

# THE LEGAL VIDYA

Open Access Law Journal

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The Legal Vidya  
Volume 2 Issue 1, November 2021, Page Nos. 11 to 20

## AN ANALYTICAL STUDY OF CHILD LABOUR DURING COVID-19

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***Abstract:*** *The issue of child labour during Covid 19 pandemic is a frontline issue in India. Child labour is a complex problem rooted in poverty. With the loss of employment during pandemic the parents themselves are sending children to work and earn money for the survival of the family. Children considered as cheap labour are exploited and are made to work in Hazardous factories. With the closing down of education institutions and unemployment there is a hike in cases of child labour in India. This paper intends to give the scenario in which the child labour has increased in India during pandemic and various steps that the state governments and judiciary has taken in order to ensure that the rights of the children are protected. The paper also suggests required efforts which can be taken to overcome this problem. Finally, the paper concludes that the proposed solutions may be found worthy in overcoming the challenges of child labour in India during these tough times.*

### **INTRODUCTION**

Child Labour is a serious issue in the whole world. Children are the future of the nation, and the nation must protect their rights and interests in society. Child Labour disturbs the mental and physical well-being of the children. They have the right of being nurtured with care and affection.

Child Labour is the phenomenon where the child is engaged in economic activity, to support their families financially. According to the International Labour Organization (ILO), child Labour is the exploitation of children by engaging them in any form of work that acts as a hindrance in their growth, interferes with their

ability to attend school, and is harmful to their development. It specifically mentions the work that is mentally, physically, and socially dangerous to their wellbeing and deprives them of the opportunity to attend school, by engaging them in extremely long and grueling work.

According to the Child Labour Act, “Child” means a person who has not completed his 14<sup>th</sup> year of age whereas, Adolescent means a person who has completed his 14<sup>th</sup> year but has not completed his eighteenth year. The Central and the state government enforces these provisions within their respective spheres<sup>1</sup>.

The History of Child Labour in India could be seen from the foreign invasion period, where the invasions not only plundered India’s wealth but also destroyed its socio-cultural ethos. The people were affected by the economic drop and, the children also faced its adversities<sup>2</sup>. The rural population could no longer afford the food and basic amenities and, due to which the children were also deprived of education. Due to the economic shock, people lost their household income and sent their children out for work to support them financially. Children were forced to work for long hours with little pay.

## **LEGAL PROTECTION**

### **I. INTERNATIONAL CONVENTIONS**

The International Convention creates a legal framework for all the countries to deal with child labour. The International Labour Organization (ILO) and the UN Convention on the Rights of the Child (CRC) are the key instruments that address child’s rights.

UN Convention ensures that the child has access to education and health care services without any discrimination. International Labour Organization (ILO) Minimum Age Convention (no. 138) and ILO Worst form of Child Labour Convention (no. 182) also lays down the safety standards and prohibits the worst form of child labour, or any work that is harmful to the health, morals, and safety of the children.

### **II. INDIAN LEGISLATIONS**

- **CHILD LABOUR (PROHIBITION OF REGULATION) ACT, 1986**

The Act prohibits the employment of children in any occupation and regulates the working conditions. Under this Act, a ‘Technical Advisory Committee’ is constituted to advice, for the inclusion of further occupations, and processes in the Schedule.

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<sup>1</sup> Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

<sup>2</sup> Rama Kant Rai, History of Child Rights and Child Labour, <http://menengage.org/wp-content/uploads/2014/06/History-of-child-rights-and-child-labour.pdf>

- **THE FACTORIES ACT, 1948**

The Act prohibits the employment of children below the age of 14. However, adolescents aged between 15 and 18 years can be employed only if they receive a certificate of fitness from an authorized medical officer.

- **THE JUVENILE JUSTICE (CARE AND PROTECTION) OF CHILDREN ACT OF 2000**

The Act made Child Labour punishable, for anyone who employs a child in any hazardous employment or bondage.

- **THE APPRENTICE ACT, 1961**

The Act lays down that the child to have Apprenticeship training should be less than 14 years of age, and should satisfy the standard of education with the physical fitness test.

- **CONSTITUTIONAL PROVISIONS**

Article 23 and 24 of the Constitution, prohibits traffic in human beings and other alike forms of forced labour. It forbids the engagement of any child who is below the age of 14 in any factory, mine, or other hazardous employment.

Article 39 (f) of the Constitution directs the state to safeguard the child by giving opportunities and facilities to develop in a healthy environment and is protected against moral and material abandonment. Article 14 ensures that the state will provide equal protection to the people. Article 15 prohibits discrimination on grounds of race, religion, caste, sex, etc, and Article 21 guarantees the right to life and liberty.

## **IMPACT OF COVID 19 ON CHILD LABOUR**

The ongoing pandemic has increased the pre-existing problem of Child Labour in India. The initial months of the pandemic saw a massive movement of migrant daily wage workers across the country. Though the lockdown was imperative for the containment of the virus, it has negatively affected the country's economy by increasing the unemployment rate and poverty.

It was revealed that by the end of September 2020, the unemployment rate in India was 6.67%. According to World Bank, the livelihood of approximately 40 million has been affected due to the pandemic. The full impact and length of the pandemic are still uncertain, and it poses a real threat of underemployment in the country.

- **POVERTY**

Poverty is considered the main cause of child labour in India<sup>3</sup>. The financial condition of the family makes the children sacrifice their education, and work for hours under inhumane conditions to earn a scanty amount of money. According to The World Bank report, 21.9% of the Indian population, for the year 2011, is below the poverty line<sup>4</sup>.

Due to poor living conditions lack of job opportunities followed by the low level of income, the parents have no alternative, but to send their child for work rather than in schools. Niti Ayog's report on SDG (Sustainable Development Goal) Index 2019, revealed that every fifth Indian is below the poverty line. It showed that 25 states and UT's of India are facing the problem of poverty, hunger, and income inequality. The report also revealed that India has 364 million MPI (Multidimensional Poverty Index) poor out of which 156 million are still children<sup>5</sup>.

The estimates had pointed to 20% rise in poverty for the year 2020. A study found that the number of people who are in extreme poverty would increase by 85 million, 180 million, and 420 million, respectively as compared to 2018. The economic shock has reduced the opportunities for parents in the labour market, and hence they push their children into hazardous and exploitative work.

#### ● DEMAND FOR CHEAP LABOUR

The children are considered to be cheap labour. The children are an easy target as they are low-skilled workers without a voice. Due to the financial crisis, the children are ready to work for lesser wages under risky conditions and are less likely to complain like others, and seeing this the company takes advantage of their vulnerability. This helps the company to keep its costs down and increase its profits.

According to a survey conducted children employed in Delhi and Patna make half the adult wage. The children are employed at the least skilled aspect of production and earn only about a sixth as compared to adult workers<sup>6</sup>.

Whenever the household needs more financial support, they turn to children. Due to family pressure, the children end up doing jobs with minimum wages for longer working hours. According to the report, the Global working hours fell in the first quarter of 2020 by 4.5% as compared to the final quarter in 2019. This indicates that there will be approximately 130 million full-time jobs with 48-hour workweek. The global working hour in the second quarter is expected to be 10.5% lower, equivalent

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<sup>3</sup> International Labour Organization, 'Causes of Child Labour', Available at [https://www.ilo.org/moscow/areas-of-work/child-labour/WCMS\\_248984/lang--en/index.htm](https://www.ilo.org/moscow/areas-of-work/child-labour/WCMS_248984/lang--en/index.htm).

<sup>4</sup> The World Bank, 'Poverty Headcount Ratio at National Poverty Line India'. Available at [https://data.worldbank.org/indicator/SI.POV.NAHC?end=2011&locations=IN&most\\_recent\\_year\\_desc=false&start=1993](https://data.worldbank.org/indicator/SI.POV.NAHC?end=2011&locations=IN&most_recent_year_desc=false&start=1993).

<sup>5</sup> Prasanna Mohanty, 'Budget 2020: Niti Ayog Shocker. Poverty, Hunger and inequality up in 22 to 25 States and UT's', *BusinessToday*, January 9, 2020

<sup>6</sup> International Labour Organization, 'Child labour wages and productivity: Results from demand-side surveys', May 2007. Available at [file:///C:/Users/HP/Downloads/2007\\_cl\\_wages\\_productivity.pdf](file:///C:/Users/HP/Downloads/2007_cl_wages_productivity.pdf).

to 305 million full-time jobs<sup>7</sup>. The lower wage and extended working hours would lead to the exploitation of children.

Around 90 percent of Indian employment is in the informal sector<sup>8</sup>. The covid-19 pandemic has provoked growth in the informal sector due to loss of employment. Child labour is widespread in the informal sector where children could enter as unskilled labourers. The greater economic hardship would lead to more children joining the labour market.

- CREDIT CRISIS

The poor families would seek money from the money lenders but at a point find it difficult to repay the debt. The impoverished families agreed to send their children to work in factories so that the debt is paid off easily and quickly. This work could go on for several years where children start to work at a very young age.

According to ILO report (2016) 40.3 million people are trapped in modern slavery where 24.9 million are under forced labour, and 1 in 4 victims of modern slavery are children<sup>9</sup>. In the state of Tamil Nadu, 351 out of 743 spinning mills use bonded labourers, for work known as Sumangali scheme<sup>10</sup>. The risk of children getting trapped in bonded labour is high in Covid<sup>11</sup>.

- EDUCATION

Credit crisis would result in a reduction of investment, including in schools. The parents without any household income would cut down their investment in schools to save expenses. With the closure of educational institutions, most of the focus has on online learning. The children from poor rural areas have no pieces of equipment to access digital learning and end up discontinuing their education. This would further drive them into child labour to support their family<sup>12</sup>.

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<sup>7</sup> International Labour Organization, '*ILO Monitor: COVID-19 and the World of Work*', third edition, ILO, Geneva, 29 April 2020.

<sup>8</sup> Priti Mahara and Rahul Suresh Sakpal, '*In Shattered Post-Lockdown Economy, Govt Must Keep a Strict Eye on Child Labour*', The Wire, 16 June, 2020.

<sup>9</sup> International Labor Organization. Statistics on forced labour, modern slavery and human trafficking, Accessed April 15, 2019. Available at <https://www.ilo.org/global/topics/forced-labour/lang...En/index.htm>.

<sup>10</sup> India Committee of the Netherlands (ICN) 2016, *Fabric of Slavery*, ICN, p. 3. Available at <http://www.indianet.nl/pdf/FabricOfSlavery.pdf>.

<sup>11</sup> Chopra, N., '*The Cost of COVID-19 Lockdown: Rise in bonded labour and human trafficking in India*', Outlook India, 13 April 2020

<sup>12</sup> Ben-Porath, Y., '*The Production of Human Capital and the Life Cycle of Earnings*', Journal of Political Economy, vol. 75, no. 4, part 1, 1967, pp. 352–365

Even after the reopening of schools, the parents will not be able to send their children back to schools. As the government restrictions were imposed on the harvesting period, the children of farmers will not have any other option but to assist their parents in the fieldwork.<sup>13</sup>

## **RECENT CHANGES IN LABOUR LAWS**

Across 11 states the government has relaxed the labour laws to boost productivity, and attract foreign investment. States such as Rajasthan, Madhya Pradesh, Punjab, Himachal Pradesh, Uttar Pradesh, Maharashtra, Karnataka, Andhra Pradesh, Odisha, and Assam went ahead and amended the Factories Act, 1948 through an ordinance. The Amendment allows the companies to extend their factory daily shift of work from eight hours per day, six days a week to twelve hours per day and six days a week.

The latest data from the Ministry of Labour and Employment has revealed that the state of Maharashtra in 2018 was reported as one of the states with the maximum number of child labour cases. West Bengal reported 17,137 cases, whereas Uttar Pradesh is in third place with 8,020 cases<sup>14</sup>. Relaxation of labour laws will create challenges for the workers who are currently employed as they would likely be unregulated. The workers will also be facing exploitative and inhuman working conditions.

The easing of laws will create an overall increase in insecurity, exploitation, inadequate means of livelihood, and discrimination faced by workers. It also reduces the bargaining power of the workers and its impact on child labour will be severe. The children are already considered as cheap labour, and with the increase in working hours, the children will be engaged in more hazardous work and exploitation.

The easing of norms was done to attract foreign investment and encourage new firms, but the relaxation of labour laws has led to a weakening of labour market and checks the operations of the new firms. This would result in the reduction of effectiveness in the monitoring standards of the working condition of hazardous industries.

The Constitution of India provides various Fundamental Rights and Directive principles of state policy, the changes made by the state government will hurt and infringe the constitutional objective. India is known as a labour surplus country where the employers have more bargaining rights and hence it is the responsibility of the state to safeguard the interest of the workers because the market does not provide them with the necessary protection.

The Uttar Pradesh Worker Front Union had challenged the notification issued by the government on 8<sup>th</sup> May 2020 regarding the relaxation of labour law provisions concerning the working hours, rest period and overtime

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<sup>13</sup> Vikas Vasudeva, 'Farming under Lockdown: Short on labourers, a long harvest', The Hindu, 18<sup>th</sup> April, 2020

<sup>14</sup> Sharad Vyas, 'States high on child labour list', The Hindu, 6 March, 2020

during Covid 19 situation<sup>15</sup>. The Government had withdrawn its notification and the court had dismissed the PIL. In *Sri Maruthi H v State of Karnataka*<sup>16</sup>, the company withdrew his notification issued on 22.5.2020 where they increased the working hours for 9-10 hours a day.

## **LITING OF HAZARDOUS OCCUPATION**

In 2016, The Child Labour (Prohibition and Regulation) Amendment Act prohibited the working of children who are below the age of 14 in any establishment whether hazardous or not to ensure that children exercise their right to free and compulsory education. The Act allows the children to work only to help the family in family enterprises or as child artists after school or on vacations.

The Act prohibits the employment of children and adolescents in mines and factories with the production of inflammable substances and explosives, hazardous processes under the Factories Act, 1948. Thus, it allows the adolescents to work under sectors except those mentioned in the Act.

In the legal Analysis by CRY (Child Rights and You) it was observed that the child labour Act draws the definition 'hazardous' occupation from the Factories Act, 1948<sup>17</sup>. The list of hazardous occupations left out 66 hazardous processes and occupations that fall under the industrial activity under the Environmental Protection Act 1986. The government must take a step to develop a comprehensive list of Hazardous work for the benefit of child rights.

## **JUDICIAL MANOEUVER ON CHILD LABOUR AMID COVID-19**

The Pandemic has exacerbated the inequality in the education system and has created a digital divide where the students belonging from the economically weaker section are incapable to attend school. The Judiciary has taken various steps to ensure that children are provided with all the resources and there is no hindrance in their education.

In *AA Sanjeev Narrain v State of Karnataka*<sup>18</sup>, the Hon'ble court ordered the State government to provide laptops, tablets, etc to students from economically backward classes. The court directed the state to raise funds from the companies and NGOs working in the field of education to ensure that there is no disruption of education.

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<sup>15</sup> *Uttar Pradesh Worker Front v Union of India* PIL No. 597/2020

<sup>16</sup> *Sri Maruthi H v State of Karnataka* WP No. 7276/2020

<sup>17</sup> Shreya Ghosh and Priti Mehra, '*Covid-19 and Child Labour in India: Challenges and way Forward*', Child Rights and You (CRY), October 2020

<sup>18</sup> *AA Sanjeev Narrain v State of Karnataka*, W.P 11708/2020, 04/12/2020

The Hon'ble Supreme Court was also approached to constitute a committee to look into the matter of child trafficking for employment. The court noted that the children are trafficked amid Covid-19 as they are considered to be cheap labour<sup>19</sup>. The children are to be protected from the onslaught of abuse and violence that they will face after the lockdown. There needs to be a policy framed for the protection and rehabilitation of children.

In Re Contagion of Covid 19 Virus in Children Protection Home<sup>20</sup> the Hon'ble Supreme Court directed the State Governments to provide data about the children who has lost their parents in this pandemic. The information provided by the State Governments/Union Territories on the 'Bal Swaraj' portal shows that there are 3621 orphans, 26,176 children have lost one parent and 274 have been abandoned. The Court suggested that DCPO (District Child Protection Office) should ensure that proper ration, food, medicine and clothing for the child. The children should not face the situation where they discontinue their education. The private educational institutions should permit the children to continue their education for six months until then some arrangements can be made.

## **SOLUTIONS**

There are various steps that the government could take to curb the increasing number of child labour in the country.

- **ACCESS TO EDUCATION**

Due to the temporary closing down of schools, the government should ensure that the children have access to the innovative online learning facility. Being out of school does not mean falling into child labour. This will prevent children from permanently dropping out of school. The government should encourage parents to send their children back to school.

The children should be provided with every facility that encourages them to go back to their classrooms and continue their education. Relaxation of school fees and other related expenses should be given to students who will not be able to attend school.

School authorities should ensure that every student must be given a free meal and special efforts should be made to identify children orphaned due to COVID 19. According to UNICEF, 83-132 million people were undernourished during the pandemic. The data suggests that 370 million students missed

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<sup>19</sup> Bar and Bench, 'Supreme Court mulls forming Committee to check on the issue of Child Trafficking for Child Labour in private establishments', Shruti Mahajan, June 8, 2020. Available at <https://www.barandbench.com/news/litigation/sc-mulls-forming-committee-check-on-child-trafficking-child-labour-private-establishments>

<sup>20</sup> IN RE CONTAGION OF COVID 19 VIRUS IN CHILDREN PROTECTION HOMES, 2021 SCC Online SC 422, order dated 07.06.2021



the meals provided by the schools<sup>21</sup>. Many states like Andhra Pradesh, Bihar, and Haryana, etc have taken the step to provide financial assistance and ration facilities to students and their parents<sup>22</sup>.

- LABOUR MANAGEMENT

The authorities need to inspect and monitor the businesses that are at high risk of child labour. The administration of child labour at a local level can play an important role as it would help them to identify and follow up the child labour cases.

With the help of new technologies and various schemes, the reach of child labour inspection could be extended. The administration should make an effort to collect data on embedded labour processes to identify the involvement of children in hazardous work.

- EMPLOYMENT FACILITY

A policy should be created to employ the labourers in the informal sector to provide them income support and encourage the economy and labour demand. These policies would encourage labourers to work and generate income that would reduce the probability of children being forced to enter the workforce.

The government should protect health, safety, and labour rights. With the impact of COVID 19, the companies should prioritize the safe and healthy return of the employees. The international labour standards should act as a guiding force for businesses to curb the impact of the pandemic.

- RUN REHABILITATION

Nonprofit organizations can help the government in identifying and rescuing children from child labour. They can provide support to the child during legal proceedings or can run fundraising programs for them. NGOs can also make an effort to get the rescued children enrolled in schools and get them educated.

## CONCLUSION

Covid – 19 has a huge impact on people's health and safety. Poor people are facing the wrath of the struggling economy. Children from economically backward backgrounds are working to support their families

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<sup>21</sup> UNICEF (2020). COVID and Children. August 2020 available at <https://data.unicef.org/topic/covid-19-andchildren>

<sup>22</sup> Sanrachna, *Covid- 19 and its Impact on Mid-Day meal in India*, 5 August 2020. Available at <file:///C:/Users/HP/Downloads/COVID-19%20and%20Its%20impact%20on%20Mid-Day%20meal%20program%20in%20India.pdf>

financially. Due to the loss of employment, the parents themselves are sending their children to work in hazardous industries.

The demand for children as labourers in this pandemic has also increased as the children are considered as cheap labourer with a lack of skill. The companies exploit them by providing lesser income and making them work for longer hours. The government with the help of NGOs should ensure that the children are provided with all the facilities. To deal with child labour, the labour law regulation should strictly be imposed. The vulnerable children should be identified and provided with social security measures.

The government should strengthen the national budget for health, education, social security, for the vulnerable section of the society and encouraging the use of new technology and techniques and make them systematic. The International Conventions should also be followed to provide social protection measures.

