



# CONSTITUTIONAL AND LEGAL FRAMEWORK FOR ELIMINATION OF CHILD LABOUR AT NATIONAL AND INTERNATIONAL ARENA

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## ABSTRACT

*Every child is God gifted and deserves to receive the best that the society can offer. Children need to grow in an environment that enables them to lead a life of freedom and dignity where opportunities of education and training are provided to grow into a worthy citizen. Child Labour is a global phenomenon where unfortunately large proportions of children are deprived of their basic rights and are engaged in various sectors of the economy. The affirmation of the elimination of child labour as an objective coupled with commitment to action, pending its attainment, to improve the conditions of working children are the two planks of ILO policy. In this article the researcher tries to explain the reality of the problem of child labour and finds out the existing constitutional and legislative framework to curb the menace.*

**KEYWORDS:** Child Labour, International Labour Organisation, constitutional framework, Legal intervention, judicial trends.

## I. INTRODUCTION

In ancient times, children provided a helping hand to their parents in agro based activities whether at home or in the fields. Not all forms of works done by children contribute to child labour but when Industrialisation started in the 18<sup>th</sup> century, it brought about employment for the children in almost all sectors of the society of hazardous nature restricting them from their physical, mental and personality growth which slowly gave birth to child labour. As per the definition of International Labour Organisation (ILO), "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, sometimes separated from their families, frequently deprived of meaningful education and training opportunities that could open up them a better future".<sup>1</sup>

According to Encyclopaedia of Social Sciences "When the businesses of wage earning or of participation in self or families support conflicts directly or indirectly with the business of growth and education, the result is child labour."

The children engaged with agricultural sector today are highly in risk with exposure to dangerous chemicals and equipments. Others are domestic workers, prostitutes, factory workers, street children, peddlers or running errands for their livelihood. When the child is the sole bread winner of their families, they work hard losing their life, childhood, education, growth. In many sectors of the work fields, child labour has been banned but it continues by illegal means, loss of fear, threat and dominance power. As of today, every one out of six child is engaged in child labour, working in many industries set-up around the globe directly or indirectly depriving his or her mental, physical and emotional development which is essential in childhood. But with time and awareness, child labour has started to decline slowly from its roots. It is a well-known fact that the elimination of child labour is a long-term process around the world but some forms of child labour must be kept in priority list and banned at the earliest possible.<sup>2</sup>

<sup>1</sup> Manoshi Mitra and Sunil Kumar Mishra. Child Migration, child trafficking and child labour in India. Institute of Human Development. Executive Summary.2103.

<sup>2</sup> Planning Commission of India, Government of India, report of the Working Group for Social inclusion of Vulnerable Group like Child Labour and Bonded and Migrant Labour in the 12th Five Year Plan (2012-17), Para 4.2. Available at: [http://planningcommission.gov.in/aboutus/committee/wrkggrp12/wg\\_vulnerable\\_groups.pdf](http://planningcommission.gov.in/aboutus/committee/wrkggrp12/wg_vulnerable_groups.pdf). Accessed on 19 September 2013



## II. HYPOTHESIS

- ❖ Child is a vulnerable section of the Society.
- ❖ Child labour persists even where it has been declared illegal, and is frequently surrounded by a wall of silence, indifference, and apathy. But that wall is beginning to crumble.
- ❖ The total elimination of child labour is a long-term goal in many countries, certain forms of child labour must be confronted immediately.
- ❖ Constitutional and Legislative frameworks are insufficient to curb the problem of Child Labour.

### Objectives of the Study

- To know the causes of Child Labour.
- To identify the Constitutional and Legislative framework to curb the problem of Child Labour.
- To know the International legal Framework for elimination of Child Labour.

## METHODOLOGY

The research on this topic has done by adopting the doctrinal method of research. It is blend of both the descriptive and the analytical methods of study. The secondary data have been collected from books, journals, newspaper, magazines, websites etc.

## III. CONSTITUTIONAL AND LEGAL FRAMEWORK:<sup>3</sup>

The Constitution of India guarantees every child a protection against exploitation. Some of the important constitutional provisions upholding children's right are:

**Article 14:** Equality before Law and Right to Equality.

**Article 15:** The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them i.e. nothing in this Article shall prevent the states from making special provision for Women and Children.

**Article 19 (1):** All citizens shall have the right – (a) to freedom of speech and expression; ... (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India.

**Article 21:** "No person shall be deprived of his life or personal liberty except according to a procedure established by Law." Thus, Article 21 secures two rights: 1) Right to life and 2) Right to personal liberty.

**Article 21 A:** Free and Compulsory education for all children of the age of six to fourteen years.

**Article-23: Prohibition of Traffic in Human Beings and Forced Labour:** Traffic in human beings beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an punishable offence in accordance with law.

**Article-24: Prohibition of Employment of Children in Factories etc:** No children below the age of fourteen years shall be employed to work in any factor or mine or engaged in any other hazardous employment.

**Article 39 A:** Provides for free legal aid to the poor and weaker sections of the society and ensures justice for all, it means duty of the State to secure an operational legal system that provides equal justice and free legal aid to the citizens.

**Article-39 (e) and (f) Directive Principles of State Policy:** The States 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 a vocation unsuited to their age of 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 42:** Provision for just and humane conditions of work and maternity relief The State shall make provision for securing just and humane conditions of work and for maternity relief

**Article 45:** State shall endeavour to provide early childhood care and complete the age of six years.

**Article 46:** The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes (SC) and the Scheduled Tribes (ST), and shall protect them from social injustice and all forms of exploitation.

**Article 47:** It directs the State to raise the level of nutrition and the standard of living and to improve public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of intoxicating drinks and drugs.

The legal protection of the child is backed by policy and programmatic commitments. Some of the major policies in areas affecting child labour are listed below:

<sup>3</sup> Prof. M.P.Singh, "Constitution of India", 1<sup>st</sup> Edition 1999, Published by Delhi Law House



Year	National Policies
1974	National Policy for Children
1986	National Policy on Child Labour
1987	National Policy on Child Labour
1993	National Nutrition Policy
2002	National Health Policy
2003	National Children's Charter

#### IV. LEGAL FRAMEWORK FOR ELIMINATION OF CHILD LABOUR

Apart from the Constitutional Law, India has enacted a number of legislations that addresses the issues of Child Labour. The generic code is the Indian Penal Code of 1860 and the other special enactments are listed below:

Year of Enactment	The Special Laws
1890	Guardians and Wards Act
1948	Factories Act (Amendment in 1949, 1950 and 1954)
1951	The Plantation Labour Act
1956	The Young Persons Harmful Publication Act
1957	Immoral Traffic (Prevention) Act (Amended in 1986)
1959	Bombay Prevention of Begging Act
1960	Orphanages and Other Charitable Homes (Supervision and Control) Act
1961	The Motor Transport Workers Act
1961	The Apprentices Act
1966	The Beedi and Cigar Workers (Conditions of Employment) Act
1976	Bonded Labour System (Abolition) Act
1986	Child Labour (Prohibition and Regulation) Act
1987	Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act.
1993	The Children (Pledging of Labour) Act
2000	Juvenile Justice (Care and Protection of Children) Act

**The Factories Act:**<sup>4</sup> This Law mandates for the factories employing more than 30 women workers, to provide a suitable room for children under the age of six. It also prohibits employment of children below 14 years in a factory. Regulates employment and restricts night employment of children between 15 and 18 years.

**The Bombay Prevention of Begging Act:**<sup>5</sup> It makes soliciting or receiving alms in a public place, under any pretence and allowing oneself to be used as an exhibit for the purpose of soliciting or receiving alms as a punishable offence.

**The Orphanages and Other Charitable Homes (Supervision and Control) Act:**<sup>6</sup> This Act provides for the supervision and control of orphanages and homes for children. The Act defines 'Home' as an institution, whether called an orphanage, a home for neglected women or children, a widow home, or by any other name, maintained for the reception, care, protection and welfare of women or children.

**The Bonded Labour System (Abolition) Act:** The Act makes it illegal for anyone to be forced to work as a bonded labourer. It also makes parents who pledge their child or other family members to work as a bonded labour liable for punishment.

**The Child Labour (Prohibition and Regulation) Act:**<sup>7</sup> This Act prohibits the engagement of children in certain employment and regulates the conditions of work of children in certain other employments. The Act provides a listing of hazardous processes and occupations in Schedule 'A' and a list of occupations and processes where children may work under regulated conditions.

**The Children (Pledging of Labour) Act:**<sup>8</sup> It prohibits making an agreement to pledge the labour of a child (15 years and under) for employment.

**The Plantation Labour Act:** The original Act prohibited employment of children below 12 years on a plantation but this was amended in 1986 whereby a child is permitted to work if certified as a fit person with a working week of no more than 49 hours.

<sup>4</sup> The Factories Act, 1948

<sup>5</sup> The Bombay Prevention of Begging Act, 1959

<sup>6</sup> The Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960

<sup>7</sup> The Child Labour (Prohibition and Regulation) Act, 1989

<sup>8</sup> The Children (Pledging of Labour) Act, 1933



**The Motor Transport Workers Act:**<sup>9</sup> No child under 14 years is allowed to be employed in any capacity in motor transport undertaking.

**The Apprentices Act:**<sup>10</sup> It provides for the regulation and control of the training of apprentices in particular trades. The minimum age of which is 14 years and the apprentice should satisfy standards for education and fitness.

**The Beedi and Cigar Workers (Conditions of Employment) Act:**<sup>11</sup> The Law prohibits the employment of children under 14 years of age in the beedi or cigar industry. Women and the same those under 18 years are prohibited to work at night.

**Juvenile Justice (Care and Protection of Children) Act:**<sup>12</sup> It is based on the principle to promote and safeguard the rights of children who are in conflict with law and in need of care and protection. The Act seeks to establish Child Welfare Committee and Juvenile Justice Board in all districts across the country to deal with the children in need of care and protection and those children who are in conflict with law.

## STATUTORY MANDATE

### CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986:<sup>13</sup>

Employment of Children in the following occupations is prohibited as per Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986:

- i) Cinder picking, clearing of an ash pit or building operation in the railway premises
- ii) Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train
- iii) Work relating to the construction of a railway station or with any other work where such is done in close proximity to or between the railway lines
- iv) Transport of passengers, goods or mails by railways
- v) A port authority within the limits of any port
- vi) Work relating to selling of crackers and fireworks in shops with temporary licenses
- vii) Mines (underground and under water) and collieries
- viii) Abattoirs/Slaughter Houses
- ix) Automobile workshops and garages
- x) Foundries
- xi) Plastic units and fiber glass workshops
- xii) Handling of toxic or inflammable substances or explosives
- xiii) Employment of child as domestic worker or servants
- xiv) Employment of children in dhabas (road-side eateries), restaurants, hotels, motels, tee-shops, resorts spas or other recreational centres.

## V. RECENT DEVELOPMENTS AT NATIONAL AND INTERNATIONAL ARENA

### 2021 International Year for the Elimination of Child Labour

The UN has declared the “International Year for the Elimination of Child Labour” in 2021 providing a platform to take in hand the challenges faced during COVID-19 and a way towards the goal set by SDG Target 8.7 to end child labour in all its forms by the year 2025. It will also propel momentum towards the V Global Conference on Child Labour (VGC) to be held in South Africa in 2022.

While great step have been made in tackling child labour, in recent years, progress has slowed and has been uneven across regions, age groups and sectors. The ongoing COVID-19 health pandemic threatens to drive more children into child labour. Joining forces to tackle child labour is now more important than ever. The global partnership Alliance 8.7 is driving action towards reaching SDG Target 8.7 and 22 Pathfinder Countries and 230 partner organizations have committed to accelerate action, share knowledge and implement innovative solutions.<sup>14</sup>

### Revision of the NCLP Scheme:

With dynamic changes of the society, the revised scheme of the National Child Labour Project (NCLP) offers the volunteers incentive which would motivate to improve their skill, dedication and efficiency. Here, the Government has upgraded the amount

<sup>9</sup> The Motor Transport Workers Act, 1961

<sup>10</sup> The Apprentices Act, 1961

<sup>11</sup> The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

<sup>12</sup> Juvenile Justice (Care and Protection of Children) Act, 2021

<sup>13</sup> Institute for Human Development. “Impact of Mahatma Gandhi National Rural Employment Guarantee Scheme (NREGA) on Child Labour, Executive Summary 2013

<sup>14</sup> ILO, “2021 International Year for the Elimination of Child Labour

“ <https://www.ilo.org/global/topics/child-labour/int-year/lang--en/index.htm>



of stipend from Rs.150/- to Rs.400/- per month per child, rates of honorarium for volunteers and other parameters of the scheme and has also untangled the guidelines for quick implementation of NCLP Scheme. Furthermore, the coverage of the Scheme is in all the districts having prevalence of Child Labour. State Governments are being given the responsibility for conducting survey on child labour in the regions with high frequency of child labour by the Ministry of Labour & Employment.

#### **Re-alignment of NCLP Scheme with RTE Act, 2009:<sup>15</sup>**

With the enactment of Right to Education Act, 2009, there has been a need for realignment of the NCLP Scheme with the provisions of RTE Act, 2009. Ministry of Human Resource Development vide their letter No. 10-4/2009-EE.4 dated 2.7.2010. It has been stated that the NCLP Schools can act as special training centers for unenrolled and out-of-school children in accordance with the provisions of Section 4 of the RTE Act and Rule 5 of the Right of Children for free and compulsory education (RTE) Rules, 2010.<sup>16</sup>

#### **Provision of Child & Adolescent Labour Rehabilitation Fund:**

The Child Labour (Prohibition of Regulation) Amendment Act, 2016 has an assured provision for constitution of Child & Adolescent Labour Rehabilitation Fund ensuring that child and adolescent is not only rescued but his future is secured by such collected fund for his welfare and education in district level. The amount of fine realized from the employer of the child or adolescent shall be directly credited in the Rehabilitation Fund. The appropriate Government will also credit an amount of Rs. 15,000/- for each of the child and adolescents so rescued from the work.

### **VI. JUDICIAL APPROACH TOWARDS ELIMINATION OF CHILD LABOUR IN INDIA**

i. **“Anjali Roy Vs. State of West Bengal”<sup>17</sup>**

The Court observed that the real wealth and future of the Nation are its children and youth for which their physical and mental health has to be cared.

ii. **“Democratic Rights Vs. Union of India”<sup>18</sup>**

The Court held that the practices of child slavery, forced or compulsory labour or other forms of hazardous and exploitative work which jeopardise the health, safety and moral of the child should be identified to provide them a quality of life, which may include basic diet during working period.

iii. **“Laxmikant Pandey Vs. Union of India”<sup>19</sup>**

The Court observed that the welfare of the community, its growth and development depends upon the health and well being of its children and for that children need special protection because of their tender age and physique, mental immaturity and incapacity to look after themselves.

iv. **“M.C.Meheta Vs. State of Tamilnadu”<sup>20</sup>**

The Court stated that the spirit of the constitution is intended to protect the formative years of the child. When a child is put to serve under a labour market, he/she must be given 60% of the wages of that of an adult.

v. **“People’s Union for Civil Liberties Vs. Union of India”<sup>21</sup>**

The Court observed that the Child Labour (Prohibition and Regulation) Act, 1986 prohibits procurement of children for labour between the years 8 to 16 and if anybody violates not only he/she could be subjected to punishment but also could be made to pay compensation to the victims.

vi. **“Bandua Mukti Morcha Vs. Union of India”<sup>22</sup>**

The Court directed the Government to stop employment of children under 14 years of age in the carpet industry in the State.

### **VII. CONCLUSION AND SUGGESTION**

According to the definition of International Labour Organisation (ILO) “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, sometimes separated from their families, frequently deprived of meaningful education and training opportunities that could open up them a better future”.

<sup>15</sup> RTE Act, 2009

<sup>16</sup> “CHILDREN AND WORK” article published in

<https://labour.gov.in/sites/default/files/Updated%20Status%20on%20Child%20Labour.pdf>

<sup>17</sup> AIR 1962 Cal. H.C.

<sup>18</sup> AIR 1983S.S.C.

<sup>19</sup> (1984) 2SCC.

<sup>20</sup> JT (1993) S.C.

<sup>21</sup> (1998) SCC.

<sup>22</sup> (1997) SCC





There is a need for awareness of all concerned in the criminal justice system, judicial officers, prosecutors, medical experts, police officers etc in respect of the existing Indian Laws for its smooth implementation to maintain peace and security in the society. Not only these officials but also the partnership with the NGOs is important so as to carry on Law enforcement, rescue, prevention, counselling, rehabilitation, reintegration, social empowerment etc.

According to the Census 2001, there are 12.59 million working children in the age group of 5-14 years. Available information of the Census indicates that children under 14 years constitute around 3.6% of the total labour force in India. Of these, nine out of every ten work in their own rural family settings. About 85% are engaged in traditional agricultural activities, less than 9% work in manufacturing, services and repairs. Whereas about 0.8% work in factories only. The State of Andhra Pradesh is amongst the highest child labour population, which, as per 1991 Census had 1.66 million working children. Even today, Child Labour continues to be an area of great concern.<sup>23</sup>

In India, estimates vary in-between Human Rights Watch's estimate in 1999 of 40 million bonded labourers and figures provided to the ILO in June 1998. The ILO Committee of Experts' requested for a repeat comprehensive survey where a representative of the Government of India stated that 251,000 bonded labourers had been identified, out of which approximately 231,000 had been rehabilitated. The Indian Government's official figures grossly underestimate the scale of the problem. The joint survey by the Gandhi Peace Foundation and the National Labour Institute in 1978-79 estimated that there were 2,617,000 bonded labourers in the 10 States surveyed. It should be stressed that this survey only looked at bonded labour engaged in the agricultural sector. The recent report submitted to the Supreme Court by the Commission on Bonded Labour in Tamil Nadu (31<sup>st</sup> October 1995) estimated that there were approximately 1,250,000 bonded labourers in Tamil Nadu alone. Given the prevalence of bonded labour in other Indian states – Haryana, Punjab, Uttar Pradesh, Bihar, Maharashtra, Rajasthan, Madhya Pradesh, Andhra Pradesh, etc. it seems that the correct figure is more likely to be in the region of 20 million.<sup>24</sup>

The 1991 Census recorded the number of workers to be 11,882,762 (11.88 million) in Odisha, while 2001 Census recorded the number of workers to be 14,276,488 (14.28 million). In 1991, out of the total workforce in the State, main workers constituted 10,377,635 and marginal workers were 1,505,127 number. As per 2001 Census, the main workers constitute 9,589,269 (26.05% to total population) while marginal workers are 4,687,219 (12.74% to total population). As per 1991 Census there were 452,394 child workers in Odisha. Out of the total 452,394 child workers, main workers figured as 325,250 whereas 127,144 were marginal workers.<sup>25</sup>

The annual report stated above shows enhancement of living standards. The role of the educational infrastructures is the long run strategies marked in the process of progressive elimination of child labour.

<sup>23</sup> Annual Report 2012-13, Ministry of Labour & Employment, Government of India

<sup>24</sup> Shivani Satija Preet Rustagi. Focus on child and adolescent domestic workers in Delhi and Ranchi. Institute of Human Development. Executive Summary.2013.

<sup>25</sup> Annual Report 2012-13, Ministry of Labour & Employment, Government of India