CHAPTER-VII
CHILD RIGHTS: AN EMPIRICAL AND EVALUATIVE CRITIQUE

A purely theoretical study of Child Rights and its legal regimes cannot prove very beneficial unless an empirical study is performed in order to identify the functional and technical deficiencies in the existing laws and policies. Thus, the empirical study was conducted with an objective to ascertain the lacunas in the implementation of the existing laws and to have insight into people's perceptions about various violations related to Child Rights. For this purpose the universe of empirical study included various classes of persons who were given questionnaire so that views of nearly fair representative data related to violation of Child Rights are collected for analysis and evaluation. Questionnaires were designed for different categories of people keeping the objectives of the survey and informational needs in minds. Some of the questions were common in the questionnaire few questions were different depending upon the category i.e. for businessmen there are some specific questions whether they employ child labour if yes what is the wage structure they follow. Since the objective of the questionnaire has been to conduct an in-depth study of the violation of Child Rights in India, sample surveys of 30 respondents were carried out. For this eight different categories has been taken into consideration for filling questionnaires i.e. academicians, labour officers/inspectors, law students, businessmen, child workers working in different fields, general public, advocates and students not from law background. The distributions of categories are as follows: (figure 7.1)
The responses were analysed and are elucidated in the charts and presented in the study. Filled questionnaires\(^1\) were collected and the data was processed. Various questions are posed to them related to Child Rights such as,

- Are the existing legislation for children are effective?
- What is the opinion of people to have uniform definition of child?
- What is the basic reason for child to work?
- Whether Article 21 A will help in improving the status of child literacy?
- Whether the education system provides quality education or not?
- What are the reasons for the failure of child labour legislation?
- What is the main reason for indulging children in crime?
- How effective role has been played by NGOs in this field?
- Are you in favor of total ban on child labour?

Relevant data has been prepared for various parameters in graphical form and is given below. (Figure 7.2 Opinion with regard to uniform age of child)

There does not seem to be any uniform definition of child. Under labour laws it is 14 years, contract it is 18 years, criminal law for absolute incapacity it is 7

\(^1\) See Questionnaires in Appendix
The first question in questionnaire deals with the problem of age of the child. In all the categories most of the people have agreed that the age of the child should be 14 years. But the labour officers in majority i.e 47% have supported it to be 18 years. (Figure 7.3 Effectiveness of existing Legislative Provision)

The next question was on the effectiveness of the existing legislative provisions for the protection of children. In all categories the majority have agreed that they are non-effective. In this case academicians 80%, lawyers 87%, law students 80%, students 86% general public 70%, labour officers 73% and businessmen 67% have agreed that the existing legislative provision are not sufficient to protect the children. Next is the most important problem in India i.e. Child labour. Here also the majority have agreed that the poverty is the most prominent reason for the child to work along with other reasons like illiteracy, population exposure, early settlement in life and supplement to family income. The next question was in continuance to the former one that whether the children should be allowed to work if ‘yes’ in which avocations. In relation to this problem the majority have

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2 For details see Supra Chapter II

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agreed in favour of total prohibition of employment of children below 14 years in any kind of avocation. (Figure 7.4 Most prominent reason for child to work)

(Figure 7.4 Most prominent reason for child to work)

(Figure 7.5 Employment of children should be totally Prohibited)
In case of those people who supported the view that children should be allowed to work in that case the maximum believe that they should be allowed to work only in domestic and household section. But recently the Ministry of labour has imposed a ban on the employment of children as a domestic help, restaurants, hotels, motels and dhabas. The ban is going to be effective from October 10, 2006.\(^3\)

The Child Labour (Prohibition and Regulation) Act, 1986 has been a result of constant demand and result of various committees. The Act has been enacted with the intention to ban employment of children below 14 years in specific occupations and to regulate the conditions of work. But despite all the efforts the desired result has not been achieved. The same question was made a part of questionnaire to know the response of different sections of society. In majority all of them have agreed that the above referred Act need an amendment i.e. academicians 73%, lawyers 60%, law students 73%, students 50% general public

60%, labour officers 47% and businessmen 57%. (Figure 7.7 Child Labour (Prohibition and Regulation) Act, 1986 has achieved desired result or not)

(Figure 7.8 Child Labour (Prohibition and Regulation) Act, 1986 indirectly legalizing child labour)
The next question is in continuance to the earlier one i.e. that the Child Labour (Prohibition and Regulation), 1986 provides a schedule divided in two parts Part A & B. Part A contains a list of occupations which are hazardous and Part B contains the list of processes. If these processes are carried out with the aid of the family or in form of school established by or receiving assistance of government in which child below 14 years is allowed to work. This provision indirectly legalizes child labour and people in each category have agreed in majority with this existing lacuna in the above referred Act. The main reason for failure of Child Labour (Prohibition and Regulation) Act, 1986 is lack of implementation which has been agreed by majority of the categories. But the labour officers have agreed that the main reason for the failure of the Act is lack of government interest and unawareness among children about their rights. (Figure 7.9 Reason for failure of Child Labour (Prohibition and Regulation) Act, 1986)

The next question is relating to suggestion for the improvement in the implementation of the above-referred Act. The majority of the people in all categories except students have agreed that the imposing stringent punishment is the only way to achieve desired result. Students are of the view that sensitizing
the society along with imposing stringent punishment can help us to improve the implementation of the above-referred Act. (Figure 7.10 Suggestion for the improvement in the implementation of Child Labour (Prohibition and Regulation) Act, 1986)

(Figure 7.11 Child labour as one of the reason of unemployment)
One of the reasons of child labour is employer’s preference for children. The basic two reasons for this attitude are cheap labour and inability to organize themselves against exploitation. The academicians, law students, students, general public and labour officers is answered in an affirmative manner i.e. they also believe that to some extent child labour is one of the reason of unemployment. But majority of lawyers and businessmen are not convinced with this idea. Next question also relates to the role of the government in promoting child labour by not implementing poverty alleviation programmes. In this context unanimously in majority all the categories have agreed to the failure of government in not implementing poverty alleviation programmes. (Figure 7.12 Implementation of poverty alleviation programmes by Government)

The next set of three questions deals with the most sensitive and important issue i.e. education as a fundamental right to children.\textsuperscript{4} In this context the first question

which is asked from the respondents is whether the insertion of Article 21 A will make a difference to child illiteracy. The majority of categories have agreed that it will definitely make a difference. But as far as the state government is capable of performing this responsibility in this case the view is not unanimous the academicians, lawyers, law students and labour officers have posed faith in the capability of state government while students, general public and businessmen have doubted the capability of the state government. They believe that state government will not be able to perform this responsibility. Next question is the most debated one since independence i.e. is the quality of education imparted in our schools. Our education system is more elitist one. The education system is directly related to the child labour but in that case also education system should aims towards self-employment. In response to this question the majority have agreed that education system fails to impart quality education (Figure 7.13 Article 21 A would make difference to child illiteracy)
(Figure 7.14 Capability of state government to perform duty ensured under Article 21 A of the Constitution of India)

(Figure 7.15 Existing education system provides quality education or not)
The next four questions relates to the indulgence of children in crime. We have observed that there has been decrease in juvenile delinquency in traditional crimes but there has an increase in the crimes under the heads like counterfeiting and dacoity in 2003. The first important question which has been asked from the respondents is the main reason for indulging children in crime. Surprisingly, along with poverty another reason which has been supported by majority in all categories is destitute and neglected children. These children because of their environment are more prone to indulge in crime. (Figure 7.16 Main reason for indulging children in crime)

What is the main reason for children indulging in crime?

- poverty
- destitute/ neglected children
- want to earn easy money
- any other reason

Next question was whether the criminal law in our country is sufficient to deter the criminal acts in children. The objective of laws relating to child should be to provide care, protection and reformation. In this context also the respondents in all categories in majority have agreed that the criminal law in our country has failed to fulfill the expectation of the juveniles. (Figure 7.17 Criminal law is sufficient to deter the criminal acts in children)

The Next two questions are also very important to check out the criminal instinct among children. The first question relates to psychological survey of children to curb the criminality among children. This view has been supported by all the respondents. Another view which has been unanimously supported by all the respondents in majority is the need of moral and social education to children to curb the criminality among children. (Figure 7.18 Psychological survey of children to curb the criminality among children)
whether the psychological treatment will help to curb the crime in children?

Businessman
Labour Officers
General Public
Students
Law Students
Lawyers
Academicians

□ yes □ no □ can't say

(Figure 7.19 Need of moral and social education to children )

Whether the social and moral education to children will help us to curb crime in children?
Non-governmental organizations are partners and collaborators of government for helping the government in implementing social and welfare agencies. They act as a bridge between government and the areas out of reach of government. The role of Non-Government Organizations (for e.g. CRY, Indian Red Cross Society) in implementing the rights of children has become vital these days. When this question was asked from the respondents the majority of them have agreed that the working of NGOs is satisfactory only. (Figure 7.20 Role of NGOs in implementing the rights of children)

The next question relates to the sensitivity of the respondents towards the violation of rights of children. In this majority of respondents have agreed that incase they witness these violation they will react to it. In response to the next question there has been a mixed response for the preference of girl or boy for household activities by the respondents. But they are very few i.e. 10% or less than that in each category who are not in favour of employment of both. In this case also the majority have agreed that they
employ children above 14 years. There are few also who never bother to ask age.

(Figure 7.21 Reaction of people towards the violation of Child Rights)

(Figure 7.22 Preference for employing household servant)
Next set of questions are class questions which has been from different categories. The first class question is asked from labour officers with regard to the practical difficulties faced by the officials in dealing with the complaints of child labour. In this regard 60% have blamed the legislation as it is a weak one and 40% have blamed the government for its lack of policy (Figure 7.24 Practical difficulties faced by the Labour officers)
The next three set of questions has been asked from businessmen especially those running small entrepreneurs. These people have been taken as a separate class because the child labour incase of industrial sector is more prevalent in small industries. The three questions which has been asked from them are whether they employ children in their establishment, Awareness about the laws prohibiting child labour and incase they employ children in their establishment the wage structure adopted by them. The analysis of the responses is:

- In response to the first question 67% have disclosed that they don't employ children while 33% have admitted that they employ children in their establishment.
- 87% have claimed that they are aware of the legislation pertaining to children while 13% have admitted the ignorance about child labour legislation.
- As far as third question is concerned out of 33% who are employing children 0% is paying wages at par to adults, 27% is paying as per Minimum Wages Act, 30% is paying less than prescribed.

(Figure 7.25 Employment of children in small establishment)
Are you aware of labour legislation relating to child?

- Yes: 13%
- No: 87%

The next set of questions has been asked from working children. The four questions which have been asked from them are where the children are employed, their working hour, if they are studying also and the most prominent reason for child to work. The analysis of the response is:

- In response to the first question the 52% respondents are employed in shops, 24% are employed in factory, 20% are employed in Domestic purposes and 4% are employed in offices.
In respect to working hours 40% of the children are working for minimum 10 hours, 24% are working for 6 hours, 20% are working for 8 hours and 16% are working for more than 10 hours.

In response to the next question only 20% working children are studying and rest 80% is not studying but out of these also the majority is interested in studying.

As far as the reason to work is concerned the majority i.e. 48% have mentioned poverty and next to poverty is 28% is population exposure. (Figure 7.28 Place of employment of children)

(Figure 7.29 working hours of children)

(Figure 7.30 whether these children are studying)
The last question which is asked from all the respondents is whether child labour should be totally banned or not. The response to the question is a mixed one. The academicians, lawyers, students, general public and businessmen are in favour of...
total prohibition of child labour. But labour officers and law students are not in favour of total prohibition of child labour. (Figure 7.32 Child labour should be totally banned or not)

On the basis of the analytical charts above on answers to various questions the following conclusions are brought out. These are as per the views of the respondents and are only representative of the cross-section of the people questioned.

- The response to the fundamental question relating to the uniform definition to the child in all the legislation is 14 years which has been agreed by all categories in majority. But all the Law officers in this regard has taken a step forward and supported the age of child as below 18 years which has been recognized in several international conventions also.

- Effectiveness of legislation for the protection of the children was next query from all the respondents. In this case the academicians 80%, lawyers 87%, law students 80%, students 86% general public 70%, labour
officers 73% and businessmen 67% have agreed that the existing legislative provision are not sufficient to protect the children. The next question which was made a part of questionnaire to know the effectiveness of Child Labour (Prohibition and Regulation) Act, 1986. In majority all of them have agreed that the above referred Act need an amendment i.e. academicians 73%, lawyers 60%, law students 73%, students 50% general public 60%, labour officers 47% and businessmen 57%.

- On the issue of making education a fundamental right under Article 21 A in the Constitution of India. As far as the capability of state government is concerned in this context the view is not unanimous the academicians, lawyers, law students and labour officers have posed faith in the capability of state government while students, general public and businessmen have doubted the capability of the state government. As far as quality education is concerned the majority have admitted the failure of the system in this context.

- Main reason which has come up in context to the problem of child labour and children indulging in crime is the poverty. Moral and social education to children at early age has been unanimously supported by all the respondents to curb criminality in children.

- As far as role of non-governmental organization is concerned in promoting children’s right, the majority of the respondents have assessed it as satisfactory only.

- In context to the class questions the labour officers have blamed the legislation as a weak one in relation to deal with the complaints of child labour.

- On the issue of employing child labour 33% businessmen has admitted this fact. Out of this 30% are paying less than the prescribed under Minimum Wages Act.

- As far as child workers are concerned the maximum of them are working more than the prescribed working hours. 40% of the children are working
for minimum 10 hours, 24% are working for 6 hours, 20% are working for 8 hours and 16% are working for more than 10 hours. Only 20% working children are studying and rest 80% is not studying but out of these also the majority is interested in studying.

- In response to the last question that whether child labour should be totally banned or not. The response of the respondents is a mixed one the academicians, lawyers, students, general public and businessmen is in favour of total prohibition of child labour. But labour officers and law students are not in favour of total prohibition of child labour.

From the above it is assessed that though the legislation is in existence for the benefit of child but still lot is required to be done in this context. Compulsory education can play a positive role in this context but still we don’t have a single central legislation. Enacting the legislation is not sufficient to deal with the problems of violation relating to child. The legislation and policies have to be implemented and monitored regularly to achieve desired result. The local bodies, government and NGOs have to take the responsibility to sensitize the society towards existing problems and the legislation in relation to that.