

## AN ANALYTICAL STUDY ON CHILD RIGHTS AND CONSTITUTION OF INDIA

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### **ABSTRACT**

The issue of child labor is one that poses significant challenges to the realization of human rights, particularly in the context of the Constitution of India. Despite the efforts made by various stakeholders to eradicate child labor in the country, it remains a prevalent issue that affects the lives of millions of children. This paper aims to explore the theoretical aspects of child labor in the context of human rights and the Constitution of India. The Constitution of India recognizes the right to education, health, and protection against exploitation as fundamental human rights. However, the persistence of child labor in various forms, such as domestic labor, bonded labor, and factory work, indicates that the constitutional provisions have not been adequately implemented. The lack of enforcement of these provisions has created a gap between the theory and practice of child rights in India. The theoretical framework for addressing child labor in India is rooted in the idea of the dignity of every individual. This concept is enshrined in the Constitution of India and recognizes that every child has the right to a life free from exploitation and abuse. Furthermore, India has ratified several international treaties, including the Convention on the Rights of the Child and the International Labour Organization's (ILO) Conventions on child labor. These treaties provide a framework for combating child labor and promoting the welfare of children. However, despite these theoretical frameworks, the practice of child labor in India remains widespread. This can be attributed to several factors, including poverty, lack of education, and the absence of effective enforcement mechanisms. Children from impoverished backgrounds are often forced into labor as a means of survival, while others are lured by the prospect of earning money. This approach should include measures to combat poverty, promote education, and strengthen enforcement mechanisms. The government must also ensure that all children have access to quality education and healthcare, as these are fundamental human rights. Furthermore, efforts should be made to improve the economic conditions of families living in poverty, as this will reduce the demand for child labor. In conclusion, the issue of child labor is a significant challenge to the realization of human rights in India. This will require a concerted effort by all stakeholders, including the government, civil society organizations, and the international community.

**Keywords-** Child Labor, Human Rights, Constitution of India, Education, Poverty, Enforcement, Exploitation, International Labour Organization.

### **1.1 INTRODUCTION**

**CHILD LABOR** Child labor is the employment of children under 14 years of age, who has been forced to engage herself/himself in work at the cost of education, schooling and self-entertainment is usually identified as a 'child labourer'. Child labor is a global problem, affecting millions of children around the world. Millions of children worldwide experience the worst kinds of rights violations such

as violence, child labour, trafficking, sexual exploitation, female genital mutilation/cutting, child marriage etc.

According to the International Labour Organization (ILO), there are an estimated 152 million children in child labor, with 72 million engaged in hazardous work. The majority of child laborers are found in Africa, Asia, and the Pacific, with the highest prevalence rates in Sub-Saharan Africa. The causes of child labor are complex and include poverty, lack of access to education, discrimination, and cultural attitudes towards children's work.

## **1.2 Human Rights And Constitution Of India**

Human Rights are fundamental rights that every person is entitled to, irrespective of their nationality, race, gender, religion, or any other status. In India, Human Rights are protected and enshrined in the Constitution of India. The Constitution also includes provisions for the protection of cultural and educational rights, the right to freedom of speech and expression, and the right to freedom of religion. India is also a signatory to several international human rights treaties and conventions, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child, among others. India has also enacted various laws and policies to protect human rights, including the Protection of Human Rights Act, 1993, and the National Human Rights Commission Act, 1993. Despite these legal protections, there are still several issues related to human rights violations in India.

## **1.3 Constitutional Provisions for Eradication of Child Labour.**

Article 15 (3) The State is empowered to make the special provisions relating to child, which will not be violative of right to equality.

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.

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. Where children are allowed to work, in such establishment, it is the duty of employer to make provisions for the education of child labourer.

Article 23 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.

Article 24 (Prohibition of Employment of Children in Factories, etc.) 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. 136 K. G. Mallikarjuna 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.

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 45** The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

**Article 51A (e)** 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.

## **2.1 RESEARCH OBJECTIVES**

- To analyse various Articles of Indian Constitution meant for protection of child labour interests.
- To discuss various legislations made by Indian government against child labour.
- To review Committees and Commissions appointed by Government on child labour.
- To explore the legal framework and policy initiatives address child labor in India, including an analysis of their effectiveness.

## **3.1 LITERATURE REVIEW**

**G. Shivagami and T. Rajendra Prasad(2019)** Child labor is forced upon parents and in many circumstances, children due to economic constraints. The major cause of child labor is widespread unemployment and underemployment among the adult poor. The main rationale for employing youngsters is that they are simpler to handle since they are less demanding knowledgeable of their rights, more trustworthy, less problematic, and no union hassles.

**Mita Bhattacharya(2014)** This paper reviews the child labour situation in India and analyses the effect of globalisation on child labour. The United Nation's Children Fund (UNICEF) supported initiatives are also operating in different districts. A great number of Non-Governmental Organisations (e.g. Action Aid India, Butterflies, CARE India, CINI ASHA, Prayas, World Vision India among others) both local and international also exist in assisting working children.

**Gopal Krishan et.al (2013)** conducted research on "Human Rights violations of children through child labour in India: An Overview" This paper analyses the issue of human rights violation of children through child labour in India. In the beginning the issue of human rights of children has been conceptualized. this paper analyses the legal and constitutional measures which protect the human rights of children in India. These include the Fundamental Rights, Directive Principles of State Policy, Fundamental Duties and various acts passed by Government of India. Thus this paper endeavors to analyse the issue of human rights violations of children in the given perspective.

## **4.1 RESEARCH METHODOLOGY**

Research methodology is an essential aspect of any research study. Here's a possible methodology for studying the topic of child labor human rights in India:

**Research Design:** The research design for this study could be a mix of both qualitative and quantitative research methodologies. A cross-sectional research design can be chosen for this study. This will help to study the current situation of child labor and the status of human rights in India. to child labor and human rights abuses. Overall, addressing these research gaps can help inform policy and programmatic interventions to address child labor and human rights violations in India.

## **5.1 NATIONAL LEGISLATION AGAINST CHILD LABOUR IN INDIA**

THE MAJOR NATIONAL LEGISLATIVE DEVELOPMENTS INCLUDE THE FOLLOWING :

**The factories Act of 1948** is an important Act which provides for interdiction of employment of young children and prescribes working hours of minors (M.C.Mehta vs. State of Tamil Nadu)

**The Employment of children Act of 1938** prohibits the employment of children less than 15 years in any occupation connected with transport of passengers or goods (Democratic Rights Vs. Union of India)

**The Children (pledging of Labour) Act of 1933** aims to eradicate the evil of pledging the labor of a child below 15 years of age.

**The Child Labour (prohibition and regulation) Act of 1986** and The Apprentices Act of 1961 treats a person up to the age of 14 years of the child. This Act has made necessary amendments in other Acts to bring uniformity in age.

**The Motor Transport Workers Act, 1961** prohibits employment of the children below 15 years of age in motor transport undertaking.

**The Beedi and Cigar Workers (conditions of employment) Act of 1966** prohibits employment of children 2MAMTA RAO, Law relating to women and children, (3rd ed., East India Company). [www.ijlmh.com](http://www.ijlmh.com) ©2018 IJLMH.

**The Plantation Labour Act of 1951** restricts employment of children up to the age of 12 years of age.

**The Merchant Shipping Act of 1958** prohibits the employment of children who are below the age of 15 years. The Shops and Commercial Establishment Act prescribes different age limits in different stages varying from 12 to 14 years.

### **Committees and Organisations**

National Human Rights Commission(NHRC), The National Human Rights Commission started making legislations for the protection of the rights of children from October 1993 with the advent Child Labour ( Prohibition and Regulation) Act, 1986.

Right to Education, RTE became a fundamental right after the 86<sup>th</sup> amendment to the constitution of India due to the efforts of NHRC.

The Ministry of Women and Child Development, The ministry of women and child development, a branch of the government of India, is an apex body for the administration of the rules and regulations and laws relating to women and child development in India. The ministry has been implementing various schemes for the upliftment of children in society, and some of them have proved to be immensely successful. They are listed below :

### **Institutions :**

1. National Institute of Public Cooperation and Child Development (NIPCCD)
2. National Commission for Women(NCW)
3. National Commission for Protection of Child Rights(NCPCR)
4. Central Adoption Resource Agency(CARA)
5. Central Social Welfare Board(CSWB)

## 6. Rashtriya Mahila Kosh(RMK)

### Programs And Schemes

The below mentioned are some schemes and programs brought about to protect different child rights as the situation may seem.

1. Integrated Child Development service(ICDS) Scheme
2. Integrated Child Protection Scheme(ICPS)
3. National Child Labour Project(NCLP) Scheme
4. Beti Bachao Beti Padho
5. Swachh Vidyalaya
6. Udaan
7. Saksham
8. National Plan of Action for Children

### Other Schemes Include :

1. Balika Samriddhi Yojana(BSY)
2. Kishori Shakti Yojana(KSY)
3. Early Childhood Education for 3-6 Age Group Children Under the Programme of Universalization of Elementary Education
4. Scheme for the welfare of working children in Need of care Protection
5. An Integrated Programme for Street Children
6. Childline Services
7. Central Adoption Resource Agency(CARA)
8. Rajiv Gandhi National Creche Scheme for the Children of working Mothers
9. Programme for Juvenile Justice
10. General Grant-in-Aid Scheme
11. Pilot Project to Combat the Trafficking of women and children for Commercial Sexual Exploitation in Destination Areas
12. National Creche Fund

All these are not included in the direct legal framework of Child Rights in India, but they are established as a result of some legislations or by some Government Ministry in pursuance of its duties.

### 6.1 Findings and Suggestions

1. Parents must be given a clear awareness about child labor is that which affects the future development of the child physically as well as mentally. Strict punishments must be enacted- if any person forces the child who is below the age of fourteen to work in factories and precarious areas will be punished severely by the court.

2. It is also the responsibility of the society to start a step to demolish child labor and make the country as non-child labor country. Like Small scale movements by NGOs like Child Rights and You(CRY), Smile Foundation and Make a Difference(MAD) and proper budget allocation are some other significant steps towards the improvement of child rights in India.

3. The Media should cover the critical issues of nutrition and recreation and other problems relating to child rightd to reach to a broader audience. Coordinating with civil societies and realosation of corporate social Responsibility(CSR) is fulfilling the sustainable development goals(SDG).

## 7.1 CONCLUSION

The constitution of India guarantees special provision and protection of law to the children. Some special provisions are specially protected the rights of children. State is under duty to promote the welfare of the child worker and help them to grow into good citizen and proper National Child Labour Project Districts should be framed for welfare and protection of children. Child labour is a social problem which can be eliminated by changes in attitudes of society . Awareness must be created through mass media. All sections of society should take dynamic step for removal of child labour. The Government needs to demonstrate this commitment through the acceptance and recognition of problems, formulation of appropriate policy, strong legal frameworks and programming, and allocation of adequate resources to programs. It needs to ensure that mechanisms for child protection are child friendly, functional and in a position to reach children in needs of protection.

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