

# Child Rights: A Socio - Legal Perspective

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**Abstract:** *It is said that children are the future of the country. Children are like the small saplings, who require to be nourished with the tools like education and environment suitable for their overall development. The more they are nurtured; the better is the future of the society. However, it is very unfortunate that due to some anti-social elements and their activity that the society as a whole has become very wicked and unsuitable for the children. Government has made schemes and policies for the welfare of the children, but for the effective implementation of the aforesaid schemes the active cooperation of each and every person is required. This paper is an attempt to analyse and find out as to what is the cause behind such nuances in the society. The researcher has also attempted to highlight certain important policies and schemes of the government of which, many people are not aware of. Finally, the role and responsibility of a common man has also been discussed.*

**Keywords:** Rights, Article, Offence, Problem, Exploitation, Labour

## 1. A Basic Introduction

Everyone today, talks about rights. But what are rights? Among the various definitions and interpretations of rights, one, which is extremely expressive is that rights are essentially the safeguards against the evils of the society. As we know that all humans have evolved from animals and it is a proven fact that we still carry certain animal traits within us. It is because of this that it is very difficult to predict what a human will do at any point of time. We cannot imagine a civil society without rights to its citizens. A society without rights can be a chaotic animal kingdom, where the survival of the fittest is the only rule. This has been illustrated by many sociological and political thinkers too that before the emergence of the civil society the humans lived a complete chaotic and unsystematic life.

Wherever, human rights are being talked about, it becomes very important to take into consideration the Universal Declaration of Human Rights. It is a milestone document in the history of human rights which states that all the human beings are born free and equal in dignity and rights. On a slight simplification of this statement, it becomes evident that the rights and dignity of a person are independent of the social status. It is not that only the rich have dignity, the poor, deprived sections of the society too have a dignity and are qualified to have the same basic rights of food, shelter and a life with dignity.

Child rights or children's right, whatever we may call them are the legitimate rights of the children. These rights are nothing more than basic expectations form a civil society. The reason as to why child rights are so important is that children are most vulnerable to any kind of threat. The threat of a society without rights is in fact too much for any child to bear because they are both, mentally and physically incompetent to take care of their own. They lack the required strength for self defence, which make them the object of exploitation. The exploitation happens both, at physical and mental level. This paper would try to analyse the exploitation of children's rights by emphasizing on two major offences, **child labour** and **child trafficking**.

### 1.1 Constitutional provisions which guarantee these rights

The concept of the rights of the children is not something, which India has learnt from the international community, the framers of the Indian constitution were consciously aware of the need of protection of children from the emerging evils of the society. Hence they mentioned these ideas at the time of drafting the constitution itself. The constitution of India assures life, liberty and dignity to all the children through the following provisions:

- 1) Article 39(e) - It provides provisions so that the tender ages of the children are not abused.
- 2) Article 24 - It prohibits the employment of children in factories or any other hazardous employment.
- 3) Article 23 - It provides for the prohibition of traffic in humans and forced labour.

Moreover the Indian republic has, through various constitutional amendments concreted the above mentioned basic ideas of the forefathers of the constitution. These include:

- 1) Article 45 - It provides provisions for early childhood care and education to children below the age of six years.
- 2) Article 39(f) - It ensures that the children are given opportunities and facilities to develop in a healthy manner and in the conditions of freedom and dignity and that the childhood is protected against exploitation.

### 1.2 Why are these rights being violated?

If the constitutional rights are observed precisely, it is not hard to understand that the maximum threat to the children is the threat to body. This is because the capability of understanding the difference between right and wrong is a continuous process. It can be gained through experiences and nobody is gifted with this ability by birth. Therefore, naturally, this responsibility shifts on the parents. However, the ever increasing number of crimes against children is an indicative of this fact, that something is not happening the way, it should happen. Either the parents are not aware of their own rights, less to say about the rights of the children,

or the parents knowingly push their children into the darkness of exploitation.

Unfortunately, with the advent of modern society, the values and culture have lost their importance, leading to corrupt minds. People are being seen as a means to an end which is why people have become totally insensitive in their treatment towards the fellow human beings. Among all other forms of exploitation, the one which is most cancerous to the society is the child trafficking.

### 1.3 Classes of offences against children

Before striving towards the solutions to the problem of increased offences against children, it is very important to understand what are the different offences which are swallowing the rights of the children. When it comes to crime, IPC is an encyclopaedia. It has the list of all the offences against the society as well as the human body. The IPC has certain specific provisions which deal specifically about the crime against children. These are as follows:

- 1) Section 317 IPC - Exposure and Abandonment (Crime against children by parents or others to expose or to leave them with the intention to abandonment).
- 2) Section 360 IPC – Kidnapping for exporting.
- 3) Section 363-A IPC – Kidnapping for begging.
- 4) Section 370 and 370A IPC – Human Trafficking

Apart from these there are certain offences punishable under the special laws in that regard. These include **POCSO** [Prevention of Children from Sexual Offences], Immoral Traffic Prevention Act, Child Labour (Prevention) Act.

### 14 What constitutes the offence of child labour?

Child labour is the practice of engaging the children in any economic activity, on a part or full time basis. It is a problem which has contaminated not only India, but other parts of the world too. Both, the developing and the developed countries have been affected by this problem, however the problem is more serious in developing countries for obvious reasons. In the Indian society, every child is considered as a gift of god, and all the ancient teachings lay stress on this fact that every child must be nurtured with care and affection. A child is like a small sapling, which requires proper nurturing to grow into a large fruitful tree. Unfortunately there are certain fools in the society who have expectations of fruit, right from the day they plant this sapling into this world, as a result of which they push the children, right in their tender age into the labour market. It is this mindset as a result of which, heinous offences take place in the society against the children. Concludingly, it can be said that child labour takes place when the children are forced to the jobs they are not fit to do, both mentally and physically.

### 1.5 Child labour & domestic help

Every coin has two faces. In simpler terms, nothing is wrong in its entirety. It is actually too broad to cover everything under one veil. Hence, this question appears that whether all forms of work by a child are *ab initio* wrong? By a common understanding the answer appears to be 'no' because if

punishment is posed on all forms of labour by children, then why should we allow any form of public gathering, having knowledge of this fact that unlawful assembly is illegal.

The **standing committee on labour (2013-14)**, while preparing its report on the **Child Labour (Prohibition and Regulation) Amendment Bill, 2012** encountered a similar question and gave a very rational reply. In its report the committee specifically mentioned that the basic purpose of the Child Labour (Prohibition and Regulation Act, 1986) is to safeguard the childhood of every child in our country and to see that each and every child goes to school. It also stated that in the amendment bill it is to be clearly mentioned that there would be no bar on children helping their families **after school hours** and in vacations in any form of work which is not for any **commercial purpose** and is **not detrimental** to his/her **physical or mental health**.

This reasoning sounds quite convincing and plausible. This is because of two reasons:

- 1) India is still a developing country and a large number of families are still dependent on the agriculture for their livelihood. In such a situation if the children help their families in the fields, after their school hours, it will surely help in completing a considerable amount of work and will be helpful to the family as well as the child himself.
- 2) India has, since time immemorial been a hub of art and culture. Some of the world's finest crafts and designs are still found only in India. Hence, it becomes very important to preserve this skill and let it flow from one generation to another. It is due to this reason that children should not be stopped from learning the skills which their family has been preserving since generations.

### 1.6 Why not a total ban?

If, this practice of child labour is so wrong, then why is it that we find a vast difference between the words and the actions? Even today, it is quite clearly known to everyone that we have not been able to stop the child labour in its entirety. Even today we see children working at the tea stalls and small *dhabas*. Why don't we ban the child labour entirely and protect the children from destroying their talent and future in these places?

This was a question which the **standing committee on labour (2013-14)**, while preparing its report on the **Child Labour (Prohibition and Regulation) Amendment Bill, 2012** too encountered and reached at quite satisfactory answers. The answer of the committee can be analysed under the following heads:

- 1) **The age issue:** India is a founder member of International Labour Organization (ILO). ILO has passed Convention 138 which provides that the minimum age for admission to employment or work shall not be less than the age of completion of compulsory schooling. Convention 182 provides that employment of all the children below 18 years should be prohibited in worst forms of child labour. Since, the completion of free and compulsory education for

children in India is upon reaching the age of fourteen years, the employment of a child above fourteen years of age doesn't sound wrong as per the existing provisions.

- 2) **The socio- economic status of the country: Article 24** of the constitution of India prohibits form any child below the age of fourteen years in any hazardous employment. The constitution makers have very carefully selected the age of fourteen years, keeping in mind the socio-economic condition of the country. It is quite evident that employing children above fourteen years of age is in no way conflicting the provisions of the constitution or the conventions of the ILO. However, if all of this is neglected and all forms of employment of children, even of those above fourteen years of age is prohibited, then the effect is to be anticipated with utmost care. If the child is prohibited from working anywhere till he attains the age of eighteen years and the government cannot provide him education due to the limitations of RTE Act, then it is quite ambiguous as to what the child would do to support himself and his family. Therefore, a restriction of this form would leave the child illiterate and unemployed, both of which are detrimental to the overall growth of the child and the country.

### 1.7 Solutions Thereto

The committee, in order to avert this situation of chaos, mentioned in it's report the concept of 'adolescence'. In its report the committee said that since there is no definition ascribed to the people in the age group of fourteen to eighteen years, this would now onwards be termed as the period of adolescence and the people of this age group would be referred, for the purpose of the Act as 'adolescents'. The amendment made it clear that though, the children of the above mentioned age group could be employed, their employment in the hazardous occupations would be strictly prohibited.

It also prescribed the punishment of imprisonment of not less than six months and which may be extended to two years or with a fine of not less than twenty thousand rupees, which may be extended to fifty thousand rupees for employing any child and for employing any adolescent in any hazardous occupation. It also prescribed the same punishment for the parents who permit such activities.

### 1.8 Why is the problem multiplying despite deterred punishment?

A big question arises that even in the presence of such stringent punishments in this regard why is this crime getting multiplied instead of being reduced? The factor which largely contributes in the nourishment of this evil is poverty. A considerable amount of the population of this country is below poverty line and the need of money for providing the bare necessity like food to the family is the reason which pushes the children out for work at a very early age. This reason, although painful is not a justification for putting the children to work at an age, at which they require care, nourishment and protection.

### 1.9 A yet more brutal form of exploitation

Child labour, although a big disease for the society stands nowhere when compared with the next big problem the children are facing nowadays. This cancerous problem is known as child trafficking. This crime is a slap on the face of the so-called modern society of which we take pride on being a member of. The ever-increasing rate of this crime in a country like India shows the last extent of moral turpitude any society can witness. The wilful involvement of the parents clearly show that the greatness of the institution of the family, now lives only in the books. The blind approach of the society reveals that we have lost the values of '*vasudhaiva kutumbakam*' somewhere.

### 1.10 Child Trafficking

It is not a separate offence under IPC. It is a type of human trafficking. As per the IPC, an offence of human trafficking is committed when any person is recruited, transported, harboured, transferred or received for the purpose of **exploitation**.

The crime of child trafficking is slightly different in this regard. It is a give and take process. The exploiters achieve money through it and give to the child such experiences which result in a never ending trauma, an irreparable loss of childhood and a hopeless life.

The data on crime against children, by agencies like NCRB reveal this fact that the trafficking of children is done, largely for the purpose of prostitution and un-natural offences. Apart from these, it is also done for the purpose of slavery, bonded labour, and the most heinous act of organ sale.

But, who are to be blamed for this? the law enforcing authorities? Not entirely, because the authority which is most easily and always accessible to the children are the parents. Therefore the prime authority responsible for protecting the child rights is the parents. But, sadly, a fact which the investigation of a majority of the case of trafficking has disclosed is that in most of the cases the rapacious behaviour of the parents acts as an aid to the offenders. It is the greed of the parents for money and luxury that provides the offenders a boulevard to reach the children and use them in the way they want.

This crime is the harsh reality of the dream which these offenders induce in the minds of the parents and the children. These type of crimes have two stages of operation. The first, being the **brainwash** of the parents and the children and the second being the actual crime itself. The offenders usually practice inducement by promising payments and monetary benefits in order to achieve the consent of any person having control over the person to be trafficked.

### What is the root cause of these crimes?

Just like every disease is a result of certain unwanted elements in the body, this crime is also a result of certain unwanted factors in the society. Upon a careful observation at the different cases of child trafficking, it is transparent

that there are certain things which are common to all of them. These are the major causes which are acting as a catalyst and causing an increase in this problem.

### The Pili Effect

This is not to be confused with the Public Interest Litigation, rather, it can be abbreviated as Poverty, Illiteracy and Lack of awareness. These are a curse to the society and have always led to increase of crime. These need to be looked in a greater detail:

- 1) **Poverty:** As per the recent updates by different agencies, the recently recorder poverty rate in India is 21.1 percent. There is no doubt that India has performed remarkably good in reducing its poverty in the last ten years. But 21.1 percent is still a significant number. There are still certain places where families cannot afford meals of both times. Their life is full of struggles and hardships. People of these kind fall an easy prey to the criminals involved in trafficking. This is because they are in a dire need of money, which these offenders take an advantage of. It is not hard to imagine that when a luxurious lifestyle and a huge amount of money is offered to someone who has a difficulty in arranging even two times meal for his family, it becomes very easy to manipulate him and obtain his consent. This is where it all starts.
- 2) **Illiteracy:** As per the recent reports of various agencies, India's present literacy rate is 74.04 percent with the state of Bihar having a literacy rate of just 63.82 percent. This means that in India, still 25.96 percent of the population is illiterate. This, although being a small number cannot nullify the consequences thereto. Education attracts the values like morality and satisfaction in a person. Further it opens up a plethora of opportunities for the person to excel in life. Illiteracy paralyses a person in this world of cut-throat competition. This in turn attracts poverty which is one of the basic reasons for the successful execution of these offences.
- 3) **Lack Of Awareness Towards Rights:** Mobile phone is a great invention which has connected people across the globe. Unlike earlier times, nowadays, a basic mobile for phone calls is cheap and available to almost all. But its utility is only for those who know how to operate it. For those who don't know anything about it, it's just a box. The constitution of India has given many rights to its citizens. But what is the use of such provisions if many are not aware about it, and those who are aware don't know when and how to use it effectively. It is this lack of awareness of rights that even today, many poor people don't know about various schemes which the government has made for them and their children. This lack of awareness sometimes creates poverty, because if someone is unaware of the existence of something, that thing, in a way doesn't exist for him.

## 2. Findings

An initial glimpse into the problem of child labour and child trafficking gives an impression that these two are different offences, but upon careful analysis it can be inferred that these offences are in a way connected. These are connected in the factors aiding them. It is very clear that both these

offences are committed largely by the consent of the people having the control over the child, i.e. who has an authority over the child. The reason why they facilitate in such heinous offences is their poverty. This poverty is caused by illiteracy and the lack of awareness towards the rights available to them.

## 3. Help by Government

The government has made various provisions for the upliftment and welfare of the poor. These schemes are capable of inflicting a massive attack on the problems of poverty, which is one of the chief factors in the increase of crime against children. Some of these schemes are:

- 1) **NREGA:** This was enacted to reinforce the commitment towards livelihood security in rural areas. The significance of NREGA lies in the fact that it creates a right-based framework for wage employment programmes and makes the Government legally accountable for providing employment to those who ask for it.
- 2) **NRHM:** It stands for National Rural Health Mission. It was launched by the Government of India in 2013 with an objective to provide accessible, affordable and quality universal health care including all aspects of a clearly defined set of healthcare entitlements like preventive, primary and secondary health services. It was further extended in march 2018, to continue until march 2020.
- 3) **RTE:** It stands for Right To Education. This seeks to provide free and compulsory education to the children between the age group of six to fourteen years till the completion of their elementary education.
- 4) **THE NATIONAL FOOD SECURITY ACT 2013:** It is a scheme by the Government to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity. Apart from the above mentioned schemes, certain other schemes like 'Rashtriya Swasth Bima Yojna', 'Aam Aadmi Bima Yojna' do find their place in a drive towards the upliftment of the poor.

## 4. Is there any way forward?

In a country like India, where equality is prevalent irrespective of the gender, caste, colour or religion, it is a matter of shame that some have reached the heights of success and advancement, some continue to remain buried under poverty. It is impossible to believe that while some have access to all the facilities, some lack even food. It is difficult to tolerate that while some have access to quality education, some lack even the elementary one. Then where is the equality? It is time, before criticizing and blaming someone we think by putting ourselves in their position and feel the insecurity and pain which they suffer for their entire life. Policies can do no good, if the fellow beings become insensitive. In order to remove a crime from the society, it is not that the criminals need to be swept away, rather it is the mental pollution and poverty which needs to be eradicated. Once we remove these, the crime will automatically collapse.