

History of child rights and child labour

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Children's rights are the human rights with particular attention to the rights of special protection and care, including their right to association with both biological parents, human identity as well as the basic needs for food, universal state-paid education, health care and criminal laws appropriate for the age and development of the child. Interpretations of children's rights range from allowing children the capacity for autonomous action to the enforcement of children being physically, mentally and emotionally free from abuse, though what constitutes "abuse" is a matter of debate. "A child is any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier.

The history of Hebrews, Greeks and Romans, whose cultures had a great impact upon the Western society, bears testimony to the fact that children, by and large, were taken for granted by their parents and the patriarchal society at large. The resultant effect of all this was that they were treated as objects of intervention rather than as legal subjects in their own right. Many labelled them as a 'problem population' whereas others reduced them to being seen as property and thus treated them as non-entities.

Ancient Greeks left girls and children born with disabilities on the wild hillsides, where exposure or animals were sure to kill them and the practice was continued routinely in Rome until Christianity became the State religion. The killing of unwanted children may have become less common in the centuries since then, but it never completely disappeared.

The French historian, Philippe Ariès, in his landmark book *Centuries of Childhood*, also claimed that 'the idea of childhood did not exist at all in earlier times', as once the 'child' moved from the biological dependence of 'infancy' it 'belonged to adult society' (Ariès, 1962: 125).

Lloyd de Mause, another historian, in *The History of Childhood* painted a very negative image of childhood and family life in the past. In fact, he went to the extent of saying that 'the history of childhood is a nightmare from which we have only recently begun to awaken'. He further contended that 'the further back in history one goes, the lower the level of child care, and the more likely children are to be killed, abandoned, beaten, terrorised and sexually abused' (Mause, 1975: 1-2). According to him, childhood was not discovered in the way that Ariès suggested. On the contrary, it was a human universal that gradually evolved itself from one stage to the other. These stages were:

- (i) Infanticidal (Antiquity to 4th century A.D.);
- (ii) Abandonment (4th – 13th centuries);
- (iii) Ambivalent (14th – 17th centuries);
- (iv) Intrusive (18th century);
- (v) Socialisation (19th – mid-20th century); and
- (vi) Helping (mid-20th century onwards).

The era of middle Ages was rightly referred to as the Dark Ages. Perhaps, an important step in the definition of rights came in 1215, in England. After a period of Civil War, the English nobility forced King John to limit his power, which had been absolute and virtually unchecked, through the *Magna Carta*.

Neil Postman (1982), at a time when there was a growing institutional recognition that children have rights, was 'facile'. His contention was that 'Childhood has not disappeared

and it will not do so. A childhood in which children are granted a moral status, in which their rights are taken seriously, will be a better childhood, not a worse one' (Freeman, 1997: 5-7).

Some historians believe that traditional families in Western Europe in the preindustrial used to live with extended family; grandparents, wife husband and children and perhaps some other relatives ruled by an elderly patriarch. Children were often temporarily sent off as servants to relatives in need of help.

The British Parliament set up a commission to investigate the problems of child labourers in the 1830's. One worker in a textile mill testified that since the age of 8 he had worked from 6 A.M. to 8 P.M., with an hour off at noon. When business was busy, however, he worked 16 straight hours, from 5 A.M. to 9 P.M. Another boy, whose parents had sold him to a mill owner, testified that the child labourers were locked up in the mill night and day. He ran away twice, and was caught and whipped by his overseer.

Child Labour appeared in earlier ages in primitive agricultural societies, but during the Industrial Revolution of the 18th century in Great Britain it was especially conspicuous and began to be opposed. It was one of the biggest scandals of the 19th century, spreading to other countries as they industrialized. The problem arose when children, many younger than ten years old, were employed by factories and mines. They were forced to work long hours under dangerous conditions for little pay. Social reformers began to condemn child labour because of its detrimental effect on the health and welfare of children. Among those helping to incite public opinion against it were **Karl Marx and Charles Dickens**, who worked at a factory himself at age twelve. One of the most effective attacks came from **Charles Dickens' novel *Oliver Twist*, which was widely read in Britain and the United States.** Many readers were impressed and changed to long lasting concern on child suffering from this novel.

In medieval Europe there was a model of distinct stages of life, which demarcated when childhood began and ended. A new baby was a notable event. Nobles immediately started thinking of a marriage arrangement that would benefit the family. Birthdays were not major events as the children celebrated their saints' day after whom they were named. Church law and common law regarded children as equal to adults for some purposes and distinct for other purposes.

Education in the sense of training was the exclusive function of families for the vast majority of children until the 19th century. In the middle Ages the major cathedrals operated education programs for small numbers of teenage boys designed to produce priests. Universities started to appear to train physicians, lawyers, and government officials, and (mostly) priests. The first universities appeared around after 1100, pioneered by the University of Bologna (1088), the University of Paris (1150) and Oxford (1167). Students entered as young as age 13 or 14 and staying for 6 to 12 years

Consensus on defining children's rights has become clearer in the last fifty years. A 1973 publication by Hillary Clinton (then an attorney) stated that children's rights were a "slogan in need of a definition". According to some researchers, the notion of children's rights is still not well defined, with at least one proposing that there is no singularly accepted definition or theory of the rights held by children.

Children's rights law is defined as the point where the law intersects with a child's life. That includes juvenile delinquency, due process for children involved in the criminal justice system, appropriate representation, and effective rehabilitative services; care and protection

for children in state care; ensuring education for all children regardless of their origin, race, gender, disabilities, or abilities, and; health care and advocacy.

In the USA, the Children's Rights Movement was born in the 19th century with the orphan train. In the big cities, when a child's parents died or were extremely poor, the child frequently had to go to work to support himself and/or his family. Boys generally became factory or coal workers, and girls became prostitutes or saloon girls, or else went to work in a sweat shop. All of these jobs paid only starvation wages.

One of the earliest recognitions of children's rights perhaps is found in the Massachusetts *Body of Liberties* of 1641 where parents are told not to choose their children's mates and not to use unnatural severity against their children. Children, furthermore, were given 'free liberty to complain to the Authorities for redress'. But this was also the law that prescribed the death penalty for children over 16 who disobeyed parents.

There is no evidence though that children did successfully litigate against their parents but nor is there any that disobedient children were executed. The document, nevertheless, remains interesting in showing, as it does, that even some 365 years ago protection of children went hand in hand with adding the power of the State to parental authority (Freeman, 1997: 47-48).

The eighteenth century as well can hardly be said to be identified with children's rights. It is pertinent to remark that the documents emanating from the great libertarian revolutions, the American and the French, have nothing specifically to say about children (Freeman, 1997: 48).

The nineteenth century, however, saw the birth of the child-saving movement, the growth of the orphanage, the development of child protection legislations, schooling and the construction of separate institutions, including the juvenile courts, for delinquent children, in different parts of the Western world. One of the reasons for this kind of development was that in the wake of Industrial Revolution there was severe exploitation of many working-class children who were widely employed in textiles, mining, agriculture, domestic service, docks and navigation. Moreover, the so-called 'advances' of industrialisation and urbanisation had serious consequences.

The Indian context: Interestingly, though historical and sociological documentation of early Indian civilisation also points out towards the pervasive biases of that time in the upbringing of children, on account of factors like caste, kinship, age, gender and the like, rulers like Ashoka (268-31 B.C.), Chandragupta Vikramaditya (c. A.D. 375-415) tried to propound moral edicts as a counter-balance in which obedience towards parents and respect for elders was extolled. In nutshell, the point driven home was that loyalty and obedience to one's elders, was not only moral but also socially approved and valued behaviour.

With the coming of the Arabs, Turks, Afghans and the Mughals, the medieval period stretching across from the eleventh to seventeenth centuries almost, saw an all-round impoverishment and degeneration in India. The foreign invasions not only plundered but completely destroyed the wealth and sociocultural ethos of India. Due to the overall economic deterioration experienced by the people, the children too faced adverse vicissitudes. Imposition of foreign culture had a profound impact at all levels. Families, and particularly those of the preponderant rural population, could no longer afford wholesome food and amenities for their children. Emphasis on elementary education gradually withered

away which was quite widespread earlier. Among the Hindus, elementary education was mostly confined to the higher castes like Brahmins, Rajputs and Vaishyas. Elementary education among the Muslims was given to those who belonged to aristocratic and rich families at home through the Maulvis. Others had to go to the *maktabs* situated in mosques. Girls, on the other hand, were seldom given education and their status in comparison to boys remained inferior. The rulers or the people took no remedial steps either.

Being a colony of the British, the plight of its children especially those belonging to the lower strata of society was certainly gloomy. As Britain was negotiating its place within a new emerging economic, social and political world order, it was a time of great uncertainty for India and this inevitably affected its children too.

Despite all this, moral panic and political reaction of that time dovetailed into the already existing reform and philanthropic efforts towards children which mobilised charity crusades and inspired voluntary effort. But, all this took a back seat in the face of growing imperialism of that time that had taken one of its worst forms. This development spelled doom for children as they were thought of as 'Bricks for Empire Building' and like others continued to be exploited in different ways. The ensuing freedom struggle, that nearly spread over 100 years – from mid-nineteenth to the mid twentieth century – aimed not merely at achieving political independence from the British rule, but also at reinvigorating the debilitated sunken society of India which under decades of slavery had lost its initiative, values and vitality.

It was the endeavour of leaders like Raja Ram Mohan Ray, Mahatma Gandhi and others to awaken the people and rouse them to overcome their backwardness, be it in the shape of illiteracy or socio-cultural practices like child marriage or neglect in the upbringing of children, etc. As a result, the long years of struggle for freedom saw an all-round spate of activities which may be termed as 'social action' so to come out of the prevailing weaknesses in society and to build self-reliance in the people. Consequently, the care of the child came to be viewed upon as a vital element in the resurrection of the nation. The architects of Indian constitution gave much of their time to inculcate social concern for the citizens of tomorrow – the children.

This was also the beginning of a spirit of independence at the group social action level (Luthra, 1979: 90-91). This period also witnessed the enactment of laws such as the Apprentices Act, Reformatory Schools Act and Factories Act which became important factors in the shaping and structuring of a new childhood.

The First World War posed a variety of challenges to Britain and other countries of Europe and North America. These were mainly connected to the question of how they could create a society which would preclude the cataclysm of violence and upheaval through which they had just passed. It would be worthwhile to mention that partly as a result of the ravages of war on the civilians in affected countries, and partly in response to the growing concern in most countries of Europe and North America for the protection of children, the newly formed League of Nations established a Committee on Child Welfare in 1919 (Lundy, 1997: 21).

In 1923, the Save the Children International Union adopted as its charter a five-point declaration which described the basic conditions a society should meet in order to provide adequate protection and care for its children. The next year, the Union persuaded the League of Nations to adopt the same declaration.

Since the League of Nations held its meetings in Geneva, this 1924 Declaration of the Rights of the Child came to be known as the "Declaration of Geneva". Recognising that 'mankind

owes to the child the best that it has to give', the five simple principles of the Declaration established the basis of child rights in terms of both protection of the weak and vulnerable and promotion of the child's development. The Declaration also made it clear that the care and protection of children was no longer the exclusive responsibility of families or communities or even individual countries; the world as a whole had a legitimate interest in the welfare of all children.

The League of Nations, as we all know, was not able to prevent another world war. The Second World War engulfed the entire planet, and caused even greater suffering for non-combatants, particularly children. In 1945, the United Nations Organisation replaced the League of Nations. In 1946, the Economic and Social Council of the United Nations recommended that the Geneva Declaration be reaffirmed as a sign of commitment to the cause of children. The same year, the United Nations established a specialised agency — UNICEF with a mandate to care for the world's children. Initially known as the United Nations International Children's Emergency Fund, it provided assistance to children in Europe and elsewhere who had lost homes, family, and opportunity as a result of the war. Its mandate was later redefined so as to give the agency responsibility for long-term assistance to children who suffered from deprivation caused by economic and political conditions, as well as the effects of war. The present nomenclature of UNICEF is United Nations Children's Fund.

The **Children's Rights Movement** is a historical and modern movement committed to the acknowledgment, expansion, and/or regression of the rights of children around the world. While the historical definition of child has varied, the United Nations Convention on the Rights of the Child asserts that "A child is any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier." There are no definitions of other terms used to describe young people such as "adolescents", "teenagers" or "youth" in international law.

Some concepts on child rights: Children's rights are defined in numerous ways, including a wide spectrum of civil, cultural, economic, social and political rights. Rights tend to be of two general types: those advocating for children as autonomous persons under the law and those placing a claim on society for protection from harms perpetrated on children because of their dependency. These have been labeled as the **right of empowerment** and as the **right to protection**. One Canadian organization categorizes children's rights into three categories:

- **Provision:** Children have the right to an adequate standard of living, health care, education and services, and to play and recreation. These include a balanced diet, a warm bed to sleep in, and access to schooling.
- **Protection:** Children have the right to protection from abuse, neglect, exploitation and discrimination. This includes the right to safe places for children to play; constructive child rearing behavior, and acknowledgment of the evolving capacities of children.
- **Participation:** Children have the right to participate in communities and have programs and services for themselves. This includes children's involvement in libraries and community programs, youth voice activities, and involving children as decision-makers.

International law

The United Nations' 1989 Convention on the Rights of the Child, or CRC, is the first legally binding international instrument to incorporate the full range of human rights—civil, cultural,

economic, political and social rights. Its implementation is monitored by the Committee on the Rights of the Child. National governments that ratify it commit themselves to protecting and ensuring children's rights, and agree to hold themselves accountable for this commitment before the international community. The CRC is the most widely ratified human rights treaty with 190 ratifications. Somalia and the USA are the only two countries which have not ratified the CRC. The CRC is based on four core principles, namely the principle of non discrimination, the best interests of the child, the right to life, survival and development, and considering the views of the child in decisions which affect them (according to their age and maturity).

Vienna Declaration and Programme of Action

Vienna Declaration and Programme of Action urges at Section II para 47, all nations to undertake measures to the maximum extent of their available resources, with the support of international cooperation, to achieve the goals in the World Summit Plan of Action. And calls on States to integrate the Convention on the Rights of the Child into their national action plans.

Perceptions of children have evolved over time: children are now viewed less as passive objects of adult concern and more as human beings with rights of their own. It is of course true that concepts about children and childhood, including what is allowed and expected of children of different ages, maturity and gender, vary widely across and within countries and cultures; there is no "universal" child. In industrialized countries, for example, some teenagers are not expected even to look after themselves, while in many poor countries, quite young children shoulder considerable responsibility within the household.

Over recent years, an undoubted convergence of thinking about children, marked by the adoption in 1989 of the United Nations Convention on the Rights of the Child (CRC), now almost universally ratified. Amongst many other rights, it recognizes "the right of the child to be protected. Many children, in very different national circumstances, carry out work that is entirely consistent with their education and full physical and mental development.

Drawing on the provisions of Convention on the Rights of the Child (CRC), Nos. (1973)138 and (1999)182, the report identifies three categories of child labour to be abolished:

- (1) Labour that is performed by a child who is **under the minimum age** specified for that kind of work (as defined by national legislation, in accordance with accepted international standards), and that is thus likely to impede the child's education and full development.
- (2) Labour that jeopardizes the physical, mental or moral well-being of a child, either because of its nature or because of the conditions in which it is carried out, known as **hazardous** work.
- (3) The **unconditional worst forms of child labour**, which are internationally defined as slavery, trafficking, debt bondage and other forms of forced labour, forced recruitment of children for use in armed conflict, prostitution and pornography, and illicit activities.

The global estimates for the year 2000 are:

Of an estimated 211 million children aged 5-14 engaged in some form of economic activity, **186 million children are engaged in child labour to be abolished (including in its worst forms).**

Of an estimated 141 million children aged 15-17 engaged in economic activity, **59 million children are engaged in child labour.**

Needless to state that without the recognition of the right to education, realization of the right to development of every human being and nation is not possible. Article 26 of the Universal Declaration of the Human Rights (1948) inter alia states that 'education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom.

On 10th December 2004, the General Assembly of the United Nations proclaimed the World Programme for Human Rights Education (2005-ongoing) to advance the implementation of human rights education programmes in all sectors.

The World Conference on 'Education for All' held in Jomtien, Thailand in 1991 pleaded universal primary education in particular on education for girls and women.

Child labour in India is the practice where children engage in economic activity, on part time or full time basis. The practice deprives children of their childhood, and is harmful to their physical and mental development. Poverty, lack of good schools and growth of informal economy are considered as the most important causes of child labour in India.

The 2001 national census of India estimated the total number of child labour, aged 5–14, to be at 12.6 million. Child labour problem is not unique to India; worldwide, about 215 million children work, many full time.

In 2001, out of the 12.6 million, about 0.12 million children in India were in a hazardous job. UNICEF estimates that India with its larger population has the highest number of labourers in the world under 14 years of age, while sub-saharan African countries have the highest percentage of children who are deployed as child labour. International Labour Organization estimates that agriculture at 60 percent is the largest employer of child labour in India, while United Nation's Food and Agriculture Organization estimates 70 percent of child labour is deployed in agriculture and related activities. Outside of agriculture, child labour is observed in almost all informal sectors of the Indian economy.

Definition of child labour is ambiguous "children below 14 years who engage in economic activities resulting in production of goods and services that add value to national product".

"Activities like prostitution, begging, smuggling etc. pick pocketing, slavery, bondage and trainee which though fetch earning, are, by convention, not considered as economic activities. Some children who are engaged in non-remunerative but productive jobs. This may be due to the fact that they are working as trainees.

Children who perform only household chores, attending or missing schools (e.g. cooking, cleaning, taking care of siblings, etc) more or less regularly.

Children who are engaged in remunerative jobs not recognized as productive under "work "e.g. children engaged in illegal activities (smuggling, prostitution, child pornography etc).

ILO, defined child labour 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, or work

whose schedule interferes with their ability to attend regular school, or work that affects in any manner their ability to focus during school or experience healthy childhood.

Child labour laws in India: After its independence from colonial rule, India has passed a number of constitutional protections and laws on child labour.

The Constitution of India in the Fundamental Rights and the Directive Principles of State Policy prohibits child labour below the age of 14 years in any factory or mine or engaged in any other hazardous employment (Article 24). The constitution also envisioned that India shall, by 1960, provide infrastructure and resources for free and compulsory education to all children of the age six to 14 years. (Article 21-A and Article 45).

India is a federal form of government, and child labour is a matter on which both the central government and state governments can legislate, and have. The major national legislative developments include the following:

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 who, 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.

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.

Bonded labour system abolition Act 1976: The act prohibits all forms of bonded labour including children from any forced labour. It also considers a forced work under any consideration, less than minimum wages labour as bonded labour as cognizable offence.

National Policy on Child Labour in 1987 India formulated a National Policy on Child Labour in 1987. This Policy seeks to adopt a gradual & sequential approach with a focus on rehabilitation of children working in hazardous occupations. It envisioned strict enforcement of Indian laws on child labour combined with development programs to address the root causes of child labour such as poverty. Despite these efforts, child labour remains a major challenge for India.

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.

The Right of Children to Free and Compulsory Education Act of 2009: The 86th Constitutional Amendment Act, 2002 provides for free and compulsory education to children in the age group of 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. Prior to the 86th Constitutional Amendment Act the Indian Constitution had a mandated provision of free and compulsory education as a Principle Directive of State Policy. Despite these provisions the country has not been able to achieve the target of universal elementary education. The 86th Constitutional Amendment Act 2002 inserted a new Article 21(8) which provides for free and compulsory education to children of the age group of 6 to 14 years being a Right to Education. The same Amendment Act

provides for amendment of the Article 45 as Directive Principle of the State Policy to provide provision for early childhood care and protection Bill upto the age of 6 years. It is also made a Fundamental Duty of parents and guardians under New Article 51(a) to provide opportunities for education to children between the age of 6 to 14 years.

India has also signed two SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION (SAARC) Conventions in 2002 for combating trafficking in the region and on child welfare. The provisions of these Conventions are being implemented. In addition to this India is also signatory to a SAARC Social Charter for addressing all issues pertaining to the social sector, including women and children, in the SAARC region.

NCPCR: The Government notified the Commissions for Protection of Child Rights Act 2005 in the Gazette of India on 20th Jan., 2006. The Act envisages setting up a National Commission at the National level and the State Commissions at the State level.

Major Constitutional Provisions

Fundamental Rights

- **Article 14:** ... shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- **Article 15:** ... shall not discriminate against any citizen... (3) Nothing in this article shall prevent the State from making special provision for women and children. (4) Nothing ... shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
- **Article 19:** (1) All citizens shall have the right – (a) to freedom of speech and expression; ... (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India.
- **Article 21:** No person shall be deprived of his life or personal liberty except according to procedure established by law.
- **Article 21 A:** ... shall provide free and compulsory education to all children of the age of six to fourteen years...
- **Article 23:** Traffic in human beings and begar and other similar forms of forced labour are prohibited...
- **Article 24:** No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Directive Principles of State Policy

- **Article 39:** ... (e) ... the tender age of children are not abused... and not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood... protected against exploitation and against moral and material abandonment.
- **Article 46:** ...shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes,...
- **Article 47:** ...raising of the level of nutrition and the standard of living of its people and the improvement of public health...
- **Article 51:** The State shall endeavour to – ... (c) foster respect for international law and treaty obligations ...
- **Article 51A:** ... (k) ... parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

India adopted a National Policy for Children in 1974, declaring children to be nation's most precious asset. In the wake of the 1990 World Summit for Children, the Government of India adopted a National Plan of Action for Children in 1992, with goals for the decade. In the year 1992 itself, it also ratified the CRC and thereafter in its Periodic Country Reports submitted to the UN Committee on the Rights of the Child has dwelled at length about the measures taken for ensuring children's rights.

The 86th Amendment to the Constitution, on the Fundamental Right to Education for the 6 to 14 years age group, has also led to the inclusion of an additional clause under article 51A that imposes a fundamental duty upon parents or guardians to provide opportunities for education of their children/wards between the ages of 6 and 14 years.

Child Marriage Restraint Act, 1929 (CMRA)

There is legal recognition of the fact that children must not be married before they are physically and mentally ready for it. The Child Marriage Restraint Act, 1929 (CMRA) prescribes a minimum age of 21 years for males and 18 years for females. It does little to protect children, who have been married off,

The Child Labour (Prohibition and Regulation) Act was enacted in 1986, to specifically address the situation of child labour. However, this law is inadequate both in its understanding and the framework that it provides for dealing with the problem of child labour.

What Causes Child Labour Today? Poverty is widely considered one of the top reasons why children work at inappropriate jobs for their ages. But there are other reasons as well -- not necessarily in this order:

1. Lack of strong political will of the nation
2. family expectations and traditions
3. lack of good schools and day care
4. lack of other services, such as health care
5. public opinion that downplays the risk of early work for children
6. Lack of stringent cognitive legislations
7. limited choices for women
8. Discrimination against Children
9. Coercive State Population Policies and Their Impact on Children
10. Children are easy to exploit on low wages and long working hours

What you should do? After the implementation of the RTE Act, every child in the age group of 6-14 has got the constitutional right to education. This implies that no child, in this age group, shall be out of school and engaged in labour, or be a victim to any abuse.

It was for this reason that the National Commission for Protection of Child Rights (NCPCR) was constituted—to protect the rights of a child. At the state level, State Commission for Protection of Child Rights (SCPCR) should be constituted which will protect the rights of a child and resolve any issue related to it.

The role of the SCPCR also includes monitoring that the rights of a child in school, that his right to elementary education is respected and that the school nurtures a healthy

environment. If a child's right is being violated, or he is being abused, then it is the responsibility of the SCPCR to intervene and resolve the issue. Any issue related to violation of child rights should be resolved within three months time. The commission shall also ensure that no child is discriminated against on the basis of his or her caste, creed, religion, community, language or gender. It is also the prime responsibility of the local authority to ensure that no child in its area is discriminated against on the basis of the aforementioned factors.

RIGHT TO EDUCATION FOR CHILD LABOURERS AND OTHER ABUSED CHILDREN

Despite the Right of Children to Free and Compulsory Education Act, 2009, paving the way for every child in the age group of 6-14 to be in school, there is a large number of children who are still out, working as child labourers or bonded labourers, and becoming victims to all kinds of exploitation, like trafficking and sexual abuse. The RTE Act aims to free these children from the clutches of abuse and bring them to school instead. It's however a challenging task.

One important aspect to be kept in mind is that rescuing a child from a workplace or from the clutches of traffickers is not easy. Therefore it is necessary to take the help of the law, and the agencies implementing the law, to achieve the desired result.

If a child is found working in a shop, restaurant, dhaba, at someone's home or in the factory, then the following steps can be taken:

- **Call the police:** Under provision 23 and 26 of the Juvenile Justice Act, 2000, the police can lodge a case against the employer immediately. According to these provisions, if a child is engaged in any dangerous work, or is not paid his wage, it is a punishable offence. The accused can be booked both under the Bonded Labour Act and the Juvenile Justice Act, 2000. This means that the police has to book the accused and start the proceedings against him
- **Inform and call the labour department:** The labour department can book the person who has been accused of employing child labourers under the Child Labour (Prohibition and Regulation) Act, 1986. Under this, the employer will have to pay a minimum fine of Rs.10,000 and a maximum of Rs.20,000 and have to serve a maximum of three months imprisonment
- **The Bonded Labour System (Abolition) Act, 1976:** Every day, across the country, there are scores of cases in which children are cajoled and duped into leaving their home, after which they are engaged in labour and are subjected to inhuman treatment. In such a case, one can approach the district magistrate or the Sub Divisional Magistrate (SDM). Under the Bonded Labour System (Abolition) Act, 1976, a child can be rescued from labour and rehabilitated. Immediately after the rescue, the SDM gives a rehabilitation package of Rs.1,000 and a release certificate. This certificate in turn makes the rescued bonded child labourer eligible for a rehabilitation package of Rs.20,000. In addition, the child is eligible for a social security pension of Rs.400 for his entire life. The family of the rescued child labourer can also avail the benefits of rural development schemes on a priority basis. The most important thing, however, is that the child can be admitted to any school in his neighbourhood, in a class appropriate for his age.

While the laws are strong, strict implementation of the same by the government is a necessity. Those found guilty of employing children as labourers or bonded labourers, should be booked under the Child Labour (Prohibition and Regulation) Act, 1986 and penalised.

There is no age limit to child abuse, and the Juvenile Justice Act is applicable to all children below the age of 18. In the course of registering a case, the police should be asked how a child's age has been determined. A child's word cannot be taken in affixing his age, and in the absence of his birth certificate, he should be taken for a medical check up to determine the same.

The SDM can write to the chief secretary of the state about making arrangements to take a rescued child labourer back home safely. Someone can also be lawfully authorised to take the responsibility of assisting such a child in going back to his family and handing him over to his parents or guardian.

CHILD LABOUR IS A CRIME

Under section 374 of the Indian Penal Code, whoever unlawfully compels a person to labour against his or her will, shall be punished with imprisonment of one year or a fine, or both.

Under the Child Labour (Prohibition and Regulation) Act, 1986, it is a crime to employ any child, below the age of 14, in any hazardous occupation. This includes work in factories, workshops, domestic households, tea stalls, dhabas (kiosks) and restaurants, among others.

Under the Juvenile Justice (Care and Protection) Act, 2000, any person who makes a child do dangerous or hazardous work, employs bonded child labourers and uses a child to get his own work done, shall be punished with three years rigorous imprisonment and a fine.

Under the Bonded Labour System (Abolition) Act, 1976, employing a child as a bonded labourer is a punishable offence.

SUPREME COURT DIRECTIVES ON CHILD LABOUR

In 1996, the Supreme Court issued directives on children employed in hazardous occupation, and their rehabilitation. They were:

- Children should not be employed in hazardous occupation. If they are, then they should be freed, and arrangements should be made for them to go to school
- A penalty of Rs.20,000 for every child that a person employs, be imposed
- In place of a rescued child labourer, an unemployed member of his family should be provided with employment. If this is not possible, then the state government should help the child with a rehabilitation package of Rs.5,000
- In this manner, a helping amount of Rs.25,000 is provided for the rehabilitation of a rescued child labourer. In addition to this, the child should be enrolled in school

In brief, if any person is found to be employing children, below the age of 14, in any work in domestic household, tea stall, dhaba (kiosks) or hotel, then criminal proceedings can be initiated against him. It is also imperative for the government to ensure that along with

rescuing a child, he or she is also rehabilitated, so that they don't fall prey to the same trap again.

CONCLUSION

"The parents of child labourers are often unemployed or underemployed, desperate for secure employment and income. Yet it is their children - more powerless and paid less-who are offered the jobs. In other words, says UNICEF, children are employed because they are easier to exploit," according to the "Roots of Child Labour" in Unicef's 1997 State of the World's Children Report. Children have the right to practice their constitutional rights, to obtain education and live at par with others in the society, without facing any discrimination. The Right to Education Act is a tool for a child to obtain his right to elementary education and is an important medium to bring all children, who are still out on the roads, to school by the year 2013. The Act pays equal emphasis on good quality education.

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