CONCEPTS, THEORETICAL PERSPECTIVES AND LEGAL PROVISIONS ON CHILD LABOUR

In the first section, an attempt has been made to specify the concepts employed in the present study. Theoretical perspective is presented in the second section and Legal Provisions on Child Labour presented in the third section.

CONCEPTS

Child Labour / Child Work

Homer Folks (1940) the Chairman of the United States National Child Labour Committee, defines child labour as “any work by children that interferes with their full physical development, their opportunities for desirable minimum of education or their needed recreation”.

Groups concerned with children’s rights differentiate between child work and child labour. Child labour is that form of work, which is detrimental to the growth, and development of the child. Family work, which interferes with a child’s education, recreation or physical, mental or moral health is also considered as child labour\(^5\).

Formal Sector

Formal sector is essentially an urban concept. Industries and firms duly registered and licensed falling under the purview of Companies Act, Industries Act and other acts such as labour,

environments etc. are generally in the urban sector due to infrastructural facilities.

It may also be called as the regulated sector which does not employ child labour due to certain reasons. Such as strictly enforced and monitored government rules, state of technology which requires qualified and experienced manpower, and most importantly the presence of trade union. The only possibility of child labour in the formal sector is that of the apprentices under 18 years of age, or through subcontracting.

**Informal Sector**

The most talked about sector in the case of child labour is informal sector. All the developing countries in Asia, Africa and Latin-America have a large, scattered and overwhelmingly dominating informal sector. Its share in total employment is significantly large. In case of Africa, it is a sort of ‘survival sector since two out of three city-dwellers already earn their living in “Survival Sector”. The informal sector is an urban phenomenon and has specific roles which are linked to traditional and family organizations. Activities in this sector are an updated representation of the primitive accumulation process in the urban centres. Access to factors of production and technology is determined more by social relations and heritage, and family friendship more than by the market system and prices.
The scope informal sector ranges over the whole spectrum of economic activities: retail trade, construction, wood and metal working, electrical and mechanical repairing, and transportation. Their mode of production is by and large labour-intensive.

**Different forms of agriculture labourers**

In rural area children are engaged in agriculture and in allied occupations as workers. They may work as paid or unpaid workers in different forms such as yearly labourers, seasonal labourers, daily – wage earners, bonded labourers and unpaid forced labourers.

**a) Yearly labourer**

In south Gujarat such a labourer is known as ‘Chakar’. This labourer’s wage is fixed on yearly basis. Such a chakar may continue his work under one master for several years, but technically his contract is renewed every year, and he has the freedom to leave his master by the end of the year.

**b) Seasonal Labourer**

Labourers of this type are employed for one – crop season from ploughing to harvesting. Depending upon the place and the type of crop, it involves a period of five to eight months.

**c) Daily- Wage Earners**

These labourers are the daily wage earners who are either known as ‘Rojja’ or ‘Dadia’. Such labourers, either in group or as individuals,
are hired for a specific agricultural activity. The payment could be either on time basis or on work basis, and it could be either fully in cash or a combination of cash and kind\(^6\).

d) Bonded-Labour

The United Nations (U.N) recognizes ‘debt-bondage’ or bonded labour as a modern form of slavery. Debt-bondage occurs when a person needing a loan and having no security to offer, pledges his/her labour or that of some one under his/her control, as a security for the loan. In many countries like India, Pakistan, Nepal, etc, children are pledged and hence they become bonded labourers. Then the pledged children have to work till the principal loan and interest are repaid. This system works in different manners. In some cases, child labour is taken as payment of interest and the principal loan remains unpaid. While in other form of agreement, pledged child earns some normal wages but the trances has to repay principal and accrued interest. It has been observed in the countries of South-East Asia that the interest rate on such loan is so high that cannot be repaid and it gets converted into what is known as inter-generational debt, i.e. inherited and perpetrated for generations.

‘Peshgi’ system in Pakistan prevalent in carpet and brick kiln industries is another example of bonded labour. So is “Kamaiya” in Nepal such debt arrangements lead to bonded labour and children are its usual victims.

e) Hidden Child Labour

There is a significant population of ‘hidden’ child labour especially in developing countries where law enforcement is, inter alia, not compatible with legislation. Child labour which has the characteristics of invisibility is generally referred to ‘hidden’ child labour.

f) Forced Labour

It is another type of labour system observed in India and some other countries. If any labourer is forced or coerced to work against his/her wishes, with or without payment, it is called forced labour. The societies characterized by their caste system have the problem of forced labour especially in India. It is causing sporadic violence in Bihar where caste ridden society leads to clashes between high castes and low castes particularly in the rural area, when the members of high caste force the members of lower caste to work for them either without payment, known as ‘begar’ or with low wages. Abducted children who are lured on some pretext also fall in the same category as they are forced to work, usually without any payment.

g) Wage Labour

When a worker, be an adult or a child, is hired by the employer on some wage rate mutually agreed upon whether lower or higher the statutory minimum wage is wage labour. The mode of payment, may
vary from daily payment to weekly or monthly. Wage labour is generally on time basis, say 8 or 10 hours; and not according to the amount of work done. The employment in household, construction and formal sector generally follows the system of wage labour.

Child wage labour is essentially exploitative as children are invariably paid lower wages than adults. Sometimes young children work as part of a family group on wage employment basis. This practice is quite common in the agricultural sector of developing countries.

h) Recreation/Leisure

An essential activity for children is termed as recreation and leisure. This is considered as primary activity along with schooling for socialization and development of children. All kinds of play, healthy entertainment forms, games and rest periods form child recreation and leisure. These facilitate in developing an appropriate attitude to work and social relation.

In most of the cases, child labour is distinguished from child work on the basis of leisure, recreation and education. Hence, the concept of recreation and leisure should be clear to researchers and field workers.

Apprenticeship

“A person learning the skills and disciplines of an occupation, which will be his or her lifelong trade or career” is apprenticeship.
Technically speaking, an apprenticeship is carried out under a form of contract of employment usually within a formalized programme under the supervision of authorized trainers. As such, it is often the subject of extensive and detailed regulation.

In a large number of cases employers generally “exploit apprentices as free labour while purporting to teach skills to a new generation”.

It is generally observed that apprentices in government and reputed private institutions or firms get paid as per law, while in other cases they are exploited as free labour. Children under 18 are legally permitted to work as apprentices in most of developing countries.

THEORETICAL PERSPECTIVES OF CHILD LABOUR
Historically, in our country, child labour has been seen as an economic phenomenon. The relationship between children and work is dictated to a great extent by the economic system of production prevalent in a country. Consequently, a change in the economic system and the mode of production brings out a change in the structure of the labour force leading to a change in the economic role of children. Thus with the onset of industrialization and the prospect of wage labour, children have been progressively employed in industry as well as in domestic and commercial establishments. Government reports (1983) showed that around 17.4 million children below the age of 15, constituting 6.8 per cent of the rural labour force and 24 per cent of the urban labour force were working as child labourers.

**Demand Side of the Child Labour**

On the demand side, child labour has been accepted, because it is believed to have an economic base that fits in to a demand and supply framework. On the demand side, there are two sets of reasons why employers prefer children. First, employing children is a cheaper and more stable proposition and hence a more profitable one. Children can be employed at much lower wage than adults and made to work for longer hours. Children do not form unions and their services can be easily terminated if the need arises without any form of compensation. The other reasons why there exists a demand for children in the work force relate to the special characteristics of children which lend themselves to employment in certain industries. In general, children are considered more active, agile and quick and feel less tired than
adults in certain jobs. Also they can be cleared, admonished, pulled up and punished for faults without jeopardizing relations.

**Supply Side of the Child Labour**

On the supply side, the most commonly cited explanation for the existence of child labour is the poverty of households that supply children to the labour force. It is dictated by the low economic status of families, where children are seen as economic assets. It is contended that families of the working children are so poor that their very survival is threatened by the lack of income. Thus children are compelled to take up various activities including working as family labour in household enterprises, assisting in contracts undertaken by parents, taking over various household duties to enable parents to do other work and working outside the home as cheap labourers in small factories, commercial and domestic establishments. The cost category often force them to spend large amount of their earnings in conditions not conducive to their health and safety. Not only do the children earn own livelihood, they allow parents to spend more time on income generating work by taking charge of household duties. Further, greater importance is given to the learning of skills from an early age, as opposed to school education as it is believed that school curricula distract children from the rural economy by creating aspirations for white collar jobs that are hard to get. The skills learnt on the other hand will enable them in securing employment when they grow up. Thus child labour is considered as a kind of apprenticeship and perceived as a vital part of learning process and in noway detrimental to the child’s development. And finally, the quality of the government
schools is so poor that parents are reluctant to send their children to them and children are not motivated to attend either. Hence it appears that the overall household economic situation coupled with the lack of proper educational facilities cause the persistence of child labour.  

**Erikson’s Theory**

Freud’s psychosexual theory highlighted the importance of family relationship for children’s development. It was the first theory to stress the importance of early experience. But Freud’s perspective was eventually criticized. First, the theory overemphasized the influence of sexual feeling in development. Second, because it was based only on the problems of sexually repressed well – to- do adults, it did not apply in cultures differing from nineteenth-century Victorian society. Finally, Freud had not studied children directly.

Several of Freud’s followers took what was useful from his theory and improved on his vision. The most important of these neo-Freudians for the field of child development is Erikson (1902-1994).

Although Erikson accepted Freud’s basic psychosexual framework, the development at each stage. At each stage, it acquires attitudes and skills that make the individual an active, contributing member of society. A basic psychosocial conflict, which is resolved also a continuum from positive to negative, determines healthy or maladaptive outcomes at each stage. Erikson’s first five stages are

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parallel to Freud’s stages, but Erikson added three adult stages. He was one of the first to recognize the lifespan nature of development.

Finally, unlike Freud, Erikson pointed out that normal development must be understood in relation to each culture’s life situation. For example, among the Yurok Indians on the northwest coast of the United States, babies are deprived of breast-feeding for the first 10 days after birth and instead are fed a thin soup from a small shell. At the age of 6 months, infants are abruptly weaned—if necessary, by having the mother leave for a few days. These experiences, from our cultural vantage point, might seem cruel. In this way, he showed that child rearing can be understood only with reference to the competencies valued and needed by the child’s society.

**Child Development and Social Policy**

In recent years, the field of child development has become increasingly concerned with applying its vast knowledge base to solving pressing social problems. At the dawn of a new millennium, we know much more than ever before about family, school, and community that foster physically healthy and cognitively and socially competent children. Though many American children fare well, a substantial minority do not. The following conditions are to be considered when a study is made on child development - childhood social indicators, or periodic measures of children’s health, living conditions, and psychological well-being.
Poverty: Over the past 3 decades, economic changes in the United States have caused the poverty rate to climb substantially; it has dropped only slightly in recent years. Approximately 18 per cent of young people under age 18 (11.4 million) are affected. Children are the poorest of any American age group—a circumstance that is particularly worrisome because earlier the poverty begins and the longer it lasts, the more devastating its effects. The poverty rate rises sharply for ethnic minority and female-headed families. Among native-American children, it is 32 per cent; Hispanic children, 34 percent; and African-American children, 39 percent. More than 60 per cent of single mothers with preschool children are poor.

Low birth weight and infant death: Annually, approximately 7 per cent of American infants—about 250,000 babies—are born underweight. Low birth weight is a powerful predictor of serious health difficulties and early death.

Child care: Sixty-one per cent of American children younger than age 6 have mothers in the labor force. Yet unlike other western nations, the United States has been slow to move towards a national system of high-quality child care. According to recent surveys, child care in the United States is substandard. Low-income parents often have no choice but to place their children in poor-quality settings.
School achievement: Many students graduating from American high schools are unprepared to contribute fully to society. From 30 to 60 per cent of 17 year – old children have difficulty with moderately complex reasoning in reading, writing, mathematics, and science. Non-college-bond youths generally lack vocational skills for well-paid jobs. And about 11 per cent of adolescents leave high school without a diploma. Those who do not finish their school education are at a risk of lifelong poverty. These conditions are particularly disturbing, since the United States is among the wealthiest of nations and has the broadest knowledge base for intervening in children’s lives.

A child of today cannot develop into a responsible and productive member of tomorrow’s society unless an environment, which is conducive to his intellectual, physical and social health, is assured to him. Every nation developed or developing links its future with the status of its children. Childhood holds the potential and also sets the limit to the future development of the society. Children are the greatest gift to humanity. Neglecting children means loss to the society as a whole. If children are deprived of their childhood socially, economically, physically and mentally the nation gets deprived of potential human resources for the social progress, economic empowerment, peace and order, social stability and good citizenship.

Hence child labour includes children prematurely leading adult lives, working long hours for low wages under conditions damaging to their health and to their physical and mental development. Some
times separated from their families they are deprived of meaningful education and training opportunities that would open up for them a better future.

**Neo-classical Theory of Child Labour**

Theories explaining the supply of child labour in the Indian labour market deserve evaluation in the context of the present socio-economic situation prevailing in the country. The neo-classical theory of child labour explains that the household supplies child labour in order to maximize its current income in preference to the income expected from that employment in future after the schooling of its children. In other words, the household has a scale of preference in the use of its child labour as the source of family income. That is why the household supplies child labour for wage income in the labour market.

The assumption, that the rational behaviour of the head of a given household is concerned with whether he should send his children for work in the labour market of wage income in order to maximize the household income or send them for schooling. When the head of the family decides to send his children for work as he wants to maximize the income or utility instead of sending them to school because there is a high opportunity cost involved in choosing schooling or leisure for them.

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The other neo-classical formulations of child labour proposed by Becker and Lewis, Willis and Schultz which also assume ‘household’ as an optimizing and rational decision-making unit and depict children as both consumption and investment goods. Their formulations also analyse ‘the determinants of fertility in terms of the relative utilites of children and other goods and service, with children involving in the investment of time and income. Thus such new-classical approach explains that the head of the family (or parent) has to decide whether he wants to maximize the present income over the future income from children which involves investment of time and income in educating the children.
LEGAL PROVISIONS ON CHILD LABOUR

The United Nations Conventions on the Rights of the Child 1989 in Article 32 states as follows:

"State parties recognize the rights of the child to be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child health, or physical, mental, spiritual, moral or social development"

Constitutional Provisions

The Constitution of India has also made special provisions for the protection and restoration of the rights of children.

Article - 23
Prohibition of Traffic in Human beings and Forced Labour.

Traffic in human beings and beggars and others similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Article - 24
If Prohibits of Employment of Children in Factories etc.

No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
Article-39 (e) and (f)
Directive principles of the state policy
The state shall, in particular, direct its policy, securing:

(e) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocation 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 and youth are protected against exploitation and against moral and material abandonment.

Article-45
Provision for Free and Compulsory Education for Children

The state shall endeavor to provide within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years.
Provisions Relating to Employment of Children under Various Acts

1. The Factories Act, 1948
   The Act prohibits the employment of a child who has not completed 14 years.

2. The Apprentices Act, 1951
   A person shall not be qualified for being engaged as an apprentice unless he is not less than 14 years of age.

3. Plantation Labour Act, 1951
   "Child means a person who has not completed his 14th year." (There is no prohibition of children. A certificate of fitness is necessary for employing a child.)

4. The Mines Act, 1952
   The Act prohibits the employment of a child below 18 years of age for work below ground.

5. The Child Labour (Prohibition & Regulation) Act, 1986
   The Act prohibits the employment of a child who has not completed his 14th year of age in any of the occupations set forth in part A of the schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule are carried on.

6. The Merchant Shipping Act, 1958
   The Act prohibits children less than 14 years of age to be engaged or carried to sea work in any capacity in any ship, subject to certain exceptions.
7. The Motor Transport Workers Act, 1961
   The Act prohibits the employment of children less than 14 years of age in any motor transport undertaking.

8. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
   The Act prohibits the employment of children less than 14 years of age in any industrial premises manufacturing beedi or cigar.

9. The Tamil Nadu Shops and Establishments Act, 1947
   The Act prohibits employment of Children who have not completed 14 years of age

10. The Tamil Nadu Catering Establishments Act, 1958
    The Act prohibits employment of Children who have not completed 16 years of Age

11. The Tamil Nadu Handloom Workers(Conditions of Employment and Miscellaneous Provisions)Act 981
    The Act prohibits employment of Children who have not completed 16 years of age

12. The Tamil Nadu Manual Workers (Regulation of Employment and conditions of work) Act, 1982
    The Act prohibits employment of Children who have not completed 16 years of age in any scheduled employment.