

Examining the Evolution of Child Labour Laws: National and Global Standpoint

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Abstract

Child labour is not any new menace; however, it has been an unspoken topic. Although it has been practiced since ages, however, it was not until the last century that the matter became principally addressed due to the socio-economic background of India. Since then, authorities have been devising methods to tackle this peril which has defaced many children and impeded them from enjoying their life up to its full potential. This is prevalent not just in India, but almost everywhere across the globe. Only after it garnered sufficient attention, several international conventions have been promulgated to regulate child labour and outlaw this practice, though not in its entirety. Neither in international arena nor national, there is an absolute ban on the child labour. We can find restrictions either on minimum age of children being employed or their latitude of working. This somewhat leaves an elbow room open for the employers to exploit child labour. Moreover, sudden clamping of lockdown 3 years back had exacerbated the matter when financial condition worsened and soon after lockdown was lifted, these children were again involved in work. The present labour law codes which are yet to be effectuated do not specifically mention about children except for one instance where children below 14 years are not allowed to work in mines or factories. While, children of 14–16 years can join only as apprentice. However, this provision has been nullified by another provision of the same act, resulting into no prohibition on children. These significant legal lacunae can be used tactfully for exploitation of the bubbling energy. Such has been discussed in this study, along with tracing the growth of laws concerning the same.

Keywords: Child labour, socio-economic, labour law codes, legal lacunae

INTRODUCTION

Child labour in Indian society is not an unspoken topic and the reason can be attributed to the socio-economic background of India, where children are considered to be the greatest gifts by God. It is an important phase of their life where their potential can be assessed and then shaped. They are like those surging waves which if channelized can create lush green fields, if not, then they can cause despoliation. At times, it is the economic conditions of the family which force them to forego their opportunities, be it academic or others, and take up such works, where usually, they are exploited, underpaid and exposed to hazardous conditions. Poor households represent the greater proportion of

child labour and this has a strong effect on school attendance rates, and dropout rates. Child labour is not just a practice in India, but almost every part of the world. It prejudices the right to access education, the right to healthy life and safety.

The layman's concept of child labour is not much different from what the legal arena ideates. In this context, it is highly pertinent to mention what is child labour as per International Labor Organization.

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‘It is best defined as a work that deprives children of their childhood, their potential, dignity and that is harmful to their physical and mental development [1].’

In other words, it refers to such works which are mentally, physically, socially and morally minacious to the children or such work which interferes with their healthy schooling experience. Hence the work like assisting parents at home, and earning pocket money on holidays shall not be considered child labour.

However, the definition given by UNICEF is quite different. As per it, there is child labour if a child between 5 and 11 years is involved in at least 1 h of economic activity or 28 h of domestic work in a week. For a child of 12 to 14 years, child labour is 14 h of economic activity or 42 h of economic activity in a week.

The child labour (prohibition and regulation) Act 1986 mentions that child labour is for anyone who has completed 14 years of age.

India's Census 2001 Defines

Across the globe, 12th June is earmarked as UN World Day Against Child Labor. As per the ILO statistics, around 152 million children are engaged in child labour, and among them, 73 million are involved in hazardous works [2].

This study aims to discuss the legal history of child labour not just in India, but in the US, UK, and also in European Union. Moreover, it will explore the legal provision in India, a comparison from the earlier laws.

LEGAL HISTORY (Brief)

International Aspect

It is widely assumed that child labour increased and became more exploitative in the initial stage of industrialization which introduced machine for the ease of work. Though children worked before industrialization too, it was un-exploitative at that time. However, doubts have arisen whether, before industrialization and mechanization, the work was more intensive as primarily home-based industry like textiles.

The inadequacy of the statistical data evidence makes it difficult to ascertain with confidence whether the level of child labour was more intensive post mechanization or before it. It is only the better-organized industries that could provide data on the number of workers and their age. Too often children escape their view or what they did was considered part-time. Efforts were made to assemble the available data, so that data on child labour could be found out and it could be ascertained what proportion of the workforce is child workers. Another approach was also taken, whereby the income contribution of the children in the family was to be calculated. An increasing or decreasing trend can help us conclude about the change. However, there existed a problem in this and it was that the study of family economy barely revealed the age of children. Hence it becomes further difficult to know whether they were children. It was a common practice in England that children in orphanages provided labour to industrial undertakings for their survival. The most notorious industry was lacemaking, where the children were supposedly at school to provide labour. No matter what confusion exists, it is pretty clear that child labour existed. Scholars after research have found some probable reasons which can be attributed to the decline of the child labour and they are:

- *Higher Wage Rates:* the assumption is that higher wages have lessened the pressure on the family to push their children into work. The problem with this assumption is that it presumes the needs of the worker class are constant even with the rise in wages.
- *Technology:* As technology became more advanced, the practice of employing children was phased out or eliminated.

- *Child Labor Laws*: nevertheless, there were not so good laws, but the laws like Factory Act 1833 which was introduced, had an immediate and substantial effect on reducing the amount of child labour. The legislation only focuses on the formal sectors and the informal sector is left untouched, where the condition is further worse.
- *Compulsory schooling*: Weiner focused more on education laws than on child labour laws. Though the implementation of the laws was not done successfully, even with partial implementation, results could be seen. The gap between the enrolment rate and the completion rate was reduced.

Further discussions about a few specific countries and renowned international organizations will be done in subsequent subsections.

INDIAN ASPECT

Before delving into the legal complexities, it is pertinent to note Myron Weiner's study of the Child and the State in India: Child labour and Education in Comparative perspective. It is one of the most controversial yet influential interpretations. He said that with the prevailing conditions of child labour in India, also those in other parts, the key to eliminating it lies in firmly enforcing the policy of compulsory schooling. He believed that compulsory children's primary education is a policy which holds the potential to remove children from the workforce as it is easier to enforce than child labour laws.

Pre 1933

In the Indian statute book, child labour has been acknowledged since around 1881 as in the factories act 1881, the minimum age of employment was set at 7 years with 9 h of work. It even outlawed double employment of children in factories. In 1891, the age was increased to 9 years. In 1911, the act was made more protective towards child labour as it introduced 'prohibition in dangerous processes and certificate of fitness'. And the latter provision still survives in the form that a registered medical practitioner shall certify that such person has attained 14 years of age and has the physical-mental fitness to work.

In 1901, the mines act prohibited the employment of children under 12 years in any inherently dangerous mine. Mines of 20 ft in depth had strict restrictions on employing the children.

Thereafter, in 1922, ILO convention insisted on raising the minimum age to 15 years and working hours to a maximum of 6 h (with a break between 4 h). The 1929 Royal Commission on Labor under John Henry Whitley had created a significant impact on regulating child labour in other industries like textile, bidi making, ports, plantations etc. The result was that several legislations had incorporated prohibitions on employing child labour up to a certain age. Like, the Indian Ports Act 1931 had set the floorage limit as 12 years. Tea Districts Emigrant Labor Act, 1932 had set it as 16 years unless allowed by parents. Also, the mines act 1935 had raised it to 15 years; and for 15 to 17 years, a fitness certificate is required.

1933–1986

The Children (Pledging of Labor) act 1933 was the first legislative piece acknowledging the problem of child bondage. It was made to prohibit agreements which pledge child labour and their employment. It even attracted punishment for those who enter into such prohibited contracts. It still survives with the penalties of a minuscule amount i.e., Rs. 50 to 200.

Thereafter, in 1938, the Employment of Children Act was the first enactment which addressed child labour, which emerged from the third session of the International Labor Conference 1937, as it adopted a special article for India, recommending the prohibition of employment of children below 13 years. However, the act had set the minimum age limit as 15 years.

In 1950, the Indian Constitution was brought in which incorporated this principle in Art 24, which reads, "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." It is a part of Part III, i.e., the fundamental rights. There are other incidental provisions too which have been incorporated for the wholesome development of children, like Art 21A (introduced in the 2002 amendment). It was a result of the Unnikrishnan V. State of Andhra Pradesh [3] judgement in which the Supreme Court ruled that free education up to the age of 14 years is a fundamental right.

In 1944–46, the Labor Investigation Committee was set up which found that despite the Employment of Child Act of 1938, children were extensively employed in bidi making, carpet making, glass and other such industries, plantations. As per their data, children formed 20% of the workers in Assam, 20% in Bengal, and 10% in South India.

In 1948, the Factories Act 1948 came up with the prohibition of employment of children below 14 years and for 15 years or above, a certificate of fitness was to be provided.

Thereafter, in 1951, the plantations act introduced a prohibition for children below 12 years. For 12 to 18 years, a certificate of fitness was required to be produced.

Mines act 1952, read with Apprentices act 1961, has categorically established an absolute prohibition on children below 16 years and for 16 years and above, children can be appointed as apprentices.

Similarly, the Motor Transport Workers Act 1961 prohibited employment below 15 years in any capacity.

Another recognized industry which employs child labour is the beedi making factories, which in the 1966 Beedi and Cigar Workers (Working Conditions Employment) Act prohibited employment of children below 14 years. For 14 to 18 years, it is restricted from 6 am to 7 pm. However, a significant exception in this context is self-employed persons in private houses.

1986 Onwards

In 1979, the Gurupadaswamy committee on child labour reported the status and child labour and remarked that there have been flagrant violations of the law due to the meagre penalties imposed. It recommended the adoption of uniform laws. In 1986, the Sanat Mehta committee was set up which reiterated the recommendation of the Gurupadaswamy committee.

Thereafter, the Child Labor (Prohibition and Regulation) Act 1986 (hereinafter written as CLPRA) was brought in which prohibited the employment of children as per the list and schedules are attached therein. It even provided an exception where the children are permitted to work i.e., in any workshop where the process is carried out by his family members. It has been criticized severely. A Child Labour Technical Advisory Committee was also set up which had the task to suggest work fields in the prohibitory list and the list grew from 5 to 57 in 1999.

In 1988, the National Child Labor Project was initiated as a part of a larger plan which strengthened other existing plans. It provided education through special schools and conducted several surveys and inspections. It even setups camps for vocational training, regular health checkup, supplementary nutrition etc.

In 1992, India ratified the UN Convention on the Rights of Child with a declaration that it would not be practically possible for India to prescribe a minimum age for every sector of employment. Perhaps this reason can be attributed to India not signing the ILO conventions 138 and 182 i.e., on the worst forms of child labour.

Another aspect which was still left unaddressed is the domestic help, where children were still employed. In 1997 and 1999, the National Human Rights Commission urged the central as well as state government employees to not appoint children below 14 years in domestic help. In 2006, this ban reached the list of CLPRA. It penned down the prohibition inclusive of Dhabas, restaurants, motels, tea shops, resorts, spas etc.

In 2003, the government of India adopted a National Charter for Children which includes a clause aiming protection of children from exploitation and performing hazardous task which prejudices their health. In 2005, the Protection of Child Rights act was formulated which invoked the principles of the UN Charter CRC. The act came into effect in 2006 and a commission was set up along with Shantha Sinha as its chairperson.

2007–2012 five-year plan focused on the children's welfare. It aimed to ensure that children do not live a life of despair and that they get adequate social security which will ease their struggle in adverse circumstances. Along with this, it even focused on the welfare and wholesome development of women too.

Thereafter in 2016, an amendment was brought in the CLPRA which suggested various improvements.

INTERNATIONAL ASPECT

United States

The history of Child Labor in America is long and unprincipled. It even dates back to the founding days of the United States. However, it became a legislative issue only in 1906. At that time the proposal for the legislation was not adopted, however, it stirred discussion and extensive research was conducted. Efforts to set standards for child labour were started very late. Broadly, the struggle can be divided into four phases and they are:

- From the late 19th century to 1941: In this time, only efforts were to remove the child workers from the workplace and encourage them to attend school.
- With World War II, the focus shifted to a labour shortage in war items production.
- During the late 1940s when older young adults were unable to find employment, they were unprepared for training.
- Roughly in the late 1980s, where child labour has almost disappeared from the policy and the issue was seen as history.

Whether they were in farms or workshops, owners also preferred to have children on board as they were more manageable, and cheaper. It was in the early decades of the 20th century when child labour was at its peak. However, soon after that, reform movements grew and there was a decline in the number. There were some organizations which led to National Child Labor Committee in 1904 and aimed at challenging child labour along with some other committees. It worked to provide free compulsory education and culminated in the fair labour standards act 1938.

The series of landmark events are chronologically arranged here:

1. 1832: New England Association of farmers, mechanics and other workingmen resolve that children should not be in factories from morning till night as it restricts their healthy recreation and mental growth, rather it prejudices their well-being.
2. 1836: National Trade Union Convention publicly proposed a minimum wage in the factory.
3. 1836: Massachusetts made the first child labour law which required that under 15 years, children should be attending schools at least 3 months a year.
4. 1842: Massachusetts limited the children working days to 10 h and other states also passed similar laws but most of them were not consistently implemented.

5. 1876: Labor movement now demanded minimum wages and the working men's party demanded a complete ban on the employment of children below 14 years.
6. 1881: the American Federation of Labor passes a resolution banning children below 14 years from all gainful employment.
7. 1883: the New York labour movement, led by Samuel Gompers sponsored legislation which prohibited children in the cigar-making industry.
8. 1892: Democratic Party adopts the recommendation of several unions to ban factory employment for children under 15 years.
9. 1904: National Child Labor Committee was formed and the child labour law reform began.
10. 1916: first federal child labour law prohibited movements of such goods across state borders if they violated the minimum age laws.
11. 1936: Walsh Healey Act passed which stated that the US government will not purchase any goods which are made by underage children.
12. 1937: Congress attempted to amend the laws and gave the federal government the power to regulate the child labour laws, but many states did not ratify it.
13. 1937: Sugar Act made and it said that sugar beet growers would be ineligible for payments if they violate the minimum age and hours of work.
14. 1938: Federal regulation i.e., the Fair Labor Standards Act was passed. This is the first act which had set a minimum age, and hours of work for the children. It even prohibits under 14 years children from working in most industries and restricts their hours of work to 3 h on school days (until they attain 16 years). In the case of hazardous works, the prohibition extends to 18 years. However, these protections were not extended to the agrarian workers, though they deserved the same protection. As per the department of labour and an estimate by the Association of Farmworker Opportunity Programs, there were approximately 5,00,000 child farmworkers in the US [4]. They started working as early as 8 years and their working hour extended to even more than 10 h/day. The children in agrarian works are continuously exposed to pesticides and other chemicals which increase their risk of cancer and other life-threatening diseases. As per the report by Government Accountability Office, 1,00,000 children farm workers get injured and this number accounts for 20% of the farming families [5].

HOW IS IT AFFECTING THE INDIAN ECONOMY?

As per the Walsh Healey act 1936, the US is not allowed to trade in such goods which are made by underage children. Several instances of this happened in India, a few years back. In 2011, there was a dispute with apparel brands as the US was about to snap ties with Indian industries if India failed to convince the US that no underage children are working in the textile factory. The previous year, the US had blacklisted India and fear existed that the brands like Reebok and Nike (who vouch for the social compliances) might shift their units away from India. Even a survey was being conducted by Northern India Textile Research to review the textile industries and it found that in one unit, four child workers were working and a few more in zari units.

Again in 2012, a similar issue arose and India was blacklisted. A labour department official remarked that though the US blacklisting countries does not lead to any action, it damages the image of the country and affects the buying choices. It was decided that the ministry of external affairs would discuss this with the US government to make a point that over several years, different programs have been introduced to tackle the inhumane practice. This was the 4th year when the US blacklisted India. The programs like National Child Labor Project work towards the elimination of child labour and rehabilitating them.

As per the US Labor Department report, areas like Mirzapur, Bhadoi, Aligarh, Sivakasi, Firozabad Delhi NCR etc. have child labour in significant numbers.

Then again in 2016 [6], US labour department had threatened to put India on that list which uses child labour for production. This matter arose in the context of the handcrafted carpet. This started in

1999, when the US executive ordered to make a list of 'Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor' which wanted to ensure that the US does not end up procuring goods made by child labour. While reviewing the industries, the US had found that in textile industries, children are exposed to dye and toxic chemicals which prejudice their health. Some are even threatened, punished, and deprived of food, and safety.

Though there is no prosecution against India by the US regarding this child labour employment, still it affects India's economy as well as the social image it holds in the international forum. The US is one of the greatest importers of Indian products, if cut ties with India, it would have severely affected the Indian economy. Moreover, getting on the black list and receiving threats from a superpower country affects the social ties India holds with other countries. Several brands might refuse to invest and trade in India, this, in turn, would prove fatal to the Indian economy in long run.

UNITED KINGDOM

There is very little information available about child labour status in the UK. With the government releases in 2019 and 2020, partial information can be acquired which will help us know the trend existing there.

Modern-day slavery is increasing there and as per the latest 2022 figures (released by Home Office), there are 7,779 modern slavery crimes in the UK and this is a 59% increase from the previous year. In 2018, there have been 6,986 cases who were referred to UK National Referral Mechanism and this number soared to 10,627 in 2019. A larger proportion of this is children (around 43%).

When it comes to modern slavery in UK, children account for a greater percentage and they are being exploited predominantly (consisting of around 63% of the referral cases). In cases of sexual exploitation, there is a prevalence rate of approximately 20%. There are several other practices which are not contained in the official information like child begging, and drug selling (by travelling in the county lines). Amidst all these, their physical and mental well-being is risked. As per the National Referral mechanism, children are more likely to get affected than adults in cases of forced child labour. In 2018, out of 1868 cases of forced labour, 1333 are of children i.e., around 71%. The age group affected is 16–17 years [7]. A scheme was introduced called Independent Child Trafficking Guardians to support the victims and focus on relationship building, safety and social care.

There is a stark difference in gender affected by forced labour. Males are more vulnerable to child exploitation. Even the data reveals it. In 2019, 72% of cases (2248) were males and just 28% were (880) females. Moreover, the number of referrals as compared to the total cases has been low in males than in females.

This matter is also of grave concern and needs to be addressed.

EUROPEAN UNION

Before moving on to the legal intricacies of the EU in tackling child labour, it is highly appurtenant to mention that it had marked 2021 as the year for the elimination of child labour. Despite all the development made, there are still millions of children trapped in the net of exploitation. Millions are at the risk of falling into child labour due to the pandemic. It has adopted a zero-tolerance approach against child labour. It is a concrete strategy to effectively stop the supply of child labour and inspect the existing laws on child labour. The EU strategy on combatting trafficking in human beings from 2021-to 2025 is also playing an immense role in tackling child labour as they are also the victims of trafficking. EU is said to work on not just elimination of the child labour but also on overall development like providing human rights, aiding with social policies etc. It even promises to ensure education. Along with withdrawing child labour, it also focuses on tackling inequalities, poverty and social exclusion.

One of its successful projects is the Project Cotton, in which the EU had assisted in eliminating child labour in cotton, textile and garment industries. Through this project, the EU has rescued 4000 children

in Burkina Faso and Mali. It not just rescued them, but also reintegrated them into mainstream education. It is vital to assist them to live their life up to their full potential.

EU even has a council directive on the protection of the young people at work dated 22nd June 1994.

It consists of 18 articles, starting with the directive that member states shall take all the necessary steps as they deem fit for the elimination of child labour. It adds that the minimum age set by states shall not be less than 15 years at any event. Employers are to ensure that there is no economic exploitation, and no jeopardize to the physical mental or moral health [8].

This directive will not affect the domestic help in a private household or in cases of such works which is regarded as not harmful or dangerous [9].

Art 5 provides an exclusionary clause whereby children can be employed for the cultural, artistic or sports performances with prior authorization of the procedure. While gathering authorization, the safety of the children and their school group attendances has to be addressed [10].

Art 6 lays down some general guidelines for the employer which should be taken for the safety and health of the young people. The employer is to assess the nature, degree and duration of exposure of a child to the harmful chemicals or fumes; the machines, apparatus or devices with the way they shall be handled. After the assessment, if it is found that there is any risk to their safety, then regular monitoring of health shall be done.

Moreover, the employer shall prohibit the young people in case the work is beyond their capacity or there is harmful exposure to any agent which can lead to chronic disease or if there is a risk of accident, radiation identified. It further directs the state to prepare a list where to such derogations are inevitable for the training of adolescents. Thereafter, it shall be ensured that the works done are now under the supervision of any competent party. The annexe to the directive pens down several chemicals, and biological and physical agents which are harmful to young people if they deal with them. It even provides for nine categories of processes and works which shall be prohibited [11].

The working time is fixed till 8 h/day or 40 h/week for works under a training scheme [12].

It is 2 h on school days and 12 hours a week if performed after school and such work is not prohibited by the state [13].

The time may rise to 7 h/day and 35 h/week when schools are off and this may rise to 40 h if the child is 15 years [14].

There have been cases where the children are working under several employers and the working hours in such cases will be cumulatively counted.

Night work i.e., 8 pm to 6 am for children and 10 pm to 6 am or 11 pm to 6 am for adolescents is prohibited. However, the member states are allowed to authorize the adolescents for night work, provided that adequate safety is provided and that they have suitable time for rest. Though the member states are permitted to authorize night work, there is a time prohibition of midnight till 4 am, during which no work can be done [15]. Along with these, a minimum of consecutive 14 h of rest is a must for children and 12 h for adolescents. Weekly 2 days leave, if possible, consecutively (one Sunday). In case of technical reasons, the minimum rest period can be reduced [16].

It even adds that in a few cases, the leave provisions can be derogated and such cases are:

1. Shipping or fisheries;

2. Armed forces and police;
3. Hospitals;
4. Agriculture; and
5. Tourism, hotel, café, etc.

In case the daily working hour is more than 4½ h, then the young people are entitled to a break of at least 30 min [17].

Art 13 provides for such situations where there is a derogation of leave, working hours or night work; in such cases, state may authorize it, if it is temporary and the nature of work is such that there cannot be any delay [18]. However, if derogations are not justified, then the state shall impose measures to implement them [19].

INTERNATIONAL LABOUR ORGANISATION

International Labor Organization remarks on child labour as a violation of fundamental human rights and acts as a hindrance in children's holistic development. There exists a vicious circle of poverty and child labour. The latest estimate says that there are 160 million children in child labour globally at the beginning of 2020. It is even found that 8.9 million more children would get into this forced labour by the end of 2022, due to the pandemic [20].

There are two principal conventions by ILO on dealing with child labour; and they are the ILO Minimum age for admission to employment convention and the ILO worst forms of child labour convention. The former prescribes the minimum age and it shall not be less than 15 years at any work. However, if there is any insufficiency in educational facilities then after consultation with the employer, it can be reduced to 14 years.

If the employment is of such nature that it will jeopardize the health, and safety of children, then in such workplaces, the minimum age shall not be more than 18 years [21].

As per Art 6, the provisions would not apply to children working in schools as a part of vocational training or technical education etc.

The worst forms of child labour convention, 1999 contains 16 articles in total. A child under this convention is an individual below 18 years of age and the worst forms of child labour include [22]:

- Slavery in all forms;
- Forced labour or bondage;
- Child prostitution;
- Child pornography;
- Involving in international drug trafficking;
- Or any such work which harms the morals of the children.

Art 5 and 6 recommend a consultation with the employer and devising a mechanism to deal with it. Whatever steps are taken, they should aim at [23]:

- Preventing the worst forms of child labour;
- Providing necessary assistance for withdrawal of children;
- Free basic education, rehabilitation; and
- Accessible help in cases of emergency.

India has ratified both these conventions, i.e., six out of eight core conventions have been ratified. The ones which have not been ratified are Freedom of association and protection of the right to Organize. India ratifying these conventions is a big step in itself and now India needs to focus more on domestic laws which will lead to compliance with the international conventions.

INDIAN ASPECT

Indian Constitution

Indian Constitution has incorporated a few provisions which ensure the protection of children from economic exploitation and working in a hazardous situation which is derogatory to their health. The direct provision for this is Art 24 [24]; however, there are some more incidental articles penned hereinafter:

- *Art 21A [25]*: provides that the state shall provide free and compulsory education to all the children in the age group of 6 to 14 years in such a manner as will be determined by the law. This has been incorporated in relation to the directive principle of Art 45 which urges the state to provide early childhood care and education (from 6 to 14 years). Art 21 A was inserted by the 86th Constitutional Amendment Act 2002 [26] which promulgated the following provisions:
 - Initiation of right to full-time elementary education in a formal school which fulfils essential norms and standards.
 - Insertion of Art 51A (k) [27] which mandates the parents to furnish their wards, between 6 and 14 years, with the opportunity of education.

In *Unnikrishnan, JP v. State of Andhra Pradesh* [28], Supreme Court had derived the right to education from Art 21. It formed a relation between the fundamental rights and directive principles of state policy.

- *Art 24*: prohibits employment of children, below 14 years, in any factory or mine or hazardous employment. The term 'hazardous employment' has not been defined anywhere; hence doubts have arisen as to what all things are included. In *Asiad work case* [29], the court interpreted the term and held that the employment of children in construction work would be hit by Art 24. It even added that the omission of 'construction work' in the list of the 1986 Act is a deplorable event. It urged the state government to rectify it. The term prohibition in hazardous work implies that children can be permitted to work in a non-hazardous situation. Several enactments had amended its provisions to bring it in compliance with the constitution, like the mines act 1952 had prohibited employment below 18 years. The factories act had set the minimum age limit as 14 years.
- *Art 39 (e) [30]*: is focused on the health and strength of workers and ensured the protection of children from abuse at the workplace due to economic necessity. This article provides for a holistic approach towards children i.e., focusing on their health and strength, rather than limiting itself to only prohibition at work. In *Bandhua Mukti Morcha v. UOI* [31], the apex court has linked Art 24 with Art 39 (e) and said that it is incumbent upon the state to provide facilities and opportunities related to Art 39 (e).

Realizing the gravity of the problem, the government has embarked on a holistic and multi-pronged approach to eliminate this bestial practice. In pursuance of this, CLPRA was promulgated, thereafter the policies were introduced. Such policies and CLPRA have been deliberated upon hereinafter.

Child Labour (Prohibition and Regulation) Act, 1986 (Prior Amendment)

This act is a result of several commission reports like the National Commission on Labour 1969; The Gurupadaswamy Committee 1976; and Sanat Mehta Committee 1948. The legislative intent behind passing this act is not to altogether abolish child labour, but rather to regulate it as the name of the act itself suggests. It repealed The Employment of Children Act, 1938 [32]. The relevant provisions of this act are listed below:

- *Definition of child [33]*: one who has not completed 14 years of age.
- *S.3 [34]*: prohibition on employment of children in any workplace as mentioned in Part A & B of the schedule (it contains 18 occupations and 65 processes). However, this provision will have no application if the occupier is aided by the child's family i.e., father, mother, brother, sister.

- Child Labour Technical Advisory Committee to be set up under the notification of the central government to add to the list in schedules. It shall consist of a chairman and other members as appointed. It may even appoint sub-committees [35].
- Part III regulates the establishments which were not mentioned in sec 3 or the schedule.
- Sec 7 provides for the working hours and it says, the working hours shall not exceed the prescribed limits. Moreover, the children should not be made to work for more than 3 h at stretch until and unless they have a break of 1 h. The total spread over shall not be more than 6 h, including the work period [36].
- There shall not be any concept for overtime for children and no work between 7 pm and 8 am [37].
- There shall be one weekly holiday and such day shall be put on notice at any conspicuous place. It shall not be amended more than once in 3 months.
- As per sec 9 [38], a notice has to be sent to the inspector (within 30 days) concerning the child labourers who were working immediately before the implementation of this act. A notice has to be sent even if the child labour persists to work after this act.
- In case there is any dispute as to whether an individual is a child i.e., dispute as to age, it shall be referred by the inspector to the medical authority (if there exists no certificate) [39].
- A register shall be maintained by every occupier containing the details of the children working, like name, date of birth, hours of work, and nature of his work [40].
- Health and safety shall be addressed in the official gazette by the appropriate government. However, a few basic matters shall not be prejudiced like waste disposal, ventilation, drinking water, latrine, urinals, dust, fumes, fencing, the safety of buildings, and precaution in cases of fire [41].
- Section 14 [42] provides for penal provision in case of infringement of the act. In case sec 3 is violated, then there shall be imprisonment of 3 months to 1 year or a fine of Rs. 10,000 to 20,000 or even both [43].
- For a subsequent conviction, the term of imprisonment increases to 2 years [44].
- In case of contravention of any provision made under the act like failure to give notice or maintain a register, there shall be imprisonment of 1 month or a fine of up to Rs. 10,000 or even both [45].
- Schedule to this act lists down 18 occupations (like transport of passengers, goods by railways; in any port; slaughterhouses; mines; diving; circus; garages; fibreglass workshops; caring of elephants; in the handling of toxic materials; in construction relating to railways or in the proximity of railway lines) and 65 processes (warehousing; beverage industry; food processing; zari making; stone breaking; stone crushing; sawmill, potteries; ceramic; utensil making polishing; oil refinery; diamond cutting; rag picking; scavenging; manufacturing of burning coal; lock making; gem cutting polishing; detergent manufacturing; brick kilns etc.) where employment of children is prohibited.

Critical analysis of the act: Though the act solely aims at regulating or eliminating child labour, it has some shortcomings. This act contains no provision for rehabilitation of the rescued children. It merely punishes the employer and is uncomfortably silent about the after effect on the children. Moreover, the act fails to define hazardous employment and lists down several occupations or processes where employment of children is not allowed, though the list is not exhaustive. Giving a definition would have made it easier to determine what kind of activities can be counted in the scope of hazardous activity.

Most of the provisions are regulating working hours, leaves, and weekly holidays.

The inspector is responsible for finding out child labourers and withdrawing them from the workplace. But, the number of child labourers is huge in comparison to the inspectors. Hence for the simple reason of non-implementation of the statute, child labour still prevails in India. Even if any case is reported and reaches the court, it is due to the lack of proper age proof, that the prosecution fails.

The exclusion of domestic help workers or unorganized workers from the ambit of the act leads to an increase in the scope of the exploitation of child workers. There are many unorganized sectors where children are employed as a house help. These small scale units have remained unaddressed.

Moreover, the other exclusionary clause is the family members as the employer. This means that in case the employer is family, then the prohibition will be inapplicable and children below 14 years can work too.

National Child Labor Project

National Child labour Project Scheme i.e., NCLP is a government initiative scheme in 1988 aiming to rehabilitate child workers (in hazardous occupations or processes) in endemic districts.

The Table 1 pens down the number of districts covered in several states.

Firstly, a survey was conducted of such child labourers who were to be rescued and then to be put into special schools to enable them to attune into the mainstream formal education system. The special schools, also called rehabilitation centres provided vocational training, mid-day meal, a stipend of Rs. 150/month, and health care facilities through the doctors.

The target groups have been divided into two classes i.e., age groups of 5–8 and 9–14 years.

This project is implemented through a registered society under the chairmanship of any administrative body like a district, magistrate, or collector. Members of such society can be from concerned government departments or their representatives like Panchayati Raj, or even from Trade Unions, or NGOs.

Table 1. Data of children mainstreamed till 2015.

State	Number of children mainstreamed
Andhra Pradesh	2,85,285
Assam	4,186
Bihar	40,800
Chhattisgarh	18,461
Gujarat	5,640
Haryana	5,706
J&K	233
Jharkhand	21,720
Karnataka	18,127
Madhya Pradesh	59,899
Odisha	1,08,309
Punjab	4,034
Rajasthan	33,546
Tamil Nadu	98,880
Uttar Pradesh	1,34,377
West Bengal	30,649
Maharashtra	21,720
Grand Total	8,95,529

The funds are sanctioned by the Central government department of labour and employment. Funds are released depending upon the project activities and directly provided to the district project societies who in turn allocate funds to those running the schemes. The Table 1 denotes the data of children mainstreamed till 2015 since its inception [46].

NCLP has a dedicated online portal named PENCiL i.e., Platform Effective Enforcement for No Child Labor). It was developed for better monitoring or enforcement.

The Table 2 presents the data on funds received [47].

Table 2. Data on funds received.

States	2018–19 (Rs in million)
Andhra Pradesh	309.46
Assam	1109.45
Gujarat	99.41
Haryana	234.66
Jammu & Kashmir	56.14
Karnataka	184.23
Madhya Pradesh	514.34
Maharashtra	106.19
Odisha	138.62
Punjab	256.88
Rajasthan	319.46
Tamil Nadu	878.53
Telangana	204.56
Uttar Pradesh	1420.72
West Bengal	1896.90

Outcomes as expected from the program:

- Identification of child labour.
- Withdrawal of child labour, including adolescent labour from the target areas.
- Mainstreaming the children into either regular schools or special schools.
- Providing the competent adolescents with legally permissible occupation.
- Better information spread to the targeted communities.
- Enhanced capacity to train the children.

12th 5-Year Plan (2012–2017)

The vision of the 12th five-year plan (2012–2017) is growth based i.e., growth which is:

- Faster,
- Inclusive, and
- Sustainable.

It had several other targets like real GDP growth at 8%, and manufacturing growth at 10%. Along with this, it focused on child labour and found that children below 18 years embodies more than 40% of India's population. Though India has been working on the child development indicators, still it has failed when compared to other developing countries. It had produced some relevant facts:

- India is home to the largest number of malnourished children in the world.
- 1.8 million deaths among below 5 years old children; 68,000 deaths among mothers and 52 million stunted children.

Keeping in mind these facts, the child budget has been categorized into four sectors [48]:

- Child development (18.6%);
- Child health (3.6%);

- Child education (76.4%); and
- Child protection (1.3%).

It even allocated budgets for the schemes like Integrated Child Development Scheme (block-wise) and Integrated Child Protection Scheme (an estimate of 91.92 crores in 2010–2011).

Kailash Satyarthi on Child Labor

Kailash Satyarthi, 2014 Nobel Peace Prize Winner is renowned figure when it comes to resolving the menace of child labour. He has always been in the forefront for the fight against child labour. He founded the Bachpan Bachao Andolan (Save the Childhood Movement), which worked and successfully liberated more than 85,000 children from bondage. Not only such children were liberated but also, they were rehabilitated. The instance which moved him was on the 1st day of his schooling where he saw a boy of his age was sitting outside the school with shoe shining utilities. When he asked his teacher about it, he was said that the child was poor, hence could not afford to study at school. Thereafter, he started writing leaflets to bring the issue to the public domain and after a lot of struggle, the 1986 act was promulgated. He even discovered that none of the International Organizations like UNICEF, ILO has any legal instrument which addresses this menace. After a lot of struggle and campaigns, the 1st ILO legislation was introduced as International Program on the Elimination of Child Labor 1992.

In 1993, he launched a march in India under the Bachpan Bachao Andolan. 5 years later, i.e., in 1998, he launched a global march of 80,000 km across 103 countries and it lasted for 6 months. The crowning achievement was the promulgation of International Program of the Elimination of Child Labor.

In 2017 September, another march was launched which advocated for ending sexual abuse. It was termed as Bharat Yatra, a nationwide mobilization which covered 11,000 km.

In this way, he has also had a hand in the elimination of child labour.

CONTEMPORARY SCENARIO

2016 Child Labour Act, 1986 Amendment

The amendment act 2016 received the assent of the President on 29th July 2016. Several changes have been made and a few significant ones have been chronicled below. This act was introduced to bring the existing law in line with the Right to Free and Compulsory Education Act 2009. It worked towards introducing stricter punishments. Prima facie, it looks like it is in favour of the children, however, a closer analysis might reveal a different story. The significant amendments have been listed out:

- The long title has been amended and unlike earlier, now it prohibits employment of children in all kinds of employment and for adolescents, it is in hazardous occupation or incidentals. Moreover, the name of the enactment is also altered and now it is called the Child and Adolescent (Prohibition and Regulation) Act 1986.
- Thereafter, the definition of 'adolescent workers' has been included and for this act, anyone who has completed the age of 14 years but has not yet reached 18 years is an adolescent.
- Even the definition of a child was also amended, now it even relates to the Right of Children to Free and Compulsory Education 2009 and states that whichever is more shall be considered.
- Earlier section 3 plainly stated that no children shall be employed in such occupations as were mentioned in Part A of Schedule or any process as mentioned in Part B of Schedule. The provisional clause provided that in case the employer is any family, then this prohibition would not apply. Now the new provision does not even relate to the schedule.
- In the present enactment, the scope of the family has been widened and now along with father, mother, brother, and sister, it even includes father's sister, father's brother, mother's sister, and mother's brother. Hence in these areas, the provisions of the act would not apply which would swell up the chance of exploitation.

- Presently, the prohibition clauses do not apply to a wider range of activities like the audio-visual industry, advertisements, serials, sports etc.
- Section 3A [49] has been inserted which restricts the adolescents from employment in hazardous work as mentioned in the schedule.
- In several places, like in sections 6, 7, 8, 9, 10 and section 11 [50], the term 'child' is substituted with 'adolescent'.
- Section 14 [51] i.e., the penal section, earlier imposed imprisonment of 3 months to 1 year and a fine of Rs. 10,000 to 20,000. Now, this has increased from 6 months to 2 years, and fine of Rs. 20,000 to 50,000.
- As earlier there was no separate provision for adolescents, there was no penal provision in relation to it. Now, it provides for imprisonment of up to 2 years and a fine of not less than Rs. 20,000 to 50,000.
- The amendment act 2016 provides for punishment to parents who permit the usage of their children for commercial purposes (if worked in derogation with sec 3, sec 3A).
- For subsequent convictions, now imprisonment is up to 3 years, which was earlier only 2 years.
- Insertion of Section 14A, 14B, 14C, 14D. 14A & D [52] provides for procedures to be carried out under CrPC. Sec 14 B calls for a rehabilitation fund i.e., the fine from the employer. Sec 14 C talks about the rehabilitation of such a child or adolescent who has been working.
- Insertion of sec 17 A and 17B [53], which provides power to the district magistrate to carry out the investigations and make periodic investigations of such places where child labour is prohibited.
- Sec 18 provides for the safety conditions and measures as well as a committee (now named as Child Labor Technical Advisory Committee).

Contemporary Labor Codes and Child Labor

Earlier there were 44 central legislations, each governing a different aspect of the labour law. However, 29 of them have now been amalgamated to constitute 4 codes. This is done to overcome the cumbersome procedure laid down in separate enactments. It created confusion for the investors; hence, they avoided trading in India. Moreover, some terms were defined in different legislations in different ways, which created a mishmash, hence most of the time, the workers were not able to acquire the statutory benefit. In short, this amalgamation would simplify the understanding of labour laws.

The four codes are Code on Wages, Industrial Relations Code, Social Security Code, and Occupational Health and Safety Code. It is only the occupational safety and health code which contains any direct provision for regulating child labour.

OSH Code

Chapter XI, Part IV, section 70 talks about the minimum age requirement for employment in mines. It pens that no individual below 18 years of age shall be employed to work in the mine. However, it carves out an exception that for purposes of work as apprentices or trainees, individuals of 16 to 18 years may be allowed to work, only with the permission of the manager. In the case of trainees (other than the apprentices), prior permission of Inspector cum facilitator or chief inspector cum facilitator is required.

Reading Sec 70 with 68 might give us a different picture altogether. As per sec 68, no provision of the OSH code, except for a few as mentioned therein (Section(s) 35, 38, 40, 41, and 44), shall apply to two specific kinds of mines and they are:

1. Where mining is done not for commercial purposes like obtaining minerals. The depth shall not be more than 6 m for general mines and 15 m for coals. The number of workers shall not be more than 20 workers.
2. Any mine engaged in the extraction of kankar, gravel, laterite, kaolin clay, China clay, building stone etc.

As per sec 68, along with sec 70 suggests that even the age restriction on employment of mines is inapplicable in the aforementioned types of mine i.e., below 16 years can also be employed in such mines.

Hence, the provision which prima facie looked as if it complied with the CLPRA, now stands different. One of the possible reasons for the existence of this provision is that these kinds of mines are perhaps presumed to be non-hazardous.

Code on Wages, sec 19(5) provides that no fines can be levied on individuals below 15 years of age. However, its relevance is difficult to comprehend as it has nothing mentioned about age restriction from employment. A general reading of it would suggest that individuals below 15 years can be employed in any industry, but, reading it with sec 3, CLPRA would mean that employment in hazardous industries is restricted.

The Social Security code talks about age restriction in the context of benefits to gig workers or platform workers. Sec 113 of the act says that gig workers will be eligible for registration and other benefits only if he has completed 16 years of age or as prescribed by the central government. This provision puts an indirect restriction on underage employment by curtailing their access to benefits.

These are the current provisions which deal with several aspects of labour laws including child labour (though it has not been adequately addressed).

IS CHILD LABOUR ALLOWED IN ANY FIELD?

This sub-heading may appear unconventional since the paper has primarily focused on the protection of children from forced labour and economic exploitation. The point worth noting here is that no legislation or enactment prohibits children from employment absolutely. To start with, the supreme law i.e., Indian Constitution, Art 24 mentions that no children below 14 years shall be employed in hazardous industries. Though the term hazardous industry holds wide connotation, it can be presumed that the list includes such industries where there is an anticipation of bodily injury, like mines, factories of different kinds, building and construction industry, carpet weaving, bidi making, electroplating, in handling toxic substances etc.

Hence a closer look at the provisions reveals that there is no absolute ban, moreover, the Child Labor (Regulation and Prohibition) Act 1986 also provides for a ban on child labour but not an absolute ban. Before the 2016 act, Section 3 of the act says that employment of children is prohibited only in those areas of work which are listed in parts A and B of the schedule. Before the 2016 amendment, there were 18 items in Part A and 65 processes in Part B, employment in which is prohibited. Some of the prohibited occupations or processes are:

- Automobile industry, garage.
- Handling of inflammable objects or toxic substances.
- Circus.
- Caring for animals.
- Mines.
- Collieries.
- Slaughterhouses.
- Any port.
- Bidi making.
- Cement manufacturing.
- Carpet weaving.
- Mica cutting.
- Manufacture of explosives.
- Tanning.
- Building and construction industry works.

- Brick kilns.
- Hazardous processes as defined in factories act.
- Detergent making.
- Lock making.
- Limekilns.
- Gem polishing.
- Manufacture of dyes.
- Stone breaking, crushing.
- Tyre making.
- Zari making.
- Tobacco making.
- Glazing of metals.
- Mechanized fishing etc.

The list was long, however, with the 2016 amendment, it has been severely restricted in the context of adolescents (Sec 3A) and the schedule now has only three areas of work:

- Mines,
- Inflammable objects, and
- Hazardous process.

This means that only in these three areas adolescents will be prohibited to work. Moreover, the broad term 'hazardous process' would lead to a lot of controversy as to what would be hazardous and what would not be. This leaves a lot of space for exploitation of the adolescents, however, with the amendment, children have been made safer as there is now an absolute ban on the employment of children.

Another limitation is that if the employer is a family member, (father, mother, sister, brother, father's sister or brother, mother's sister or brother) then such employment would not be counted as child labour. This has been widened with the amendment as it dilated the realm of a family by adding to the list four more relations.

Furthermore, sec 3. (2)(b) [54] of the newly amended provision brings forth another realm for exploitation of child labour and it is in the audio-visual entertainment industry which includes advertisements, films, television serials or any entertainment, but not circus which jeopardizes the safety. This implies that the restriction will not be applicable to workplaces where family members serve as employers, with the exception of the audiovisual entertainment industry, excluding circuses. Also, the restriction of adolescents has now been limited only to the three fields of schedule.

Hence from this discussion, it can be concluded that there are still certain sectors where child labour is not prohibited and there exists a reasonable scope for the exploitation of adolescent workers.

CONCLUSION

'Child Labors', the combination of these two terms itself is hurtful enough. Childhood is believed to be that phase of life where an individual enjoys, studies, plays and has fun. However, this may not be the reality for every child across the world. Some children are burdened with responsibilities and they are sent to earn bread for their families. At the age when they are supposed to carry school bags, they carry gunny bags filled with a rag or even heavier items (like metals) just to earn an amount which would feed them once a day. This is how the heart-rending life of a child can be. It is not a new story to tell, this exists for ages. However, it has received adequate attention in the last few decades. Several enactments in India as well as in several other countries have been formulated to address this issue.

International organizations like the UN, EU and ILO have promulgated several directives to eliminate this sadistic practice.

In India, it was in 1933 that for the first time, a regulation was brought in that directly talked about child labour and bondage. Thereafter several other acts came in and the noteworthy among them is CLRPA, 1986. It partially restricts the employment of children as well as adolescents (after the 2016 amendment). Though in the amendment there remains scope for the employment of adolescents as well as children. There are government initiatives too like NCLP (National Child Labour Project), the 12th five-year plan (2012–17).

Looking into the international aspect, this study delved into US, UK and EU laws. Not much information is available about the UK, however about the US, there has been a chronological development of legislation. Be it international organizations or other states are taking steps to curb this menace, and it is due season that we address it and we stamp out child labour in all forms.

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