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CONSTITUTIONAL RIGHTS OF CHILDREN AND CHILD LABOUR IN INDIA: A COMPARATIVE STUDY

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Abstract

Children are the valuable gift on the earth and they are the future contributors of family, society and nation. Several types of rights taken place in the Indian Constitution, 1950 such as positive rights: right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational right and other negative rights known as directive principles of state policy. When we talk about children rights then that we can see some important articles of the Indian constitution, 1950 such as Article 15(3), 21A, 23, 24, 39 (e) and (f), 45 visualized crystal clear specially dealt with child rights. Present day, Child labour is the big problem in our society and nation. Therefore the reason they are belonging to poorness background, illiterate, uneducated, unstrengthen background and they are employed in any sector under compulsion for surviving of life. For the purpose of preventing to child labour the parliament made some law and rules in the lights of Indian Constitution, 1950 and other International Convention such as the United Nations Convention on the Rights of the Child, 1989 called UNCRC in short, United Nations International Children’s Emergency Fund (UNICEF), 1946 and the United Nations World Summit for Children, 1990. This paper will provide a comparative view between rights of children and child labour as well as identifying the socio-legal problem of child labour and there solutions.

Key Words: Constitution, Children Rights, Child Labour, Compulsion and Convention.

1. INTRODUCTION-

“There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace.”

-- Kofi Annan

Today’s world face great problem of child labour, millions children are involved in child labour. Children are the future and asset of any country. Hence it is the duty of every country to protect its child and childhood. For the purpose of the complete development of the child the legislature makes policies and laws with special exemptions regarding children, United Nations International Children’s Emergency Fund (UNICEF), 1946 was established for the protection of child rights. Child rights are protected at the international level through the United Nations Convention on the Rights of the Child, 1989 called UNCRC in short. And their rights were discussed by organizing the United Nations World Summit for Children, 1990. In the light of CRC many laws have been amended and legislations have been made by the legislatures of our country. Such as Articles 15 (3), 21, 21A, 23, 24, 39 E and F, 45 of the Indian Constitution, Commission for Protection of Child Rights Act, 2005, Juvenile Justice (Care and Protection of Children) Act, 1986, Sections 82, 83 and 317 of the Indian Penal Code, 1860 and Sec. 20, 93, 95 139 and 295 of Bharatiya Nyaya Sanhita, 2023 and several scheme /policy specially for children’s.

2. BRIEF HISTORY OF CHILDREN RIGHTS-

Children’s rights are a relatively new concept. Although Human Rights have been discussed since the 17th century, it was not until the 19th and 20th centuries that the rights of children began to be considered. Initially, discussion of children’s rights tended primarily to be focussed more on protection rights e.g. outlawing child labour, rather than any concept that children were entitled to their own rights as equal citizens of the world.



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At the beginning of the 20th century millions died in the First World War and many more were orphaned by the fighting. The League of Nations was formed after the war. As an inter-governmental organization its aim was to try to protect basic human rights standards.

Around the same time Eglantyne Jebb, a British teacher, took action. Eglantyne Jebb helped found Save the Children and drafted the Declaration on the Rights of the Child which was subsequently adopted by the League of Nations.¹ This was designed to put pressure on the post-war governments to protect children's rights.

In 1924 the League of Nations adopted the Geneva Declaration on the Rights of the Child. However with the rise of fascism leading to the Second World War, millions of children were again left unprotected – killed, gassed or orphaned. The atrocities of the Second World War were the catalyst to setting up a way of internationally regulating human rights. In 1945 the United Nations adopted the Universal Declaration of Human Rights.² Although the rights of children were implicitly included, many argued that the special needs of children justified an additional separate document.

In 1959 the United Nations General Assembly adopted a second Declaration of the Rights of the Child. Meanwhile the United Nations Human Rights Commission group started to work on the draft of the Convention on the Rights of the Child (CRC). Non-governmental organizations were critical to the drafting of the Convention. It was not until nearly 30 years later in 1989³ that work on the CRC was completed and the Convention was adopted by the United Nations General Assembly.

The UNCRC has the status of an international law. It is essentially a 'promise to all children' to respect, protect and fulfil all of their human rights. It is one of the most comprehensive of all the human rights treaties containing a complete list of civil and political and social, cultural and economic rights. On the 2nd September 1990 the United Nations Convention on the Rights of the Child was entered into force. The United Kingdom ratified it in 1991 although they submitted certain reservations.

3. RIGHTS OF CHILDREN'S INTERNATIONAL AND NATIONAL SCENARIO- **International Scenario-**

Children's rights milestones are under as:

- Geneva Declaration of the Rights of the Child, 1924 adopted by the League of Nations,
- Universal Declaration of Human Rights, 1948 adopted by the UN,
- Declaration of the Rights of the Child, 1959 adopted by the UN,
- International Year of the Child, 1979,
- Convention on the Rights of the Child, 1989 adopted by the UN,
- World Summit for Children, 1990 held at the UN,
- UK ratified the UNCRC, 1991,
- Optional protocols to the CRC, 2000 are adopted by the UN, specifically On the Involvement of Children in Armed Conflicts, and On the Sale of Children, Child Prostitution and Child Pornography,⁴ and
- A World Fit for Children, 2002 is agreed to as a consensus document at the United Nations General Assembly Special Session for Children.

National Scenario-

The Indian constitution accords rights to children as citizens of the country, and in keeping with their special status the State has even enacted special laws. The Constitution, promulgated in 1950, encompasses most rights included in the UN Convention on the Rights of the Child as Fundamental Rights and Directive Principles of State Policy. Over the years, many individuals and public interest groups have approached the apex court for restitution of fundamental rights, including child rights. The Directive Principles of State Policy articulate social and economic rights that have been declared to be "fundamental in the governance of the country and ... the duty of the state to apply ... in making laws" (Article 37).⁵ The

¹ H. O. Agarwal, International Law & Human Rights 299 (11th ed. 2010)

² *Ibid.* 652

³ *Ibid.* 713

⁴ *Ibid.* 714

⁵ M. P. Singh, V.N. Shukla's Constitution of India, 366 (12th ed. 2013).



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government has the flexibility to undertake appropriate legislative and administrative measures to ensure children's rights; no court can make the government ensure them, as these are essentially directives. These directives have enabled the judiciary to give some landmark judgements promoting children's rights, leading to Constitutional Amendments as is in the case of the 86th Amendment to the Constitution that made Right to Education a fundamental right.

Constitutional Guarantees that are meant specifically for children include:

- Article 21 A: Right to free and compulsory elementary education for all children in the 6-14 year age group,
- Article 24: Right to be protected from any hazardous employment till the age of 14 years,
- Article 39(e): Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength,
- Article 39(f): Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment, and
- Article 45: Right to early childhood care and education to all children until they complete the age of six years.

Besides, Children also have rights as equal citizens of India, just as any other adult male or female:

- Article 14: Right to equality,
- Article 15: Right against discrimination,
- Article 21: Right to personal liberty and due process of law,
- Article 23: Right to being protected from being trafficked and forced into bonded labour,
- Article 29: Right of minorities for protection of their interests,
- Article 46: Right of weaker sections of the people to be protected from social injustice and all forms of exploitation, and
- Article 47: Right to nutrition and standard of living and improved public health.⁶

India has a fairly comprehensive policy and legal framework addressing the rights and protection of children. Here is the list of child rights in India:

- The Child Labour (Prohibition and Regulation) Act (1986, amended in 2016)
- The Juvenile Justice (Care and Protection) Act (2000, amended in 2015)
- The Prohibition of Child Marriage Act (2006)
- The Protection of Children from Sexual Offences Act (2012)

These acts aim to ensure the fundamental rights of children in India, including the right to life, survival, and development.

4. CHILD LABOUR AND THERE CONTRIBUTING FACTORS-

Child Labour affects over 160 million children worldwide, denying them education and basic rights. Child Labour is a violation of children's rights – the work can harm them mentally or physically, expose them to hazardous situations or stop them from going to school. They work in fields, in factories, down mines, as servants or maids, or selling goods in the street or at markets. Girls are more likely than boys to do domestic work, such as cleaning, making food and serving.

The work that children can be forced to do might also be illegal – such as working with drug gangs or in prostitution. Many children may get no money for the work they do but they will get food and a place to sleep. If they become sick or injured, most children will not get any money for missing work.

Children may be driven into work for various reasons. Most often, child labour occurs when families face financial challenges or uncertainty – whether due to poverty, sudden illness of a caregiver, or job loss of a primary wage earner. The consequences are staggering. Child labour can result in extreme bodily and mental harm, and even death. It can lead to slavery and sexual or economic exploitation. And in nearly every case, it cuts children off from schooling and health care, restricting their fundamental rights.

⁶ *Ibid.* pages 47 to 318



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Not all work done by children is classed as child labour. There is not an issue when a child is working to progress their life skills without compromising their health, their well-being or their education. Often older children may do chores for their parents or small jobs to earn pocket money or gain work experience. This work prepares them for their adult working life.

All these forms of child labour can prevent a child from going to school and limit their opportunity to fulfil their potential. Many child labourers never go to school or drop out Education is a proven strategy for reducing child labour. Lack of access to education keeps the cycle of exploitation, illiteracy and poverty going – limiting future options and forcing children to accept low-wage work as adults and to raise their own children in poverty. Children who have access to education can break the cycle of poverty at the root of child labour.

CONTRIBUTING FACTORS OF CHILD LABOUR-

The factors of child labour are numerous and vary from one country to another and from one economic sector to another. Several common main factors can however be identified:

A. Poverty-

The primary cause of this problem in India is poverty. Children from low-income households frequently have to work to provide for their families. They might be employed in the informal economy, on farms, or in factories.⁷ One of the factors that determines child labor is poverty. Because they lack access to good jobs and a sufficient income, impoverished families send their kids to work or ask them to work in the family business. People may begin to view child labor as an “acceptable” tradition because it has been around for so long, but this is obviously untrue! In this setting, employers view themselves as offering a social service, and families are content with the money generated by child labor. Naturally, a social and economic environment is necessary. Children who work are frequently a cheap source of labor. The substantial number of child laborers in some places jeopardizes respectable working conditions for adult employees, keeping.

Lack of access to Quality Education-

Many children in India do not have access to good schools. When children do not have access to quality education, they are more likely to work instead of going to school.⁸ Lack of quality education limits the chances of the child worker to escape from the cycle of poverty. Educational gaps impact on child labourers as they move into adulthood as low levels of literacy and vocational qualifications deprive them of decent work opportunities not allowing them to get out from poverty.

B. Growth of the Informal Economy-

The informal economy is made up of small businesses and self-employed workers. The informal economy often employs them because it is difficult to enforce child Labour laws in the informal sector. Discrimination in terms of gender and socio-economic status can be identified as one of the main causes of Child Labour.

C. Lack of Awareness-

Most parents are unaware of the physical, mental, and psychological ill consequences of this issue.

D. Armed conflicts-

Armed conflicts is another important cause of child labour. Children are more vulnerable and can be enlisted as child soldiers or used in military operations.

5. SOCIO-LEGAL PROBLEM OF CHILD LABOUR AND THERE SOLUTIONS-

The socio-legal problem of child labor in India is that despite laws prohibiting it, a significant number of children are still forced to work, depriving them of education, exposing them to hazardous conditions, and perpetuating a cycle of poverty, violating their fundamental right to childhood development and education, while also hindering the nation's economic progress due to a less skilled workforce.

The Indian judiciary particularly the apex court is very much poised against the forced labour and employment of children. But still the judiciary is not hopeful of total prohibition of child labour.

The Supreme Court in the case of *Francis Coralie v. Union Territory of Delhi*⁹ has emphasized that the right to life mentioned in Article 21 of Indian Constitution includes the right to live with human dignity. The ambit of this article can

⁷ <https://www.ilo.org/resource/brief/causes-child-labour>

⁸ <https://www.unicef.org/bih/en/node/546>

⁹ AIR 1981 SC 746 (India).



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be expanded to include variety of rights which are necessary for the full development of life. This Article can thus be made applicable for the overall development of a child as well.

In the case of *People's Union for Democratic Rights v. Union of India*¹⁰ the Supreme Court observed that it is a clear breach of Article 24 of the Constitution to employ the children below the age of 14 in the construction work. The court has prohibited any kind of violation of Articles, 23 and 24 and has further laid emphasis on observance of fundamental rights by private individuals and spoke strongly against any form of forced labour.

The Supreme Court in the case of *Bandhua Mukti Morcha v. The Union of India and others*¹¹ took into cognizance the employment of children in carpet manufacturing in Mirzapur in Uttar Pradesh. The District magistrate conducted the raids and got released 144 children who were under the forced custody of the owners.

In the case of *Sheela Barse v. The Union of India*¹² under the direction of the Supreme Court the children who were working near furnaces in glass industry under chemical fumes & coal dust were released.

The Supreme Court in the case of *M.C. Mehta v. State of Tamil Nadu*¹³ held that employing children in hazardous work is gross violation of sections 3 and 4 of the Minimum Wages Act, 1948; sections 67, 71 and 75 of the Factories Act, 1948 and Articles 24(1) and 45 of the Constitution of India. It was further held that the minimum wage for child labour should be fixed and children can be employed in the process of packing only and not at the place of manufacturing.

In the case of *Salal Hydro Project v. Jammu & Kashmir*¹⁴ the court observed that total prohibition of child labour in any form may not be socially feasible in prevailing socioeconomic environment. Article 24 therefore puts only a partial restriction on child labour. The court observed that so long as there is poverty and destitution in this country it will be difficult to eradicate child labour.

Right to education-

The abolition of child labour requires introduction of compulsory education. There is a saying any child out of school is a child labour. Compulsory education and child labour laws are inter-linked. Thus Article 45 of the Constitution supplements Article 24.

This right cannot be denied to a citizen by charging higher fee known as capitation fee. The right to education flows directly from right to life under Article 21 of the Constitution and dignity of individual cannot be assured unless it is accompanied by Right to Education. In this connection it is important to mention here that The Right of Children to Free and Compulsory Education Act, 2009 came into existence on 26th Aug. 2009.

According to Article 45 of the Constitution the State shall endeavor to provide within a period of ten years from the commencement of the Constitution free and compulsory education for all children till they complete the age of 14 years. In the case of *Mohini Jain v. State of Karnataka*¹⁵ the Supreme Court declared that right to education at all levels is a fundamental right, covered under Article 21 of the Constitution. In a later case of *Unikrishnan v. State of Andhra Pradesh*¹⁶ the Supreme Court held that primary education means the education upto the age of 14 years is a fundamental right, professional education is not.

Right to physical health and right to mental, moral, spiritual and social development-

Child labour and the right to physical health; right to mental, moral, spiritual and social development are quite interconnected. The former always interferes with the later.

Article 39 of the Constitution entails to protect the health of the children. According to the Supreme Court in the case of *Maneka Gandhi v. Union of India*¹⁷, right to live is not merely confined to physical existence but includes within its ambit the "right to live with dignity". This implies that not only physical health but also the mental, moral, spiritual and social

¹⁰ AIR 1982 SC 1473 (India).

¹¹ AIR 1997 SC 2218 (India).

¹² AIR 1987 SC 656 (India).

¹³ AIR 1997 SC 699 (India).

¹⁴ AIR 1984 SC 1773 (India).

¹⁵ (1992)3SCC 666 (India).

¹⁶ AIR 1993 SC 2078 (India).

¹⁷ AIR 1978 SC 597 (India).



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development of the child should be protected. According to the Act of 1986 the Govt. can make rules for the health and safety of working children.

6. COMPARATIVE VIEW BETWEEN CHILD RIGHTS AND CHILD LABOUR-

When we compare to child rights to child labour then we find results under as- Child rights guaranteed by our Constitution of India, 1950 and other some international instruments but child labour prohibited by both. Child rights are the subject of law and policies but child labour is the social as well as legal problem. The legislature made law on child right to protect their and social workers raise voice against child labour and there protection.

7. CONCLUSION-

In end of work on the basis above mentioned facts find conclusion under as; 20th century was golden age of the human rights as also child rights. Several instrument developed and made by League of Nations and United Nations because the world seen two world wars results. Preventing to effect of world international organization made Geneva Declaration of the Rights of the Child, 1924, Universal Declaration of Human Rights, 1948, Declaration of the Rights of the Child, 1959, International Year of the Child, 1979, Convention on the Rights of the Child, 1989, World Summit for Children, 1990, UK ratified the UNCRC, 1991, and Optional protocols to the CRC, 2000, A World Fit for Children, 2002 is agreed to as a consensus document at the United Nations General Assembly Special Session for Children.

In the respect of India, the Constituent Assembly include the all human rights in Part third and fourth of the Indian Constitution, 1950 we known as Fundamental rights and Directive principles of state policy. Some Articles specifically relating to child rights and child Labour such as Articles 15 (3), 21, 21A, 23, 24, 39 E and F, 45 of the Indian Constitution, Commission for Protection of Child Rights Act, 2005, Juvenile Justice (Care and Protection of Children) Act, 1986, Sections 82, 83 and 317 of the Indian Penal Code, 1860 and Sec. 20, 93, 95 139 and 295 of Bharatiya Nyaya Sanhita, 2023. Child labour is the big problem in India caused by poverty, lack of education, poor economical conditions and social status of families factors. Indian judiciary played vital role to protected child rights and prevents child labour through decisions e.g. Francis Coralie, People's Union for Democratic Rights, Bandhua Mukti Morcha, Sheela Barse, M.C. Mehta v. State of Tamil Nadu, Salal Hydro Project, Mohini Jain, Unikrishnan and Maneka Gandhi etc.

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