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## **ANALYTICAL STUDY OF DEVELOPMENT OF LAWS IN INDIA DEALING WITH CHILD LABOUR**

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### **ABSTRACT**

Children are supremely important national asset. Children are the future custodians and torch bearers of the society. Unfortunately, millions of children are deprived of their childhood and right to education and thereby they are subjected to exploitation and abuse. The problem of child labour is one amongst the serious abuse of the children. The problem has remained in the society even after 75 years of our having independence. Protection of children from all forms of abuse and exploitation across the world is the need of the hour. In *M. C. Mehta Vs. State of Tamil Nadu and others*, Supreme Court opined that the child labour emanates from extreme poverty, lack of opportunity for gainful employment, intermittency of income and low standards of living. To eliminate the menace of child labour and to effectuate the mandate of Articles 23, 24, 39, 45 and 47 of the Constitution, Indian legislatures have created laws to prohibit child labour and improve the socio-economic factors present in India. The response of judiciary with regard to child labour is highly commendable. Supreme court has played an important role to control the problem of child labour and has shown its concerns by bringing occupations and processes under the court's order by the direct application of constitutional provisions.

The focus of this research article is to study causes and consequences of child labour. This research article also discusses international conventions regulating child labour, constitutional and legislative enactments prohibiting the use and abuse of children in the work place. Despite all these measures the practice of child labour is perpetuating in India. This research article tries to analyze legislative enactments in India. Researcher believes that certain measures like constitutional amendments, legislative changes and its effective implementation can help to reduce issue of child labour. It is to be remembered that existence of laws cannot be sole help in this issue unless backed by a strong societal commitment.

Key words: Child Labour, Vulnerable, Prohibition, ILO Convention

## Introduction

“I am the child, All the world waits for my coming, All the earth watches with interest to see what I shall become, Civilization hangs in the balance, For what I am, the world of tomorrow will be. I am the child; You hold in your hand my destiny, You determine, largely, whether I shall succeed or fail, Give me, I pray you, these things that make for happiness; Train me, I beg you that I may be a blessing to the world”. - Maime Gene Gole

Children are the future of any society and in turn they shape the world’s future. The problem of child labour has been one of the greatest problems as it affects children both physically and mentally. Almost all countries, whether developed, developing or underdeveloped face problems related to child labour. But, the issue of child labour in the worst form has been seen in some of the developing and under developed countries.

In the pre-industrial agricultural societies of India, children worked as helpers in the family business under the benevolent supervision of their elders. The workplace was an extension of the homely atmosphere, and the nature of the work was easy due to the simple skills. The advent of industrialization and urbanization has led to an exodus of rural populations to urban centers. Children had to work individually, under their employer, or without parental supervision. They got exposed to chemicals, toxins and dangerous work. In addition, children's physical health and mental development were endangered by working long hours without sufficient leisure time and adequate wages.

## Concept of child labour

According to **Second National Law Commission on Labour**, “Children out of home, away from family, working for wages and the place of work unfriendly and unsuitable for their wellbeing are child labour.” On the other hand, **Census of India** covers a wider definition and says, “Any child engaged in productive work, with or without compensation, wages or profit is child labour.”<sup>1</sup>

According to **International Labour Organization (ILO)**, the term “child labour” is often defined 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:

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<sup>1</sup> Malik & Raval, Law and Social Transformation in India, 216 (4<sup>th</sup> ed.,2014)

- is mentally, physically, socially or morally dangerous and harmful to children; and/or
- interferes with their schooling by: depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work.<sup>2</sup>

The ILO suggests that, children or adolescents who participate in work does not affect their health and personal development or interfere with their schooling, is not child labour. Therefore, whether a particular form of "labour" can be called "child labour" depends on the age of the child, the nature and duration of the labour performed, the conditions under which it is performed and the goals pursued by each country.

### **Magnitude of child labour**

As statistics indicate, the issue of child labour is very serious. A total of 152 million children – 64 million girls and 88 million boys – are estimated to be in child labour globally, accounting for almost one in ten of all children worldwide. According to data from Census 2011, the number of child labourers in India is 10.1 million of which 5.6 million are boys and 4.5 million are girls. Despite rates of child labour declining over the last few years, children are still being used in some severe forms of child labour such as bonded labour, child soldiers, and trafficking. Across India child labourers can be found in a variety of industries: in brick kilns, carpet weaving, garment making, domestic service, food and refreshment services (such as tea stalls), agriculture, fisheries and mining. Children are also at risk of various other forms of exploitation including sexual exploitation and production of child pornography, including online<sup>3</sup>.

There has been decrease in the incidence of child labour in India by 2.6 million between 2001–2011. However this decline is more visible in the rural area, while the number of child workers has increased in urban areas, indicating the growing demand for child workers in menial jobs.<sup>20</sup> The Covid-19 pandemic may have result in the first ever rise in child labour.<sup>4</sup>

### **Causes of Child Labour**

There are number of factors which are responsible for child labour. These are as follows:

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<sup>2</sup> International Labour Organization, <https://www.ilo.org/ipec/facts/lang--en/index.htm> (last visited 26/09/2022)

<sup>3</sup> Child labour and exploitation, <https://www.unicef.org/india/what-we-do/child-labour-exploitation> last visited 30/09/2022

<sup>4</sup> P. Ishwara Bhat, Law and Social Transformation, [www.ebcwebstore.com/](http://www.ebcwebstore.com/) last visited 19/11/2022

1. Chronic poverty

Half of India's population lives below the poverty line. Children have to work up a sweat to make up for the loss of household income due to the sickness, death and drunkenness of the elderly. Children of poor family are a source of their income. The Oslo Conference on Child Labour (1997) said, "Child labour is both a consequence and a cause of poverty. Thus, strategies for poverty reduction and elimination need to address this problem. Use of child labour slows economic growth and social development, and it constitutes a severe violation of basic human rights."<sup>5</sup>

2. Preference of employer

Employers prefer children over adults because they are active, enthusiastic, disciplined, manageable, and inexpensive. Some chores, such as carpet making and other delicate tasks, are better handled by children.

3. Lack of education

The poor believe that education is confined to the upper castes of society and is of little concern to them. The number of children in a household also hinders education.

4. Absence of trade unions

Child laborers are not organized into unions that can rally for their cause.

Therefore, child labour is the result of social inequality, attitude of the privileged class, lack of employment opportunities, poverty and most important lack of parental motivation.

### **Consequences of child labour**

- Child labour deprives the child of his fundamental right to education.
- It exploits the child physically, economically, mentally and emotionally.
- It brings poor health and low physical growth. It takes away his childhood and develops vices such as smoking, tobacco chewing, taking alcohol, gambling etc.
- It creates perpetuation of poverty in the family of child labourer.
- It leads to child trafficking, illiteracy and economic inequality.

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<sup>5</sup> P. Ishwara Bhat, Law and Social Transformation, [www.ebcwebstore.com/](http://www.ebcwebstore.com/) last visited 19/11/2022

## **International Conventions**

The international commitments may be divided into two categories, namely with International Labour Organization and United Nations.

The two ILO Conventions on child labour are Convention No.138 on Minimum Age and Convention No. 182 on the Worst Forms of Child Labour. These Conventions are “fundamental” Conventions<sup>6</sup>. Worst form of child labour convention took place in 1999. This fundamental convention defines as a "child" a person under 18 years of age. It requires ratifying states to eliminate the worst forms of child labour, including all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; child prostitution and pornography; using children for illicit activities, in particular for the production and trafficking of drugs; and work which is likely to harm the health, safety or morals of children. The convention requires ratifying states to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. It also requires states to ensure access to free basic education and, wherever possible and appropriate, vocational training for children removed from the worst forms of child labour<sup>7</sup>.

### **UN convention on Rights of the Child, 1989**

It's become the most widely ratified human rights treaty in history and has helped transform children's lives around the world. Article 32 of the Convention, assures right of protection from economic exploitation and from performing any hazardous work or to interfere with child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development. Article 28 assures right of child to elementary education and further states a view to achieving this right progressively and on the basis of equal opportunity.<sup>8</sup>

### **Constitutional provisions to safeguard interest of children**

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<sup>6</sup> ILO conventions on child labour, available at <https://www.ilo.org/ipec/facts/ILOconventionsonchildlabour/lang--en/index.htm> last seen on 30/09/2022

<sup>7</sup> ILO child labour, Available at [https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/childlabour/langn/index.htm#:~:text=Minimum%20Age%20Convention%2C%201973%20\(No.&text=This%20fundamental%20convention%20sets%20the,16%20under%20certain%20strict%20conditions\)](https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/childlabour/langn/index.htm#:~:text=Minimum%20Age%20Convention%2C%201973%20(No.&text=This%20fundamental%20convention%20sets%20the,16%20under%20certain%20strict%20conditions)) last seen on 30/09/2022.

<sup>8</sup> Malik & Raval, Law and Social Transformation in India, 221 (4<sup>th</sup> ed.,2014)

While drafting the constitution, the makers were aware of the issues encountered by children and included explicit provisions to address them. The constitution makers incorporated certain universal and special provisions for advancement of children's status.

Constitutional safeguards for the welfare of the children are as follows:

1. Article 15(3) empowers the state to make special procedure for the welfare of children.
2. Article 21-A provides for free and compulsory education to all the children of the six to fourteen years by the State.
3. Article 23 (1) prohibits traffic in human beings, beggar and all other forms of forced labour. Violation of this provision is an offence punishable under the law.
4. Article 24 prohibits the employment of children below the age of 14 years in any factory or mine or engaged in any other hazardous employment.
5. Under Article 39(e) the State has the duty to ensure 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 avocations unsuited to their age or strength.
6. Article 39(f) mandates 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.
7. Article 45 provided for early childhood care and education to children below the age of six years.
8. It is the duty of the State under Article 47 to raise the level of nutrition and the standard of living and to improve public health has necessary ramification on rights of the children against hazardous labour.
9. Under Article 51A (k), the parent or guardian has the duty to provide opportunities for education to his child or ward respectively who is between the age of six to fourteen years.

## **Legislative attempts to prohibit child labour in India**

In order to implement the constitutional and international obligation towards eradication of child labour in different occupations, as on today, the following legislative enactments are passed:

1. Section 67 of the Factories Act, 1948 does not allow the child who has not completed his 14<sup>th</sup> year to work in any factory.
2. Section 26 of the Plantation Labour Act, 1951 does not allow child who has not completed his 12 (after 1986, 14) years' to work in any plantation.
3. Section 109 of the Merchant Shipping Act, 1951 provides: "No person under 15 years' (after 1986 14 years') of age shall be engaged or carried to sea to work in any capacity in any ship, except (a) in a school ship, or training ship, in accordance with the prescribed conditions; or (b) in a ship in which all persons employed are members of one family; or (c) in a home-trade ship of less than two hundred tons gross; or (d) where such a person is to be employed on nominal wages and will be in the charge of his father or other adult near male relative.
4. Section 45 of the Mines Act, 1952 does not allow any person who is below eighteen years of age to be present in any part of a mine above ground where any operation connected with or incidental to any mining operation is being carried on.
5. Section 21 of the Motor Transport Workers Act, 1961 does not permit any child to work in any capacity in any motor transport undertaking.
6. Section 3 of the Apprentices Act, 1961 does not qualify a person who is less than 14 years' for being engaged as an apprentice to undergo apprenticeship training in any designated trade.
7. Section 24 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 bars child to work in any industrial premises.
8. Child Labour (Prohibition and Regulation) Act, 1986 (Act 61 of 1986) replaced the Employment of Children Act, 1938. The Child Labour (Prohibition and Regulation)

Amendment Act, 2016 substituted the earlier clause that prohibited employment of child in hazardous occupations and processes by a new clause which states that “child shall not be employed or permitted to work in any occupation or process.” For violating this prohibition either imprisonment for 3 to 12 months or fine of Rs 10,000 to 20,000 or both may be imposed.

### **Judicial approach**

For meaningful and gratifying reforms, mainstream judicial activism has also entered this area.

1. M.C.Mehta v State of Tamil Nadu<sup>9</sup>

In this case petitioner drew attention on working of children in factories manufacturing matches and fireworks in Sivakasi. The Court issued directions for survey of child labour within six months; for identifying the most hazardous employments; and for giving alternative employment to adult members of the family of child workers nearest to the place of residence of the family or pay Rs 25,000 per child in lieu thereof. The Court also directed that in the matter of non-hazardous works, there shall be periodic visits by the authorities to ensure that such work by the child does not exceed 4 to 6 hours per day and 60 per cent of the minimum 628 wage is paid<sup>10</sup>.

2. In District Beedi Workers’ Union<sup>11</sup>, employment of children in beedi manufacture was held as illegal.

3. Bachpan Bachao Andolan v. Union of India<sup>12</sup>

In this case a public interest litigation under Article 32 is filed before the Supreme Court. The Supreme Court took note of the rescue of 18 children who were working in a circus most of whom were trafficked from Nepal. These girls were subjected to mental, physical and sexual abuse, and were forced to work in the circuses against their will and were kept in the unhygienic conditions. They were deprived of education, play and recreation, and had limited exposure to the outside world. The employment of children involved violation of Article 21 and 21-A of the Constitution and various laws. The Supreme Court held that employment of the children below the age of 18 years in the circuses is unconstitutional and illegal. It further issued several

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<sup>9</sup> M.C.Mehta v State of Tamil Nadu (1996) 6 SCC 756

<sup>10</sup> P. Ishwara Bhat, Law and Social Transformation, [www.ebcwebstore.com/](http://www.ebcwebstore.com/) last visited 19/11/2022

<sup>11</sup> District Beedi Workers’ Union v. State of T.N., (1992) 1 SCC 221

<sup>12</sup> Bachpan Bachao Andolan v. Union of India (2011) 5 SCC 1

directions to the Central Government to conduct raids and liberate the children/juveniles; the liberated children/juveniles are to be sent to protective homes and then reunited with the parents after a proper verification. The government was further directed to issue notification prohibiting the employment of children/juveniles in circuses and to frame proper schemes for rehabilitation of such children.<sup>13</sup>

#### 4. Bandhu Mukti Morcha V Union of India<sup>14</sup>

The Supreme Court of India, in this public interest litigation case, directed the State of Uttar Pradesh not to employ children in carpet industry and issued welfare directives which including prohibiting child labour under the age of 14 and providing children access to education and health facilities.

#### **Analysis of legislative enactments**

The prohibition of child labour under Section 3 Child Labour (Prohibition and Regulation) Amendment Act, 2016 was not absolute. Exceptions were made with regard to working in family enterprises or as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus. In practice, since nearly 80% of India's full time and part time child workers are trapped in a situation where the parents of working children and the families work jointly within family economic enterprises like farms, household industries and petty trade. By virtue of this proviso to Section 3, they fall outside the ambit of the Act<sup>15</sup>.

None of the existing laws provide for any educational opportunities for the rescued children. Because of this, children remain uneducated and again start working in another industries/factories.

Given the context of no support structures for the child labourers either from the family and the state, the high risk of child labourers turning delinquent in the process of socialization is yet another issue that is overlooked by Indian legislations.<sup>16</sup>

One serious gap in the law is the non-involvement of NGOs. NGOs constitute important social capital for activating at the grassroot level the policy of preventing and eradicating the child

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<sup>13</sup> P. Ishwara Bhat, Law and Social Transformation, [www.ebcwebstore.com/](http://www.ebcwebstore.com/) last visited 19/11/2022

<sup>14</sup> Bandhu Mukti Morcha V Union of India (1997) 10 SCC 549

<sup>15</sup> P. Ishwara Bhat, Law and Social Transformation, [www.ebcwebstore.com/](http://www.ebcwebstore.com/) last visited 19/11/2022

<sup>16</sup> Indian Bar Review, 2016 Vol-1, Pg no. 58

labour practice and mainstreaming the released child workers into the learning system. NGOs are working to protect the children from the evil of child labour. These NGOs include Bachpan Bachao Andolan, Child Rights and You (CRY), Global March against child labour, Talaash Association, ChildFund, Care India, RIDE India, Childline etc. Identification of working children is a complicated task to be carried out with well-planned strategies with which the NGOs are generally acquainted. Counselling and motivating the children and the parents about the need for learning and disadvantages of early labour upon one's career can be better handled by the NGO activists.<sup>17</sup>

Another criticism of the amendment is that the long list of hazardous occupations and processes in the Schedule of Child Labour (Prohibition and Regulation) Act, 1986 is substituted by reference to mines, inflammable substances or explosives and hazardous processes listed in the Factories Act. The hazardous process in the agricultural sector is not included.

Many laws have been enacted in order to prohibit child labour. However they haven't been effective in curbing the problem. The statistic report of 2017 explains that India is one of the leading countries in Asia as it has 33 million children employed in child labour. According to the 2011 Census, total child population was 259.6 million out of which 10.1 million are either working as main worker or as marginal workers. Despite of several laws that are enforced in India which prohibits the child labour still, there are many children who are employed in homes, nearby restaurants and factories across the country. Including sexual and mental abuse, these children are also subjected to various other types of exploitation. June 12 is observed as **Anti-Child Labour Day** but activists expressed that due to lack of enforcement of the Child Labour Act, 1986 still there are many cases of child labour all around the world.

### **Conclusion and suggestions**

1. Constitutional Amendment: Article 24 of the Constitution should be amended as below:  
“No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other employment.”
2. The measure for rehabilitation of child labour and adolescents rescued from exploitations is addressed in Child Labour (Prohibition and Regulation) Amendment Act, 2016. It is necessary to implement this step effectively.

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<sup>17</sup> P. Ishwara Bhat, Law and Social Transformation, [www.ebcwebstore.com/](http://www.ebcwebstore.com/) last visited 19/11/2022

3. The age of child provided under Child Labour (prohibition and Regulation) Act, 1986 i.e 14 years should be enhanced to 18 years so as to bring it on par with United Nations Conventions on the Right of the Child, 1989.
4. Child Labour cases shall be referred/ made over to Fast Track Courts for quicker dispensation of justice.
5. There should be holistic approach in dealing with the children and co-ordination between various government functionaries meant for elimination of child labour.
6. Every state government should frame rules under the Right to Education Act, 2009 immediately for the proper implementation of the provision of the Act.
7. It is to be remembered that existence of laws can not be sole help in this issue unless backed by a strong societal commitment.
8. Although poverty is root cause of the child labour, it can no longer be an excuse for child labour as the State stands as the ultimate guardian of children against child labour practice. Education as a policy instrument for removal of children from labour and a means of empowerment should be largely relied upon for a desirable result.

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10. Child Labour (Prohibition and Regulation) Act, 1986