment, injurious to health, the exploitation of children by different capitalists and profit makers for their personal gains continued unabated in utter disregard of constitutional injunction and statutory prohibition. The phenomenon of child labour is multi-dimensional complex problem and deep rooted in the socio-economic fabric of the society. There are many factors responsible to this complex problem, so a comprehensive integrated approach is required to tackle and combat child labour. This can be done only by bringing attitudinal change, and social awareness and rigorous campaign against the social system in which the problem of child labour is entangled. Thus, it requires honest effort and strong commitment and support of the state.

²¹ *This argument is in response to National Child Labour Project (NCLP) scheme. however it is not sufficient in Combating child labour.*