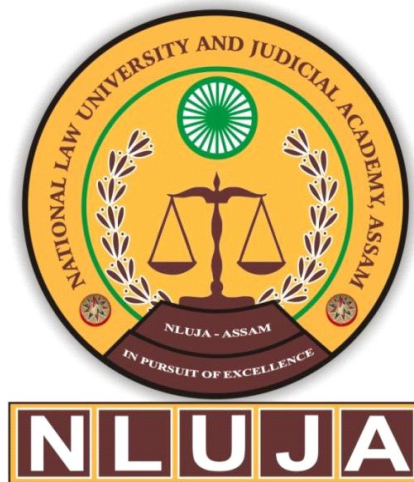


**COMBATING CHILD LABOUR IN INDIA: AN ANALYSIS OF
THE CONSTITUTIONAL AND STATUTORY MECHANISMS**



Dissertation submitted to National Law University and Judicial Academy, Assam
in partial fulfilment for award of the degree of
MASTER OF LAWS

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SUPERVISOR CERTIFICATE

It is to certify that Mr. BIKASH SEN DEKA is pursuing Master of Laws (LL.M.) from National Law University and Judicial Academy, Assam and has completed his dissertation titled “COMBATING CHILD LABOUR IN INDIA: AN ANALYSIS OF THE CONSTITUTIONAL AND STATUTORY MECHANISMS” under my supervision. The research work is found to be original and suitable for submission.

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DECLARATION

I, BIKASH SEN DEKA, pursuing Master of Laws (LL.M.) from National Law University and Judicial Academy, Assam, do hereby declare that the present dissertation titled “COMBATING CHILD LABOUR IN INDIA: AN ANALYSIS OF THE CONSTITUTIONAL AND STATUTORY MECHANISMS” is an original research work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise, to the best of my knowledge.

Date: 25.06.2019

BIKASH SEN DEKA

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PREFACE

We often come across situations where we are able to witness children working as domestic help, maids, servants, employees and workers at homes, tea stalls, hotels, shops, small scale establishments, etc. Although, we are well aware of the immorality of employing children, we usually don't bother to raise our voices against such practices in those circumstances and ordinarily leave the matter for the State to handle. From the legal standpoint, such practices are unlawful and discriminatory. Child labour is still prevalent in the society even though it is constitutionally prohibited and statutorily restricted and controlled in our country.

Labour laws being an interesting subject of law and child labour being a thought-provoking area of study, I was motivated to take child labour prevention as my dissertation topic and conduct my research on it. However, any research on child labour is vast and limitless. The topic can be studied from the perspective of the society, politics, economics, geography, law, etc. Nonetheless, I have attempted to present the topic by limiting my scope to the laws on child labour prevention. I have covered most of the relevant municipal and international laws on child labour. My research primarily concentrates upon the constitutional, statutory and international legal aspects of child labour prevention. My endeavour has been to present my understanding on child labour in India and analysing the constitutional mandates and statutory implications on prohibition, restriction and control on child labour in the country and adherence to international standards in order to curb the prevalence of working children. The first part of this research will present a brief introduction on the topic along with the methods adopted to conduct the research and related matters. The second part conceptualizes child labour from Indian outlook, its legal history, its different forms and its causes. The third part provides the constitutional stand on child labour and child rights. The fourth part sheds light on the several laws on prevention of child labour and safeguard of rights of children. The fifth part shall illustrate the various international legal initiatives adopted by organisations such as UN, ILO and SAARC to curb child labour at the global level and the adoption of these initiatives within the Indian legal framework.

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LIST OF ABBREVIATIONS

1.	&	And
2.	§	Section
3.	A.I.R	All India Reporter
4.	Art.	Article
5.	Chap.	Chapter
6.	CLPR	Child and Adolescent Labour (Prevention and Regulation) Act, 1986
7.	CRC	Convention on the Rights of the Child
8.	ICCPR	International Covenant on Civil and Political Rights
9.	ICESCR	International Covenant on Economic, Social and Cultural Rights
10.	ILO	International Labour Organisation
11.	IPC	Indian Penal Code
12.	IPEC	International Programme on the Elimination of Child Labour
13.	RTE	Right to Education
14.	S.C.C	Supreme Court Cases
15.	SAARC	South Asian Association for Regional Co-operation
16.	Sec.	Section
17.	UDHR	Universal Declaration of Human Rights
18.	UN	United Nations
19.	UOI	Union of India
20.	v.	Versus

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1952 – The Mines Act

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1958 – The Merchant Shipping Act

1961 – The Apprentices Act

1961 – The Motor Transport Workers Act

1966 – The Beedi and Cigar Workers (Conditions of Employment) Act

1976 – The Bonded Labour System (Abolition) Act

1986 – The Child and Adolescent Labour (Prohibition & Regulation) Act

1988 – The Child Labour (Prohibition & Regulation) Rules

2009 – The Right of Children to Free and Compulsory Education Act

2012 – The Protection of Children from Sexual Offences Act

2015 – The Juvenile Justice (Care and Protection of Children) Act

International Instruments

1930 – Forced Labour Convention

1948 – Universal Declaration of Human Rights

1949 – Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others

1957 – Abolition of Forced Labour Convention

1959 – Declaration of the Rights of the Child

1966 – International Covenant on Civil and Political Rights

1966 – International Covenant on Economic, Social and Cultural Rights

1973 – Minimum Age Convention

1989 – United Nations Convention on the Rights of the Child

1999 – Worst Forms of Child Labour Convention

2000 – Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

2000 – Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

2002 – SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution

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CHAPTER 1

INTRODUCTION

1.1 Research Background

Poverty, illiteracy, overpopulation, malnutrition, economic instability, corruption, etc. are some of the issues which are common in every developing country. Such problems tend to have a negative impression on the progress and advancement of these countries. Moreover, in these countries, there exist other issues such as lack of effective welfare policies, unorganised labour, mismanagement of human resource and inefficient laws. Such factors not only hamper the growth of the economic and commercial institutions but also degrade the quality of the workers and labourers. In developing countries, it is often seen that children are employed as workers in various industries, factories, shops, establishments, farms, etc. Children are engaged in such employments as they provide cheap unskilled labour for work which does not require specialised expertise. However, it has been realised that child labour of such kind is a violation of the basic human rights of children. The engagement of children in various employments negatively impacts the growth, development, health and wellbeing of such children as well as deteriorates the quality of human resource and endangers the future of a nation, its economy and society.

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 their physical and mental development.¹ Thus, child labour can be defined as the exploitation of children by engaging them in certain employments which may hamper their physical and mental well-being.

In India, the problem of child labour is widespread in villages, small scale industries, shops and other establishments. Due to extreme poverty and illiteracy, the children belonging to economically backward sections of the society are forced to work instead of pursuing education. After gaining independence, the Indian government adopted the Constitution and enshrined within it certain special provisions for preventing exploitation of children in the form of child labour prohibition and protection and

¹ *What is child labour*, International Labour Organization (Feb. 17, 2019, 3:00 PM), <https://www.ilo.org/ipec/facts/lang--en/index.htm>.

promotion of the welfare and rights of children. Art. 21A provides for free and compulsory education for children between 6-14 years old. Art. 23 prohibits trafficking and forced labour. Art. 24 prohibits employment of children below 14 years of age in factories, mines and other hazardous employment. Art. 39 imposes duty upon the state to ensure that the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength. Art. 42 obligates the state to make provision for securing just and humane conditions of work and for maternity relief. These provisions along with others provide for constitutional prevention of child labour in India.

In the quest for ensuring that children are not forced to work or get engaged in various employments, the Government of India has enacted various preventive laws and statutes. The principal child labour prevention legislation in India is the CLPR Act which has been introduced with the objective to prohibit the engagement of children in all employments and to regulate the conditions of work of adolescents in certain employments. Additionally, the Factories Act, Mines Act, Plantation Labour Act, etc. have been introduced which contain specific provisions prohibiting and regulating child labour in various employments.

At the international level, the need for protection of children and promotion of the child rights has received universal support due to the efforts of the UN and other organisations. UDHR under Art 25 provides that children are entitled to special care and assistance. The UNCRC has prescribed a set of standards to be adhered to by all State Parties in protecting the child and securing the best interest of the child. ILO has played a key role in the elimination of child labour around the world. By the Declaration on Fundamental Principles and Rights at Work, all ILO members have an obligation to effectively abolish child labour. Furthermore, the ILO Convention Nos. 29, 105, 138 and 182 make it obligatory for all members who have ratified the same to effectively adopt proper labour standards and abolish and eradicate child labour. India's commitment towards elimination of child labour has been furthered with the submission of the instruments of ratification to the International Labour Office on 13th June 2017.

In recent times, India has made great strides for the elimination of child labour from the country. The legislature and the judiciary have played key roles in policy making

and implementation for child labour eradication. The existing constitutional and statutory measures although have proved effective but more efforts are still required to be made for the complete abolition of child labour and for the promotion and protection of the rights of children in India.

Therefore, the background of this research is to conceptualize child labour from the point of view of the Indian society and conduct an in-depth study and analysis on the workings of the constitutional machinery and statutory framework in India along with the international actions to curb and limit the practice of employing children as workers in various field of work.

1.2 Statement of the Problem

Child labour is a growing concern all over the world. Employment of children in various factories, labour activities, etc. is rampant in developing and underdeveloped countries. Such practices lead to degradation of human resources and put the future of the economy in jeopardy. In India, child labour is prevalent in different shapes and forms. Children are employed in factories, small scale industries, farms, shops and other establishments, which hamper their development, growth and attainment of a dignified life. After attaining independence, the Indian government has dedicated itself in prohibiting and eradicating child labour practices through the constitutional framework. India has adopted various statutory and legal measures to curb and combat child labour issues. At the international stage, India has made commitments to promote the rights of child and eliminate the worst forms of child labour. The main objective of this research is to study the prevention of child labour in India from the constitutional, legal and statutory standpoint in order to understand how far such measures have been successful in preventing and regulating child labour in India.

1.3 Aims and Objectives

The aims of this research are to study and analyse the issue of child labour in India, the various constitutional and statutory measures adopted to eradicate the problem along with the international efforts to combat child labour.

For the purpose of achieving the aims of this research, the researcher has put forward the following objectives:

- a) To conceptualize the issue of child labour in the Indian context;
- b) To study the provisions under Constitution of India for the prevention of child labour;
- c) To analyse the statutory framework against child labour in India;
- d) To analyse the various international treaties, conventions and covenants that have been ratified, recognised or implemented in India in order to prevent child labour; and
- e) To draw out necessary conclusions and provide suggestions for the prevention of child labour in India.

1.4 Scope and Limitations

The study primarily focuses upon the prevention of child labour in India. The study conceptualizes the problem of child labour from the context of India. The study analyses the various principles under the Constitution of India which deal with prevention of child labour and protect child rights. The study examines the various statutory measures which prohibit and regulate child labour in India. The study also focuses upon the various international treaties, covenants and commitments entered and recognised by India in order to curb child labour. The scope of the study is limited to the efforts and actions of international organisations such as UN and ILO and regional organisations such as SAARC. The scope of this research extends to draw out conclusions and provide suggestions for preventing child labour in India.

The topic is exhaustive in nature and therefore researcher has tried to keep the study as brief as possible by covering relevant matters of the topic. Due to dearth of time, the researcher has been prevented from exploring into the depths of the topic but nonetheless the essence of the topic is covered in this research.

1.5 Literature Review

Misra² in his book provides the researcher with invaluable information on various labour and industrial laws, including child labour laws. He gives detailed description on the history of labour laws in India, the Labour Policy adopted by India, Industrial

² S.N. MISRA, LABOUR & INDUSTRIAL LAWS (2016).

Jurisprudence, labour problems as well as the numerous labour and industrial laws prevailing in India. Misra has divided his book into a number of chapters dealing with laws relating to prohibition, regulation, prevention and restriction of child labour laws in India.

Tripathi and Arora³ primarily concern their work on the legal mechanism for the protection and development of women and children. They have divided the book into two parts: the 1st part concerns itself with the laws and rights for protecting rights of women and upholding principles of gender equality, while the 2nd part of the book includes the topics relating to child protection laws and child rights. The writers have encompassed many facets relating to the rights and protection of children and adolescents in India covering various issues such as compulsory education of children, juvenile justice, foeticide, child sexual abuse, trafficking as well as the child labour laws and its prevention and regulation. The writers have also covered various legal measures and international commitments adopted by India for the development and protection of children.

Herath and Sharma⁴ have compiled a number of literary research works done on the topic of Child labour in the South Asia. This compilation by the editors embraces a number of articles authored by scholars and researchers who have attempted to put forward the current social, political, economic and legal aspects of child labour in developing countries like India, Bangladesh, Nepal, Pakistan and Sri Lanka. In the 1st part of the book, the authors have primarily dealt with the theoretical and empirical aspects of child labour, while in the 2nd part focus has given upon the child labour aspects from the perspective of the each of the South Asian countries. The authors have emphasised the need for shifting from traditional policies, which in recent times have proven ineffective, to newer policies and approaches in order to yield greater success in dealing with child labour issues. The authors have also looked into the significant issues faced and efforts made by the governments of the countries in South Asia in curbing child labour.

³ S.C. TRIPATHI & VIBHA ARORA, LAW RELATING TO WOMEN AND CHILDREN (2014).

⁴ CHILD LABOUR IN SOUTH ASIA (Gamini Herath & Kishor Sharma eds., Ashgate, 2007).

Byres⁵ and his colleagues provide a collection of articles focusing upon labour conditions in rural India. The writers have dealt with numerous themes in their works ranging from rural relations in villages, labour markets, feminisation of agricultural labour, poverty, politics, agrarian society in villages, etc. The writers have also attempted to describe the condition of child employment for labour purposes in agricultural activities.

Nesi⁶ and his associate authors have studied the legal efforts and actions undertaken by the ILO in the arena of child labour. The authors examine the proper implementation of the various legal obligations of the ILO members and analyses whether the supervisory system of the ILO has proved to be effective in its operation. The authors have covered the various ILO conventions particularly the Convention No. 182 which is a flagship convention of the ILO for the elimination of child labour at the global level. Furthermore, they have discussed the various issues and debates concerning eradication of child labour and promotion of proper labour standards for improvement of the economy and development of human resources.

Cullen⁷ in her book provides significant inputs on the present debate on issues relating to child labour. Her work also provides child labour as an issue of several global agencies and organisations and the efforts undertaken by them to respond to such issue. She emphasises upon the requirement to understand child labour from the perspective of social, economic and cultural factors. The book covers a wide variety of international organisations, their sub-divisions and disciplines working towards the eradication of labour involving children.

Goswami⁸ has made an attempt to provide basic concepts of the labour and industrial legal framework of India at one place. He presents his intrinsic understanding on the subject to the reader. He also provides the legal principles laid down by the Indian courts on labour and industry. Furthermore, he discusses about the various Indian legislations dealing with the prohibition, regulation and control of child labour activities in the country along with relevant case laws. The researcher has been able to

⁵ T.J. BYRES ET AL., RURAL LABOUR RELATIONS IN INDIA (2013).

⁶ CHILD LABOUR IN A GLOBALIZED WORLD: A LEGAL ANALYSIS OF ILO ACTION (Giuseppe Nesi et al. eds., Ashgate, 2008).

⁷ HOLLY CULLEN, THE ROLE OF INTERNATIONAL LAW IN THE ELIMINATION OF CHILD LABOR (2007).

⁸ V.G. GOSWAMI, LABOUR AND INDUSTRIAL LAWS (2015).

procure the basics of child labour legislations and other statutes which are necessary for the research work.

Kumar and Bhola⁹ describe the various works and actions of the ILO. The book provides to the writer about the theoretical understanding of the working and functional aspects of the ILO. The book covers the various labour standards and labour conventions in detail. The researcher has obtained considerable material regarding the ILO and its core conventions from this book.

Basal¹⁰ provides a glimpse into the contemporary realities of child labour, child rights and the social wrongs that prevail today. She provides an informative piece of work which benefits students, researchers, scholars as well as the common man in their search to understand the issue of child labour. The book covers a plethora of subjects ranging from forced child labour, exploitation, prostitution, trafficking, sex slavery, illegal adoptions, etc. as well as relevant cases in this matter and the dilemma to abolish these practices all together.

Das¹¹ in his work presents the prevailing state of labour conditions in India especially the question of child labour. He depicts Indian economy to be primarily agrarian and thereby use of children as labourers in production is a continuing practice. He further states that poverty, illiteracy and comparatively less adult population are the main reasons for employing children in various activities. He recognises the legislative measures which have successfully mitigated and controlled use of child labour in organised industries. However, the legal coverage is yet to reach the unorganised sector. He also focuses upon the various socio-legal issues relating to employment of child labour and the measures that can be undertaken to restrict and protect child labour in India.

Ahmad¹² elaborates upon the present scenario of child labour laws in India. He offers to the reader a detailed account of the legal mechanisms and policies adopted by India to regulate and restrict the employment of children in various works. He illustrates the various constitutional, legal, statutory as well as international instruments adopted and

⁹ N. JINENDER KUMAR & AJAY BHOLA, INTERNATIONAL LABOUR ORGANISATION (ILO) (2008).

¹⁰ MANISHA BASAL, CHILD RIGHTS AND SOCIAL WRONGS: A CONTEMPORARY REALITIES (2016).

¹¹ Rajani Kanta Das, *Child Labour in India: I*, 28 INT'L LAB. REV. 796 (1933).

¹² Nehaluddin Ahmad, *Child Labour: Ground Realities of Indian Labour Laws*, 37 COMMW. L. BULL. 61 (2011).

embraced by India to eradicate child labour from the country. He recognises the need for solving the immediate socio-legal issues, efficient enforcement of labour laws, compulsory education for all and positive development of human resources as ways to improve labour standards.

Grootaert and Kanbur¹³ present the issue of child labour from the economic standpoint. They have made an effort to depict the problem of child labour by covering the subject from the point of view of the economy, society and law. They focus upon the economic problems of the developing and underdeveloped countries where the practice of employing children in various works is rampant. They also attempt to provide favourable and efficient ways and policies to deal with the problem.

1.6 Research Questions

- a) What is the concept of child labour in the Indian context?
- b) What are the Constitutional provisions which prevent child labour in India and promote the rights of child?
- c) How and in what ways the statutory measures have prevented and regulated child labour in India?
- d) What are the international treaties, covenants and commitments entered and recognised by India in order to tackle child labour?

1.7 Research Methodology

The present study is primarily a legal doctrinal research. The research makes an attempt to study the issue of child labour and analyse the constitutional and statutory framework to prevent child labour in India as well as gain an understanding of the international commitments to curb child labour. The Research design models used are analytical, qualitative, and explanatory research.

The researcher has adopted qualitative and explanatory research methods to define and explain the issue of child labour in India. The researcher has analysed the history

¹³ Christiaan Grootaert & Ravi Kanbur, *Child Labour: An Economic Perspective*, 134 INT'L LAB. REV. 187 (1995).

of child labour in India and the present scenario of this problem along with the analysis of statistical data. The various forms of child labour that exists in the country have been discussed by the researcher. The researcher has analysed and explained the various reasons, causes and factors of child labour in India in order to get a better understanding of the matter.

One of the main aims of this research is to study the measures for combating child labour in India. For this purpose, the researcher has adopted legal doctrinal and analytical research methods to study and analyse the Constitution of India and its provisions protecting child rights and preventing the child labour in the country. Additionally, the researcher has undertaken the doctrinal and analytical methods to analyse the various statutes and legislation which lay down provisions prohibiting child labour and regulating the employment of children in various establishments. The study and analysis of constitutional and statutory measures for child labour prevention have been carried out exhaustively in this research. Furthermore, the researcher has studied and discussed some of the relevant landmark cases, judgements, trends and judicial measures adopted by the Indian judiciary for combatting child labour.

The researcher has adopted analytical research method to study the efforts of the various international organisations like UN, ILO, etc. in upholding the rights of the child and eliminating the problem of child labour. The researcher has studied the international commitments, treaties, conventions and covenants adopted and undertaken by India for the eradication of child labour in the country and the manner in which they attempt to curb child labour.

Sources of Data Collection

Data and information for the research have been collected from various primary as well as secondary sources such as articles, books, journals, websites etc., all of which have been enumerated in the bibliography.

Mode of Citation

A uniform mode of citation has been adopted throughout the research. The mode of citation followed in the research is the Harvard Bluebook (20th edition).

1.8 Scheme of Chapterization

1. Introduction

This chapter provides a brief introduction and insight on the topic of the study, its need and purpose. This chapter also provides the objectives, issues and methods of the study.

2. Conceptualizing Child Labour in the Indian Context

This chapter defines the concept of child labour and the issues concerning it in the Indian context. The chapter provides a brief legal history of child labour in India, the forms of child labour that exists in the country, its causes as well as provide statistical data relating to child labour in order to provide a better understanding of child labour issues prevailing in India.

3. Constitutional Framework for Child Labour Prevention

This chapter deals with the provisions of the Constitution of India concerning child rights and child labour. The constitutional provisions which prevent child labour have been specifically dealt with in this chapter along with provisions promoting the rights of child, their development and welfare.

4. Statutory Machinery against Child Labour in India

This chapter deals with various statutory and legal measures against child labour in India. The chapter studies the various acts, laws and statutes in force which prevent, regulate, prohibit and restrict employment of children in various institutions, jobs, factories, establishments, etc. along with statutes promoting the rights of children.

5. International efforts and Initiatives against Child Labour

This chapter focuses upon the international treaties, agreements, conventions, covenants and other commitments accepted and adopted by India in its endeavour to prevent, eliminate and eradicate child labour in India. The scope of the study is limited to the efforts and actions of international organisations such as UN and ILO and regional organisations such as SAARC.

6. Conclusion and Suggestions

This Chapter offers a brief summary and findings of the study as well as the suggestions put forth by the researcher.

CHAPTER 2

CONCEPTUALIZING CHILD LABOUR IN THE INDIAN CONTEXT

2.1 Concept and Definition

The term ‘child labour’ comprises of two words: ‘child’ and ‘labour’. A child is often regarded as a person who has not reached the age of puberty or does not have sufficient physical maturity and reasonable mental understanding. The term ‘child’ should not be confused with the term ‘minor’ as the latter stands for a person who has not attained the age of majority and includes both children and adolescents. In India, a child is usually defined as any person below 14 years of age. However, the legal definition of child differs from statute to statute. On the other hand, ‘labour’ refers to the physical work, effort or any other task undertaken in respect of any particular occupation or employment.

The term ‘child labour’ does not have a specific definition. In terms of person, child labour refers to a person below the age of maturity who is engaged in certain employments. In terms of work, child labour refers to the work done by a child employed in certain occupations.

The ILO defines child labour as “work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.”¹⁴ Such work or labour may hamper their physical, mental, social and moral wellbeing or affect their education.

Therefore, the term ‘child labour’ simply refers to the engagement of children in certain occupations and employments. It is defined as such labour in which children are employed to do work which may affect their physical or mental health or hamper their overall growth, social and moral development and education. However, not every kind of work carried out or done by a child can be considered to be child labour. The definition of child labour does not include any work which does not affect the health and individual growth, development and education of the child. Hence, such kind of work is encouraged as it is productive and has a positive impact on the child’s overall growth. Therefore, the definition of child labour includes work done by a child

¹⁴ *Supra* note 1.

in formal and informal sectors as well as domestic work done for a third person but not the work done for his family or domestic household.

According to 'A Future without Child Labour', child labour has been divided into three categories:¹⁵

- a) Firstly, such labour or work done by a child below the required minimum age for such work which may hamper the education and growth of the child.
- b) Secondly, such labour or work which physically or mentally threatens the wellbeing of a child due to the hazardous and unsafe nature or condition of such work.
- c) Thirdly, such labour which is recognised as "worst forms of child labour" which includes slavery, child trafficking, child bondage and forced labour, children in armed conflict, prostitution and illegal activities.

2.2 History of Child Labour in India

The practise of employing children has been prevailing in India since prehistoric times. In ancient India, the *Varna* system and slavery were some of the social evils that gripped the Indian society. The *Varna* system became even more predominant during the Vedic period. Under this system, certain classes of people were designated as lower-caste or '*Sudras*' and assigned works such as slavery, manual labour, etc. The *Sudras* were ill-treated, discriminated and exploited by the upper castes. The *Varna* system was a vicious circle as it hereditarily assigned the succeeding generations the same caste as their predecessors. Consequently, the children of the *Sudras* were also *Sudras* and their social position and work was predetermined by birth. The children of the *Sudras* were often forced into being slaves, bonded labourers, prostitutes, devadasi, etc. Kautilya mentioned in his *Arthashastra* about the prevalence of child labour and domestic slavery during his time. He viewed child labour as an inhuman act and recognised the need for welfare and protection of

¹⁵ *A Future without Child Labour: Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, ILO, (Geneva: International Labour Office, 2002).

children from being exploited and even prescribed proper wages for all on the basis of their work.¹⁶

In medieval India, child labour continued to prevail. During this period India came under the rule of various Muslim dynasties such as the Delhi Sultanate, the Mughals, etc. The position of children during this period was no different than the ancient times. The age old *Varna* system continued to prevail, along with slavery and child prostitution, etc. Apart from these practises, children were also placed as apprentices in various businesses and craft works.

During the early 18th century, with the beginning of the Industrial Revolution, the British started to extend their dominance over the Indian economy and later on took over full political and administrative control of the Indian subcontinent. The Industrial Revolution also had a significant impact on the economic and labour policies in India. Due to the industrialisation of factories, more and more adults were drawn towards the industrial towns and cities which led to the shortage of labour in the agrarian sector. To compensate for the loss of manpower, most cultivators employed children as labourers to work in fields. In many industries, children were exploited and employed to do various menial work for wages which were less than what adults were paid. Apart from factories and agricultural sector, children were also employed in mines, cotton mills, brothels and worked as domestic slaves, street hawkers, sweepers, etc. Such conditions prevailed due to the lack of labour welfare policies, illiteracy, widespread poverty and ignorance of the British rulers towards the plight of the labour class especially the children. Although, the social situation of that period was grim, the British made some efforts to introduce social reform to improve the lives of the people and free them from the clutches of age old superstitions and customs like child marriage, slavery, prostitution, trafficking, *sati*, etc.

When the British Parliament abolished slavery and trading of slaves in 1833, the laws applied to the British colonies also. The Slavery Act of 1843 banned the buying and selling of people as slaves in India. Furthermore, the IPC prohibited trading of slaves. These provisions were seen as ground-breaking strides towards improvement of the conditions of labour in India. Afterwards, the British Government introduced various

¹⁶ RADHAKRISHNA CHAUDHARY, SOME ASPECTS OF SOCIAL AND ECONOMIC HISTORY OF ANCIENT INDIA AND CAMBODIA 131 (1982).

statutes and policies to develop proper labour standards and improve labour conditions. The Factories Act of 1881 was framed to deal with factory policies in the country. The Act specified provisions which barred children below 7 years of age to be working in factories. Afterwards, the Factories Act of 1891 was introduced which increased the minimum age of child worker to 14 years and specified the working time of children to be 7-9 hours every day and also prevented children to work as night-time. The Factories Act was later revised in 1922, 1926, 1934 and 1948 to bring certain changes including regulation of employment of children. In 1901, the Mines Act came into force which prevented children below 12 years to be employed in mines.

After attaining independence, the Indian government was focused upon the overall social development of the country and made efforts for improving the conditions of children, protecting their rights and preventing the exploitation of children. The government adopted the Constitution which embodied the very soul of India's legal and political framework. It also comprised of a number of legal rights and directives for protecting child rights and preventing child labour. Apart from constitutional safeguards, a few existing statutes such as the Factories Act, Mines Act, etc. were amended and some new ones were introduced such as Plantation Labour Act in 1951, Shipping Act in 1951, Apprentice Act in 1961, Beedi and Cigar Workers Act in 1966, CLPR Act in 1986, etc. These statutes incorporated a number of provisions regulating and barring the employment of children in different occupations.

2.3 Statistical Analysis of Child Labour in India

In India, the Census, data and survey of government agencies, NGOs and international organisations provide various statistics relating to child labour in India. These statistics offer an in-depth and comprehensive facts and numbers in respect of the state of child labour in India. Analysing them gives us an idea of the impact and effectiveness of the policies adopted by the State to tackle child labour or the necessity to frame more cohesive strategies.

The 2011 Census shows that the total population of children between ages 5-14 is around 259.6 million out of which 10.1 million (roughly around 3.9% of the total population of children) are working as main or marginal workers in the country. The

statistics also shows that 42.7 million children of the country have dropped out of school.

Table 1

Year	Percentage of working children (5-14)			Total number of working children (5-14) (in millions)		
	Rural	Urban	Total	Rural	Urban	Total
2001	5.9	2.1	5.0	11.4	1.3	12.7
2011	4.3	2.9	3.9	8.1	2.0	10.1

*Source – Census of India, 2001 & Census of India, 2011

However, in comparison to the 2001 Census, where the total number of working children percentage was 12.7 million, the 2011 Census reports a steep decline of the number of working children by 2.6 million. Although the decrease of working children is a good sign for a progressive and developing country but such decrease is more prominent in the rural areas. Conversely, there has been an increase in the number of working children in the urban areas of the country. This has been due to the factors such as poverty, extensive urbanisation, industrialisation which have opened up numerous domestic, menial and petty jobs where children are often employed. In India, the degree and magnitude of child labour in urban and rural areas varies.

In regards to the distribution of child labour/ working child (ages 5-14) in different Indian states, Table 2 below gives a state wise data of the number of working children.

Table 2

Sl. No.	Name of State/UT	No. of working children in the age group of 5-14 years	
		2001 Census	2011 Census
1.	Andaman & Nicobar Islands	1960	999
2.	Andhra Pradesh	1363339	404851
3.	Arunachal Pradesh	18482	5766
4.	Assam	351416	99512
5.	Bihar	1117500	451590

6.	Chandigarh	3779	3135
7.	Chhattisgarh	364572	63884
8.	Dadra & Nagar H.	4274	1054
9.	Daman & Diu	729	774
10.	Delhi	41899	26473
11.	Goa	4138	6920
12.	Gujarat	485530	250318
13.	Haryana	253491	53492
14.	Himachal Pradesh	107774	15001
15.	Jammu & Kashmir	175630	25528
16.	Jharkhand	407200	90996
17.	Karnataka	822615	249432
18.	Kerala	26156	21757
19.	Lakshadweep	27	28
20.	Madhya Pradesh	1065259	286310
21.	Maharashtra	764075	496916
22.	Manipur	28836	11805
23.	Meghalaya	53940	18839
24.	Mizoram	26265	2793
25.	Nagaland	45874	11062
26.	Odisha	377594	92087
27.	Pondicherry	1904	1421
28.	Punjab	177268	90353
29.	Rajasthan	1262570	252338
30.	Sikkim	16457	2704
31.	Tamil Nadu	418801	151437
32.	Tripura	21756	4998
33.	Uttar Pradesh	1927997	896301
34.	Uttarakhand	70183	28098
35.	West Bengal	857087	234275
	Total	12666377	4353247

*Source – Census of India, 2001 & Census of India, 2011

The table above shows that the densely populated states of the country also have a high number of working child population. Uttar Pradesh (8,96,301), Maharashtra (4,96,916), Bihar (4,51,590), Andhra Pradesh (4,04,851) Madhya Pradesh (2,86,310) and Rajasthan (2,52,338) are the states which account for more than half of the total working child population in the country. Another important thing to note here is the decrease of the number of working children between 2001 (12666377) and 2011 (4353247). Such decline can be credited to the various initiatives undertaken by the government to tackle child labour such as the introducing Right to education, *Sarva Shiksha Abhiyan* and the grass-root level work carried out by NGOs such as Child Rights and You (CRY) and Save the Children. The foundation of free and compulsory education to every child between 6 to 14 years as a fundamental right has been the prominent reason for such decline. Another reason may be the stringent enforcement of the various statutes such as the CLPR Act, Factories Act, etc. and awarding of severe punishments for employing children. It has been projected that the percentage of working children may come down even more in the Census of 2021 due to a number of government policies such as National Child Labour Project (NCLP), *Beti Bachao Beti Padhao*, etc.

2.4 Forms of Child Labour in Various Sectors in India

The employment of children as labourers is commonly seen not only in rural areas but also in urban areas. Children are employed both full-time and part-time in several sectors and areas which can be considered to be hazardous, unfit or injurious for engaging children. Some of them have been listed below.

a) Hazardous Working Conditions

Children are often employed or engaged in work which involves working in unhealthy, unhygienic or hazardous working conditions or the work itself is of dangerous nature and unfit for children. Such kind of child labour is usually seen in the following sectors of work:¹⁷

- Glass Factories
- Match Factories

¹⁷ *Child Labour: Targeting the Intolerable*, ILO (Geneva: International Labour Office, 1998).

- Firecracker Factories
- Carpet Industry
- Metal and Brass Industry
- Sports Equipment Industry
- Mining Sector
- Brick Making Sector
- Cement Making Industry
- Construction work
- Chemical industry

b) Worst Forms of Child Labour

A few forms of labour have been identified by the ILO as “worst forms of child labour” because of the nature of work as well as the severity and magnitude of effort and capacity required for such kind of work. They are as follows:

- Child slavery, bonded child labour, etc.
- Trafficking, Prostitution and sexually exploiting children for commercial purposes.
- Children in armed conflicts.
- Children in illegal activities such as drug production and drug smuggling and trafficking.

c) Domestic Work

Children are often employed as servants and maids for household and domestic work. Such employment may be either full time or part time. Wages are minimal and burden of work involves whole of the household chores including cleaning, washing,

cooking, sweeping, etc. Such children are frequently subjected to physical, mental and sexual exploitation and abuse.¹⁸

d) Destitute & Street Children

Poor and destitute children are often forced by antisocial individuals to work as street hawkers, shoe shiners, rag pickers, beggars and pickpockets.¹⁹ Such children often grow up to be criminals, thugs and anti-social persons themselves.

e) Unorganised & Informal Economic Sectors

Children are often employed in various unorganised and informal sectors which are not under any regulatory or legal framework.²⁰ In such sectors, children are exploited and do not enjoy the basic minimum wages and hygienic conditions of employment. Such kind of child labour is often seen in small scale industries, agricultural and farming activities, family owned businesses, small shops and establishments, etc.

2.5 Causes of Child Labour in India

There are many reasons which force children to work. Family values, social structure, economic condition, politics, government policies, war, calamities etc. may operate as significant factors/catalysts which lead to child labour in a country. In developing countries like India, the causes of child labour are vast due to the prevalence of multitude of issues and factors.

Some of the causes and factors which attribute to child labour in India are discussed as follows:

a) Poverty

One of the most noticeable causes of child labour in India is the widespread poverty and economic instability in the society in general.²¹ The large majority of child workers are from poor and impoverished households. Children from poor backgrounds often work due to their economic necessity or compulsion from their families.

¹⁸ *Supra* note 15.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Supra* note 17.

b) Illiteracy

The lack of proper education and schooling opportunities of children and illiteracy of parents themselves often contribute to child labour.²² Illiteracy leads to lack of knowledge, ignorance of rights, gender discrimination and disregard towards progressive ideas. Shortcomings of the educational schemes and policies, insufficient educational infrastructure and lack of awareness towards the importance of education can compel children to work in various employments rather than attend schools. High percentage of children dropping out of school in order to pursue employment opportunities lead to an increase in the percentage of unskilled workers in the economic sphere.

c) Overpopulation and Demographic Imbalance

Rapid population explosion, disproportionate gender ratio and other demographic imbalances in the country are also regarded as factors encouraging child labour. Overpopulation results in not only shortage of necessities but also shortage of opportunities in life. Thus, children are forced to work in order to pursue better living standards and economic sufficiency for their families. In situations where children amount to majority of the total population of a country, there results in scarcity of workforce which are mitigated by making children participate in the economic process.

d) Migration

Migration may be due to various reasons such as urbanisation, effects of natural calamity, armed conflicts, etc. Such migration often makes the families and their children economically and socially vulnerable and compels them to work in menial jobs and makes children victim of child labour.²³

e) Failure of Law Enforcement

One of the main causes of the prevalence of child labour is the failure or shortcomings of proper law enforcement mechanisms.²⁴ The neglect of the government and its

²² *The State of the World's Children*, UNICEF (1997).

²³ *Id.*

²⁴ MYRON WEINER, *THE CHILD AND THE STATE IN INDIA: CHILD LABOUR AND EDUCATION POLICY IN COMPARATIVE PERSPECTIVE* 5 (1991).

agencies to efficiently enforce measures to prevent child labour is another reason. Also, the penal repercussions for employing child workers are not adequate because of which employers freely engage minors in various employments.

f) Absence of Proper Laws

The absence and inadequacy of laws and regulations often facilitate the employment of children in areas where they are incapable of working. The practice of employing child workers is seen in informal and unregulated economic sectors in which employers take advantage of the legal loopholes. Regulatory, preventive and penal provisions and laws should be enacted and strictly enforced for combating child labour. Such laws should not only lay down the boundaries and parameters for employers to employ workers but should also lay down the regulatory norms and standards of work conditions and benefits to be given to all workers equally.

g) Social Discrimination

Social discrimination of people belonging to the minorities and lower castes also contribute to child labour. Although, discriminatory behaviour on caste basis is constitutionally prevented, it is still prevailing in many parts of the country. When such sections are deprived of equal status and rights in the society, they tend to get isolated and ignored. The children of such sections are compelled to work rather than pursue educational opportunities.

h) Lack of Social Protection and Awareness

In India, children are not adequately protected and safeguarded in the society because of which prevalence of child labour is rampant. Absence of adequate and effective social welfare schemes, difficulties in accessing legal protections and attitude of parents that children require work skills instead of education are some of the key reasons which have made children victims of child labour.

i) Family Issues

The family plays an important role on a child. The circumstances of the child's family impacts the child to get involved in various employments, works, etc. at a very early age. Family issues such as low income, large families, traditional attitudes of family,

lack of awareness towards the importance of education, etc. are the causes which often forces children into child labour.

j) Economic Feasibility

Child workers are mostly employed because they provide to their employers cheap, economically feasible and cost-cutting unskilled labour. Due to their simple and unskilled work, such child labour can be easily replaced.

k) Vulnerability and Ease of Exploitation

Another cause of child labour in India is that children belong to a vulnerable and unorganised group which is unaware of their rights at work and are incapable to enforce them. Such reasons make it easier for the employers of the child workers to exploit them for meeting their needs.²⁵

l) Technological Impact

With the development of technology and advent of industrialisation, machines have replaced most of the man-force in industrial activities. In today's time, most work are carried out by such machines but there still exists some amount of unskilled manual work where children are often employed.

²⁵ *The State of the World's Children*, UNICEF, 27 (1997).

CHAPTER 3

CONSTITUTIONAL FRAMEWORK FOR CHILD LABOUR PREVENTION

3.1 Overview

The Constitution of India pronounces a number of guidelines and regulations which promote social, economic, political welfare and protection of the Indian people. The Preamble to the Constitution summarises the rudimentary notions that the principal legal document envisions the country to be. It comprises of the principles which seek to establish India as a nation embodying democracy and republic ideals and based on the ideologies of sovereignty, socialism and secularism. The constitutional vision is to make sure that every Indian citizen enjoys a dignified life, equal status and same opportunities along with various other social, political and economic rights, liberties, the freedom of their ideas, beliefs and faith. The Constitution resolves to secure and protect the fundamental rights of the people. The State has been obligated with the duty to guarantee and safeguard the fundamental rights of the public. These fundamental rights constitute the basic natural human rights of the citizens and non-citizens alike. They also constitute some of the social and political rights of the citizens. Apart from the fundamental rights, the Constitution has also vested the State with the duty to frame certain policies for the social, economic and political welfare of the people. Thus, the fundamental rights, directive principles and other constitutional provisions seek to promote and safeguard the rights of the public and constitute India as a welfare state. Among these constitutional safeguards, there are a number of provisions which specifically deal with protection of child rights and prevention of activities such as child labour, bonded labour, slavery, child trafficking, etc.

The Indian Constitution does not explicitly define the terms ‘child’, ‘children’ and ‘child labour’. However, a number of constitutional articles have mentioned the terms in dealing with various rights and issue relating to children. In such cases, the definition of the term is implicit or open for judicial interpretation. Some of the significant constitutional provisions dealing with prevention of child labour, rehabilitation of working child and overall promotion of the rights of the children are Art. 14, 15, 21, 21A, 23, 24, 39, 42, 45, 46, 47, 51A, etc. Justice Manmohan opined that children are vulnerable sections of the country and require extra care and attention by reason of their mental and physical incapability. He also viewed that such

issues were more complex in less developed nations like India where there is widespread poverty and illiteracy. He observed that to eradicate issues like child labour, etc. the constitutional mandates against child labour are required to be executed effectively.²⁶

Articles 14 and 21 are mainly concerned with the promotion of liberty, justice, fairness, and equality. These provisions also seek to provide every person including children certain personal freedoms and equal application of laws in the society in general. Art. 15(3), 21A, 39 (e) & (f), 45, 51A (k), etc. specify provisions dealing with protection and promotion of special rights of children. Art. 23 and 24 essentially lay down the regulations for the prohibition and prevention of child labour, employment of child in dangerous occupations, *begar*, forced labour, exploitation and human trafficking. Art. 42, 46, 47, among others, deal with regulations relating to promotion of labour conditions, welfare and development of children. In this chapter, some of these constitutional provisions relating to child labour prevention and promotion of the rights of the child shall be discussed in detail.

The Indian Constitution also lays down safeguards against the infringement of the fundamental, constitutional and legal rights of the children.²⁷²⁸ These provisions deal with certain constitutional remedies available on the occasion of infringement of rights. When any fundamental rights of a person are encroached upon, the affected party can take recourse to these provisions. They come into effect when the fundamental or other rights of a person are infringed and the aggrieved approaches the judiciary for the enforcement of the same. The court enforces the rights of the aggrieved by issuing orders or directions or writs depending upon the matter at hand.

3.2 Constitutional Provisions Preventing Child Labour

The Constitution of India consists of a few provisions which prohibit and regulate child labour in the country. Art. 23, 24, 39, 19(1)(g) & 19(6) are some of these provisions. Human trafficking and forced labour are forbidden by the Constitution.²⁹ Employment of child workers less than 14 years in dangerous work environment is

²⁶ Court on its Own Motion v. Govt. of NCT of Delhi, MANU/DE/1025/2009 (India).

²⁷ INDIA CONST. art. 32.

²⁸ *Id.* art. 226.

²⁹ *Id.* art. 23.

also restricted by the Constitution.³⁰ Constitution also promotes welfare of children, provides facilities for their growth and prevents their exploitation.³¹ Any occupation, trade, etc.³² which are unreasonable and against public interest are prohibited by the Constitution.³³ These constitutional provisions among others prohibit, prevent and regulate child labour in the country.

a) Article 23

Article 23 forbids human trafficking, *begar*, and other kinds of forced labour in the country. This provision is mainly concerned with the prevention and banning of certain inhuman acts degrading mankind such as prostitution, sex trade, slavery, bonded labour etc. ‘Traffic in human beings’ refers to the trade of human beings as commodities for various immoral and inhuman purposes such as prostitution and slavery and includes the immoral traffic of women and children.³⁴ This provision also forbids *begar*, forced labour and bonded labour. Bonded labour is a kind of labour in which a person and his succeeding generations are forced to serve a person against their will. *Begar* refers to working non-voluntarily without any kind of payment. Art. 23 and 24 are the principal constitutional provisions that primarily deal with the menace of child labour in the country.

In *Peoples Union for Democratic Rights case*,³⁵ the judiciary viewed that Art. 23 has a broad and limitless scope dealing with varied acts such as human trafficking, bonded labour, etc. and acts against such activities wherever necessary. The judiciary issued directions upon the government to adopt measures for penalising those found guilty of violating the principles stated under Art. 23.

In *Bandhua Mukti Morcha*,³⁶ a PIL was filed alleging that a large number of workers were being employed in stone quarries across Haryana. It was further alleged that those workers were subjected to inhuman and hazardous work environment without proper health and medical facilities, safety measures and pathetic accommodations for lodging. It was brought before the court that the concerned authorities failed to

³⁰ *Id.* art. 24.

³¹ *Id.* art. 39.

³² *Id.* art. 19, cl. 1(g).

³³ *Id.* art. 19, cl. 6.

³⁴ *Raj Bahadur v. Legal Remembrancer*, A.I.R 1953 Cal. 522 (India).

³⁵ *Peoples Union for Democratic Rights v. UOI*, A.I.R 1982 S.C. 1943 (India).

³⁶ *Bandhua Mukti Morcha v. UOI*, A.I.R 1984 S.C. 802 (India).

enforce the laws for protecting those workers. In this case, an order was issued by the court releasing the workers from such bondage. The court was of the view that rehabilitating bonded labourers was necessary for uplifting and protecting them.

In *Sanjit Roy's case*,³⁷ the court ruled that paying the famine relief workers wages at a rate which is lesser than the minimum wage violates the provision under Art. 23. The State is prevented under all circumstances to pay less than the minimum wage.

In *Gaurav Jain*,³⁸ a PIL was filed in order to bring the court's attention towards the rehabilitation of prostitutes, sex workers and their children. The court also issued guidelines in order to rehabilitate children of sex workers, child sex workers and establishment of juvenile homes.

b) Article 24

Article 24 essentially prohibits child labour in the country. This provision prevents employing children or engaging children less than 14 years of age in various factories and other dangerous employments. The article mainly focuses upon protecting the life of children, promoting public health and safety in the work environment and ensuring that children do not hamper their development and growth by working in unsuitable and harmful workplaces. This provision sets the maximum age limit as 14 years and any person below this limit is protected under this constitutional regulation. However, minors above 14 years do not enjoy protection under this provision but strict regulations and precautions have been laid down in different statutes which are to be followed by employers when employing minors as workers in hazardous occupations.

In order to give effect to this constitutional provisions many labour legislations have incorporated provisions forbidding and regulating the employment of children in various occupations. Some of these legislations are the CLPR Act, Factories Act, Mines Act, etc.

In *Peoples Union for Democratic Rights*,³⁹ the argument was whether the Employment of Children Act of 1938 would apply in respect of employing children in construction work of various sports projects as construction industry was not included

³⁷ *Sanjit Roy v. State of Rajasthan*, A.I.R 1983 S.C. 328 (India).

³⁸ *Gaurav Jain v. UOI*, A.I.R. 1997 S.C. 3021(India).

³⁹ *Peoples Union for Democratic Rights v. UOI*, A.I.R. 1983 S.C. 1473 (India).

as a process provided in the schedule of the Act of 1938. The court disallowed this argument and ruled that construction work amounted dangerous form of employment and employing children below 14 years in such work violates Art 24 even though such work was not specified in the schedule of the Act.

In *M.C. Mehta's case*,⁴⁰ a PIL was filed in order bring the court's attention towards the conditions of the children employed in the match and firecracker industries in Sivakasi. The court, understanding the gravity of the case, ruled that no children under 14 years can be employed in any dangerous and unsafe industries, factories, mines or other works. The court also issued guidelines to the concerned authorities for undertaking steps to safeguard the social, economic and humanitarian rights of the children employed in different sectors.

In *Salal Hydro Project case*,⁴¹ the employment of children in construction works was again brought before the court. The judiciary viewed that Art. 24 prevents the employment of children in any unsafe and dangerous workplaces such as the construction industry. It is the duty of the Central Government to enforce this constitutional provision. Furthermore, it is also necessary for the government to make the people aware of the negative impacts of child labour and encourage them to enable their children to attend free and compulsory education. However, the court recognized that the present socio-economic issues would not provide sufficient prospects for the absolute and immediate abolition of child labour from the country.

In *Bandhua Mukti Morcha*,⁴² the issue of employing children in carpet industry in UP was challenged. In this case, the judiciary took consideration of Art. 24 and other directives and was of the view that employing child workers in various areas was due to poverty and other socio-economic factors and such exploitation was against the principles inscribed in the Preamble. Furthermore, the court was of the view that the elimination and eradication of child labour and exploitation is the duty of the State by proper policy making.

⁴⁰ *M.C. Mehta v. State of T.N.*, A.I.R. 1997 S.C. 699 (India).

⁴¹ *Labourers Working on Salal Hydro Project v. State of JK*, A.I.R. 1984 S.C. 177 (India).

⁴² *Bandhua Mukti Morcha v. UOI*, A.I.R. 1997 S.C. 2218 (India).

c) Article 19(1)(g) & 19(6)

Article 19 provides every Indian 6 basic freedoms. These 6 freedoms are necessary and vital for the self-determination of every citizen of the country. These freedoms enable every person of the nation to live their life freely and fearlessly. They allow every citizen to express themselves, assemble together, associate with one another, move freely within the country, reside anywhere within the country and pursue any occupation as they please. However, these provisions are not absolute and certain restraints have been imposed on a person's ability to exercise any of the 6 freedoms. These limitations are necessary so that citizens do not exercise them for purposes against the State's interest. Thus, these restrictions are considered to be reasonable in nature.⁴³

Art. 19(1)(g) deals with the liberty of every Indian to pursue any occupation, trade, profession or business. This right confers socio-economic right to every person. By virtue of this right every person is legally permitted to engage in any kind of work they desire to perform. However, Art. 19(6) places certain reasonable limits on a person's freedom of work, occupation, etc. A person can only exercise his freedom under Art. 19(1)(g) if it is: (1) reasonable & (2) in general public interest. If any work, occupation, etc. is contrary to any of these grounds, such work, occupation shall be declared illegal and unconstitutional. The freedom to pursue any profession does not include the freedom to carry on any unlawful and immoral profession. The State is empowered to forbid any trade, business, occupation which are found to be unlawful, immoral or harmful to the health, safety and wellbeing of the society.⁴⁴

The provision and restrictions under Articles 19(1)(g) & 19(6) are also applicable in case of children. Therefore, employing children in any trade, occupation, etc. which is unreasonable and against public interest shall be declared to be illegal. Thus, children working in unsafe, hazardous occupations, exploitation of children in any way such as child trafficking, sex trade, child prostitution, etc. all are considered to be unreasonable and against the interest of the public. Hence, employing and exploiting children in certain occupation, trade, etc. are illegal and unconstitutional.

⁴³ Chintamani Rao v. State of MP, A.I.R. 1951 S.C. 188 (India).

⁴⁴ J.N. PANDEY, CONSTITUTIONAL LAW OF INDIA 227 (2015).

d) Article 39

Article 39 provides for certain principles which the State is required to adopt for ensuring economic justice in the country. This article directs the State to make policies to uphold the principles. Apart from provisions dealing with equal rights of all in regards to livelihood and wages, equitable distribution of material resources, wealth and means of production, it also contains provisions for the protection, development and welfare of children.

Art. 39 (e) provides that the State is responsible for making policies to safeguard small children of delicate age and make sure that such children are not compelled to work or employed in different occupations beyond their mental and physical capacity because of economic necessity. Thus, this provision bestows upon the State the duty of ensuring that minor children are safeguarded and prevented from engaging in labour activities beyond their capability. Art. 39 (f) provides that the State is required to formulate policies for conferring children with prospects and amenities in order to develop and grow in a free and dignified manner. The State should also make sure that children and youths of the country are safeguarded from exploitation and protected morally and materially from abandonment. Hence, this provision is mainly to ensure that the State provides the children with facilities to develop properly and young generation of the country are guarded against any kind of exploitation and desertion. From analysing both the clauses, it is clear that these principles outline the State's objective to evolve policies for welfare of children and youngsters of the country and safeguard them against exploitation and cruelty.⁴⁵

In *L.K. Pandey*,⁴⁶ the apex court was of the opinion that the future of the entire country depended upon the welfare and health of the children. The court was of the view that the provisions under Articles 15(3), 24, 39 (e) & (f) was added in our Constitution as the constitution framers were well aware of the necessity to safeguard and uphold the welfare and interests of the country's children. The court also opined that children are the assets of the nation and the nation's future hinges upon the manner in which the children develop and grow.

⁴⁵ M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1483 (2018).

⁴⁶ *Lakshmi Kant Pandey v. UOI*, A.I.R. 1984 S.C. 469 (India).

In *M.C. Mehta's case*,⁴⁷ the court took consideration of Art. 39 and held that employing child workers in match factories linked directly with match and firecracker manufacturing is not permissible as such work is regarded as unsafe and harmful for the children. Nevertheless, the court permitted child workers to be engaged in packaging processes which were to be done in a place distant from the manufacturing process in order to prevent mishaps.

3.3 Provisions Protecting and Promoting Child Rights and Welfare

Apart from provision which directly deal with prohibition and regulation of child labour, there are provisions in the Indian Constitution which promote and protect the rights of child and their welfare. Art. 14, 15, 21, 21A, 38, 41, 42, 45, 47, 51A (k), etc. are some of these provisions. These provisions indirectly attempt to tackle the menace child labour by giving children the right to free and compulsory educational opportunities, empowering the State to make special laws for the welfare and protection of children, ensuring that working conditions of various industries, establishments are safe, hygienic and suitable for all workers including children, raising living standards, providing nutritional food, medical aid and assistance, etc. Some of these provisions have been discussed below.

a) Article 14

Article 14 specifies that the law shall treat every individual equally and the law of the land shall have equal application over every individual. The article comprises within it two principles. The first principle is that no person shall enjoy any special privileges and the second principle is that every person under equal conditions shall enjoy equal treatment. This article is mainly based on Dicey's 'Rule of Law'⁴⁸ and the principles of equality, justice and fairness.

This provision does not specifically deal with children and has general application of the equality principles upon all. However, the provisions of this article are based on the idea that weaker sections of the society shall not be treated the same as others. Accordingly, this provision permits reasonable classification of certain weaker sections of the society for their elevation and welfare. Apart from the other socially

⁴⁷ *M.C. Mehta v. State of T.N.*, (1991) 1 S.C.C. 283 (India).

⁴⁸ A.V. DICEY, *THE LAW OF THE CONSTITUTION* 145 (1982).

and economically backward classes, women and children are recognised as a special group. Thus, the general law of the land does apply to them uniformly in all cases. Children being minors are immune from the application of certain laws such as criminal laws, torts, contract, etc. In other cases, certain laws have application over minor but under different conditions such as labour laws, welfare laws, etc. Therefore, Art 14 ensures that children being under different conditions and circumstances than adults should be treated differently and delicately and the law cannot apply generally upon adults and children alike. Special laws and exception can be made in favour of children by virtue of Art. 14.

b) Article 15

Article 15 of the Constitution also promotes equality in the society as it forbids discrimination of the people on the basis of ethnicity, religion, caste, creed, gender or origin.⁴⁹ If any person discriminates another on such grounds it would amount to encroachment of their fundamental rights. The provision further states that no one can be prevented from accessing public places.⁵⁰ Clause 3 of the article empowers the State to make special laws for the women and children of the country. Thus, the clause recognises children as a special group which requires care and protection because of their mental and physical immaturity. On the basis of this fact, several laws have been enacted specifically for the welfare, safety and protection of child rights such as the CLPR Act, Juvenile Justice Act, RTE Act, etc. Art. 15(4) & (5) permits the government to make laws for ‘socially and educationally backward classes of citizens.’

In *Salil Bali*,⁵¹ the apex court ruled that fixation of 18 years as the age limit for identifying persons as ‘juveniles’ under the Juvenile Justice Act was constitutionally legal. This is because the State is empowered to enact laws and provisions especially for children by virtue of Art 15(3) of the Constitution and further due to the ratification and acceptance of the principles of UNCRC.

⁴⁹ INDIA CONST. art. 15, cl. 1.

⁵⁰ *Id.* art. 15, cl. 2.

⁵¹ *Salil Bali v. UOI*, A.I.R. 2013 S.C. 3743 (India).

c) Article 21

Article 21 specifies that every individual is entitled to their life and personal freedom. However, it is not absolute and a person can be deprived of such entitlement in accordance with the legal procedure. Thus, a person can fully enjoy his rights and liberties unless they are restricted by a procedure based upon rational law of the land. Previously, the term 'law' under this article was interpreted to mean the laws made by the State and such law was not essentially based upon the principles of natural justice.⁵² However, the strict and conservative interpretation of this provision was overruled by the apex court in the *Maneka Gandhi's case*⁵³ in which a wide and lenient interpretation of the provision was pursued. The court in this case ruled that the legal procedure to deprive an individual of his rights and liberties under Art. 21 must be just, fair and reasonable and in accordance with the natural justice. The term 'life' in this provision has been inferred to mean 'something more than mere animal existence.'⁵⁴

The main genesis of Art 21 is to confer upon the people the right to live a life of dignity and freedom along with the capacity to attain the bare necessities of life such as nutrition, clothing, housing, medication, education, etc.⁵⁵ Thus, the provisions under Art. 21 have been interpreted several times and a wide plethora of fundamental freedoms find their place within the ambit of Art. 21. These rights and liberties are constitutionally protected and guaranteed to all citizens and they cannot be transgressed or disregarded by the State at will. Thus, the article prevents the State to act arbitrarily and infringe the rights and freedoms of the public without valid and legitimate reasons.

Art. 21 embraces a wide range of rights including rights for the welfare and protection of children, prevention of child labour and ensuring better conditions for workers in the workplace. In *Hayath Khan*,⁵⁶ the court opined that mere prohibition of child labour is not enough to resolve the issue and the State is required to undertake further measures to rehabilitate child workers in order to assure them a dignified life under Art 21 of the Constitution.

⁵² A.K. Gopalan v. UOI, A.I.R. 1950 S.C. 27 (India).

⁵³ Maneka Gandhi v. UOI, A.I.R. 1978 S.C. 587 (India).

⁵⁴ Kharak Singh v. State of UP, A.I.R. 1963 S.C. 1295 (India).

⁵⁵ Francis Coralie v. UT of Delhi, A.I.R. 1978 S.C. 597 (India).

⁵⁶ Hayath Khan v. Deputy Labour Commissioner, 2006 (1) Kar.L.J. 365 (India).

In *Occupational Health & Safety Association*,⁵⁷ a petition challenging the state of health condition of workers, proper medical evaluation and level of safety and protection in the work environment was brought before the court. The apex court ruled that right to health, to live and to work in a clean, hygienic and safe environment is implicit within the ambit of Art. 21 and based upon the directive principles under Art 39, 41 and 42. It is the duty of the State to ensure that workers are subjected to just and humane work conditions for protecting their right to health and dignity.

In *Bachpan Bachao Andolan*,⁵⁸ a PIL was initiated against the gross atrocities committed against children employed in circuses which infringed their rights under Art. 21. It was alleged in the PIL that the children working at the circus were sexually, physically and mentally abused, denied meeting their families, unlawfully restrained and subjected to live under inhuman work environment without proper necessities like food, sanitation, sleep, etc. The court gave directions to the government and concerned authorities to undertake actions for prohibiting such kind of child employment, rescuing and rehabilitating the children and adopting measures for their welfare and education.

Art. 21 implicitly includes Right to education. In the *Capitation Fee Case*,⁵⁹ the judiciary held that right to education is a fundamental right of every citizen and is incorporated within right to life under Art. 21. Hence, no Indian can be deprived of his right to education by charging him/her a high capitation fee. A dignified life as a basic civil right cannot be attained in the society if right to education does not go along with it.

In *Neeraja Chaudhary's Case*,⁶⁰ the judiciary ruled that the mere detection and release of bonded labourers under the Bonded Labour System Act of 1976 is not sufficient enough and requires proper rehabilitation of such labourers to protect them from poverty and destitution. The judiciary has regarded identification, release and rehabilitation as a plain requisite under Art. 21.

⁵⁷ *Occupational Health & Safety Association v. UOI*, A.I.R. 2014 S.C. 1469 (India).

⁵⁸ *Bachpan Bachao Andolan v. UOI*, A.I.R. 2011 S.C. 1804 (India).

⁵⁹ *Mohini Jain v. State of Karnataka*, (1992) 3 S.C.C. 666 (India).

⁶⁰ *Neeraja Chaudhary v. State of MP*, A.I.R. 1984 S.C. 1099 (India).

In *Vikram Deo*,⁶¹ the judiciary took into consideration the wretched conditions of the care and welfare homes for children and women in Bihar which were maintained by the state government. The court issued directions to the state government to improve and ensure proper living environment in such homes. It was further recognised that children and women belong to a special group in our society and require special care and protection from the law.

d) Article 21A

Article 21A is an extension of the right to life and liberty under Art. 21 and deals with the RTE for children as a fundamental right. Previously, RTE was not acknowledged as a fundamental right and was only a directive policy under Art. 45. It was only by virtue of the 86th Constitution Amendment Act of 2002 that Art. 21A was included as part of the Constitution. This provision entrusts the State with the duty to provide to all children between ages 6-14 years free and mandatory education.

Since education is recognised as an important right of all persons, the State has confirmed that all children will be entitled to receive constitutionally guaranteed basic educational opportunities. Educating children not only leads to their growth and development but also helps them to be aware of their rights and social responsibilities as well as attain necessary skills, knowledge, vocational training for their livelihood and future endeavours.

RTE was recognised as a fundamental right for the first time in *Mohini Jain's case*,⁶² where the court ruled that educational right emanates from a person's right to life. But, in this case it was unclear as to the persons and age limit of the persons who were guaranteed this right.

Later on, the issue was again brought before the court in *Unni Krishnan*,⁶³ where the judiciary ruled that RTE is a fundamental right of all children between 6-14 years of age. As a consequence of this case, the 86th Amendment Act was introduced directing the State to give effect to right to compulsory education through legislation. Moreover, Art. 51A (k) was also introduced to make parents aware and responsible for the educational opportunities of their children. In 2009, the RTE Act was

⁶¹ *Vikram Deo v. State of Bihar*, A.I.R. 1988 S.C. 1782 (India).

⁶² *Mohini Jain v. State of Karnataka*, (1992) 3 S.C.C. 666 (India).

⁶³ *Unni Krishnan v. State of AP*, A.I.R. 1993 S.C. 2178 (India).

introduced which makes it obligatory for every child attaining 6 years of age to be admitted to the local school which would be free of cost.

In *Ng Komon v. State of Manipur*,⁶⁴ the court held that an order directing the shifting of a village school to another village as unconstitutional as it infringed the right to compulsory education of the children of the village and directed the concerned authorities to take steps ensuring the educational rights of the children.

e) Article 38

Article 38 directs the State to establish a social order where social, economic and political justice of the people are safeguarded in order to promote the wellbeing of the people within all institutions of the nation. This provision also requires the State to eradicate all kinds of injustices and disparities regarding status, amenities and opportunities prevailing between different individuals and groups engaged in different occupations and vocations in different parts of the country.

The basic purpose of this provision is to promote social and economic justice for every person, including children, in all aspects of life. The courts very often read Art. 38 along with Article 14 in order to envisage a social order based on principles of justice.⁶⁵

f) Article 41

This Article requires the State to make efficient policies within its economic capabilities for ensuring rights relating to work, education and public aid for weaker and needy sections of the society such as the unemployed, aged, sick, diseased, and others. This directive is mainly to establish: I) Right to work, II) Right to education and III) Right to Public Assistance in the country for the disadvantaged sections.

This provision does not expressly apply to children but the words “...and in other cases of, undeserved want” can be interpreted to cover children also. Thus, the duty of the State may extend to children suffering from necessity and undeserved want and it must take steps to provide education and public aid and assistance in order to promote their welfare and distributive justice.

⁶⁴ *Ng Komon v. State of Manipur*, A.I.R 2010 GAU 102 (India).

⁶⁵ *Air India Statutory Corporation v. United Labour Union*, A.I.R. 1997 S.C. 645 (India).

g) Article 42

This provision has been directed to ensure welfare of the workers. It states that the government is responsible to make policies to enforce just and human work environment for all workers and offer benefit of maternity leave and relief to all women. This provision is basically devoted to promote healthy, hygienic and safe working conditions for all workers and prevent all forms inhumane and unjust practices prevailing in various workplaces. This provision also applies indirectly to the working conditions of children who are also entitled to healthy and favourable work environment since Art. 24 does not absolutely forbid child labour from all sectors.

h) Article 45

Previously, this provision used to deal with the State's responsibility to provide free and mandatory education for every child less than 14 years of age within 10 years of the commencing of the Indian Constitution. However, this provision was replaced in 2002 after right to free and compulsory education became a fundamental right provided under Art. 21A. Presently, the Article deals with the responsibility of the State to make policies for providing care for children of tender age and education for every child less than 6 years of age.

i) Article 47

The Article talks about the State's responsibility to improve nutritional levels, living standards and public health of all people of the country. The article has used the term 'people' which impliedly includes both adults and children. Therefore, the provision of this article is applicable to all children and the State must take adequate steps to ensure that children of the country have access to nutritious food, proper standards of living and medical facilities; which are necessary for their overall growth and development.

j) Article 51A (k)

This Article lays down a wide range of basic civilian duties of all Indians. These duties make every citizen responsible for promoting, upholding and preserving the constitutional ideals, state institutions, unity, harmony, culture, heritage, natural

environment, national resources, etc. Among these duties, there is a duty of every parent and guardian to enable their child to receive educational opportunity. Art. 51A (k), which was added by the 86th Constitution Amendment Act of 2002, states that it is the fundamental duty of every Indian to provide education to their child between 6-14 years of age. The main goal of this provision is to ensure that the children do not fall victim of child labour and other immoral practices. Thus, parents are made liable to send their children to pursue education, which in turn would help the child in future and lead to effective human resource development in the nation.

In *Ashoka Kumar Thakur*,⁶⁶ extending the scope of Article 51A, the court viewed that responsibility of the State means the collective responsibility of the whole citizens. Court viewed that Art. 21A and 51A (k) respectively provide the duties of the State and the citizens for ensuring free education to the country's children. The State is liable to ensure that mandatory education for children is made feasible and accessible to all, while the parents are obligated to send their children to schools.

From the above discussion, it can be fairly deduced that the role the Indian Constitution plays in safeguarding the rights of children and promote their welfare and development is significant and crucial for the child population of the country. Many of the fundamental rights and directive principles laid down in the constitutional document are focused upon eliminating some of the atrocities and exploitative practices against children such as child labour, trafficking, slavery, prostitution, etc. There are also a number of provisions upholding child rights and welfare which are essential and needed to secure the welfare and development of the future generations.

⁶⁶ *Ashoka Kumar Thakur v. UOI*, (2008) 6 S.C.C. 1 (India).

CHAPTER 4

STATUTORY MACHINERY AGAINST CHILD LABOUR IN INDIA

4.1 Overview

The Constitution of India has laid down several mandates for safeguarding and promoting child rights, welfare, development and measures restricting child labour, slavery, trafficking, etc. Such mandates are preserved and enforced by the courts, which are bestowed with the responsibility to protect the constitutional ideals. However, the constitutional regulations against child labour only have general application and do not specifically deal with various avenues and sectors where the practice of child labour persists. The constitutional regulations only provide a blueprint and outline on the basis of which the State is required to take legislative steps to curb and regulate child labour practices. The legislature has been empowered under to make special laws for the children.⁶⁷ The various directive principles have specified certain policies for the State to undertake for protection of the child population. These provisions empower the State to make laws, regulations and policies for the purpose of prohibiting, controlling and regulating the engagement of children in various employments, works, sectors, industries, etc.

India does not have a single code covering all aspects of labour, workers, industries, child workers, labour conditions, etc. The State has enacted several labour laws, social welfare and protection laws for regulating different sectors, issues, and requirements of the labour class and promoting the labour standards in the country. These laws generally deal with various aspects concerning the welfare and protection of workers, employees and labourers such as work conditions, maintenance of hygiene, working hours, wages, bonus, holidays, leave, etc. Based on the constitutional mandates, a few statutes such as the CLPR Act have been enacted to specifically deal with matters relating to employment of child workers in various sectors. Furthermore, a number of the labour legislations in the country have specific provisions dealing the prevention and regulation of child labour. These legislations specify whether a child can be permitted to work in any specific employment, set the minimum age limit for employment, specify the measures to be undertaken when children are employed, lay

⁶⁷ INDIA CONST. art. 15, cl. 3.

down special regulations applicable to children such as work restrictions, special allowances, licences, working hours, etc. as well as penal provision for employing under-aged children and violating statutory provisions. Factories Act, Mines Act, Plantations Labour Act, Beedi and Cigar Workers Act, Juvenile Justice Act, etc. are some of the statutes dealing with measures to prevent and regulate child labour.

In this chapter, the various laws and statutes preventing and regulating child labour shall be analysed and discussed in order to understand the statutory measures and regulations adopted against child labour in the country.

4.2 Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 (CLPR)

The UN and ILO have taken great strides in formulating labour standard for the world to follow. These two organisations have undertaken measures to eradicate child labour across the globe through various covenants and conventions. These efforts require the members of these organisations to adopt measure to improve labour standards and condition of working children. India also has adopted measures to tackle child labour and CLPR Act is one such legislation.

The CLPR Act received the President's nod on December 23rd, 1986 and came into full force on May 26th, 1993. However, the Act has been amended a few times and the most significant amendment was in 2016. Previously, the Act concerned itself with the prohibition of employment of children in certain sectors and regulation of working conditions of children in some others. However, after the 2016 Amending Act several distinct changes have taken place in the new Act. The Act is now known as Child and Adolescent Labour (Prohibition & Regulation) Act, 1986. The amended Act deals with not only children but also adolescents.

Part I of the Act discusses about the title, application and defines various terms of the legislation. The definition of 'child' has been given as a person under the age of 14 years or such as the Right to Education Act of 2009 specifies.⁶⁸ It also defines 'adolescent' as a person above 14 years but below 18 years of age.⁶⁹

⁶⁸ The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986, No. 61, Acts of Parliament, 1986 (India) § 2(ii).

⁶⁹ *Id.* § 2 (i).

Part II of the statute basically deals with occupations in which children and adolescents are prohibited to work. Sec. 3 states that a child is prohibited to work or be employed in all kinds of occupations or processes. However, such child shall not be prevented from helping his family or household enterprise in any kind work which does not amount to dangerous and unsafe occupation or process as long as such work is done by the child after school or during holidays. Also, a child shall not be prevented to work as artists, or perform in entertainment business or sports under careful supervision. But, such work should not hamper the child's education.

In *Manilal Dayalji*,⁷⁰ the judiciary ruled that the provision under Sec. 3 would not apply to any workshop in which the occupier carries out process with the help of his family members which may include children. Thus, such occupier shall not be held liable for violation of Sec. 3 of the statute.

Sec. 3A prevents adolescents from being employed in dangerous and unsafe occupations and processes specified in the Schedule which includes:-

1. Mines,
2. Inflammable substances or explosives and
3. Hazardous processes. The term "hazardous processes" refer to any process which may affect the health of the person working in such process or which results in environmental pollution.⁷¹

Sec. 4 discusses about the power of the government at the centre to amend the Schedule of the Act. Sec. 5 deals with the constitution of Technical Advisory Committee, which will be set up to give its advisory opinion to the Central Government in regards to the occupations and processes to be added to the Schedule. The Committee comprises of one Chairman and not more than 10 ordinary members. The time of committee meetings and procedures are according to the discretion of the Committee.

Part III of the statute discusses about the regulation of working conditions of adolescents. In relation to the working hours, an adolescent shall not work for more than the prescribed hours in the establishment he/she is employed in. He/she shall be

⁷⁰ *Manilal Dayalji v. Competent Authority & Inspector under Child Labour*, 2015 II L.L.J. 433 (Chhat) (India).

⁷¹ Factories Act, 1948, No. 63, Acts of Parliament, 1986 (India) § 2(cb).

entitled to rest between working periods. He/she shall not be allowed to work after 7 PM and before 8 AM, or work overtime, or work in more than one place the same day.⁷² He/she shall also be entitled to a weekly holiday which shall be specified by the employers.⁷³

The occupier/employer of an establishment which employs an adolescent worker shall give notice to the local inspector, appointed under Sec. 17, in regards to certain particulars relating to such establishment, such as name of the establishment, address, name of persons in administration, nature of work or process, etc.⁷⁴ The occupier/employer also has the duty to maintain a register concerning the adolescent workers employed in their establishment, their names, particulars and type of work carried out by them, etc.⁷⁵

Sec. 13 of the Act talks about rulemaking of the government in relation to the safety and health measures to be undertaken in establishments where adolescents are employed. Such measures may be in case of: cleanliness, waste disposal, ventilation, dust and fumes, artificial humidification, lights, potable water, sanitation, precautions in case of machines, protective equipment, building and machine safety and maintenance, etc.

Part IV discusses about the penal and miscellaneous provisions. Sec. 14 penalizes any person employing a child or adolescent in certain employments. A person employing a child shall be penalised with imprisonment for 6 months, which can be extended up to 2 years or with fine or both.⁷⁶ Sec. 14 (1A) punishes any person employing an adolescent who encroaches upon Sec. 3A of the Act by imprisoning him for not lesser than 6 months, which can be extended up to 2 years or with fine or both. However, this section only punishes the parents or guardians who permit their child or adolescents to work in contravention to Sec. 3 and 3A respectively. The offences under Sec. 14A shall be cognizable.⁷⁷ Sec. 15 deals with the modified applicability of penal provisions of certain statutes.

⁷² The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986, No. 61, Acts of Parliament, 1986 (India) § 7.

⁷³ *Id.* § 8.

⁷⁴ *Id.* § 9.

⁷⁵ *Id.* § 11.

⁷⁶ *Id.* § 14 (1).

⁷⁷ *Id.* § 14A.

In *Ram Chander's case*,⁷⁸ a person was prosecuted under the provisions of the CLPR Act for employing a person less than 14 years in his carpet business. The court viewed that for the purpose of justifying conviction under Sec. 14(1) the age of the employed person must be proved by the prosecution to be less than 14 years.

Sec. 22 of the Act repeals the Employment of Children Act of 1938, which previously dealt with the matters relating to prohibition and regulation of employing child workers in different occupations.

In *Waheed Hasan Khan*,⁷⁹ it was held that a repealed act shall be treated as if at no time it was in existence except in regards to such parts preserved by the saving clause of the repealing act.

According to Sec. 18 of the Act, the concerned government has been authorised with rule making powers for furthering the purposes of the Act. By virtue of this power, the Child Labour (Prohibition and Regulation) Rules, 1988 has been made. The Rules of 1988 seek to effectuate the objectives of the Act of 1986. Rules 3 to 15 are primarily connected with the Technical Advisory Committee under the Act.⁸⁰ These rules are related to the appointing of Committee Secretary, allowances, method of resigning or removing members, filling vacancies, meeting date and location, notice, quorum, committee decision, sub-committee constitutions, etc. The manner of maintaining a register⁸¹ has been discussed under Rule 16; while the rule relating to age certificate for young workers has been discussed under Rule 17.

At present, the CLPR Act, 1986 completely prohibits child labour in any form and prohibits adolescent labour in certain employments and regulates such labour in some other employments. Previously, the Act did not mention anything about adolescent labour but was only concerned with child labour. Also, previously child labour was not completely prohibited. The Act prohibited child labour in certain scheduled employments while in others engaging children was allowed under certain regulations. The Act forbids child labour as part of India's commitment towards complete eradication of child labour from the country.

⁷⁸ *Ram Chander v. State of UP*, (2002) 1 L.L.J. 907 (All.) (India).

⁷⁹ *Waheed Hasan Khan v. State*, A.I.R. 1960 Bom 299 (India).

⁸⁰ The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986, No. 61, Acts of Parliament, 1986 (India) § 5.

⁸¹ *Id.* § 11.

4.3 Labour Laws prohibiting and Regulating Child Labour

This part discusses about the other labour laws which prohibit, restrict, prevent and regulate child labour and employment of children and young person in different employments, establishments, factories, sectors, etc. Unlike the CLPR Act of 1986, these laws are concerned with wide variety of labour aspects such as labour regulation, conditions, welfare, etc. including provisions against child labour.

4.3.1 The Factories Act, 1948

With the advent of the Industrial Revolution, the number of factories and industries in India under the British rule increased considerably. Such industries were mainly used by the British to manufacture good and items cheaply for selling them at high prices at foreign markets. In these factories, Indians were regularly employed and paid meagre wages. The work conditions in these factories/industries were horrific due to absence of regulatory provisions. Adults, children and the infirm were all employed under the same setting and conditions. It was Maj. Moore, an inspector of the Bombay Cotton Department, who first raised the need for proper legislations for regulating work conditions in factories in 1872-73. In 1881, the 1st Factories Act was introduced regulating labour conditions. Afterwards, on the basis of the recommendation of the Royal Commission on Labour, the Factories Act of 1934 was enacted. However, this statute suffered from a number of defects as a result it was replaced by the present Factories Act of 1948, which came into force on April 1st 1949. The Act of 1948 now provides several provisions regulating labour conditions, welfare, safety, penal provisions and regulation relating to child labour. In regards to regulation of child labour, the Act has raised the minimum age limit for employing a child from 12 to 14 years. The Act further prohibits children to work between 7 PM to 6 AM and reduced the daily working hours from 5 to 4½.

The Factories Act applies to whole of India except Jammu & Kashmir. The Act under Sec. 2 defines ‘child’ as person below the age of 15 years.⁸² An ‘adolescent’ is a

⁸² Factories Act, 1948, No. 63, Acts of Parliament, 1986 (India) § 2(c).

person between 15 to 18 years.⁸³ ‘Young person’ refers to both a child and an adolescent.⁸⁴

Chap. III of the statute mainly deals with provisions and regulations relating to health such as cleanliness, waste disposal, ventilation, dust and fumes, artificial humidification, lights, potable water, sanitation, etc.

Chap. IV speaks about the safety measures, precautions in case of machines, protective equipment, building and machine safety and maintenance, etc. to be undertaken for the care and protection of the workers. Sec. 27 of this chapter prohibits employing women and children close to cotton openers of a factory, except if proper precautions are undertaken. Sec. 34 prevents any person from lifting, carrying and moving any heavy objects capable of causing injury. The State Government is empowered to formulate rules proposing the weight of the loads which a child, adolescent and other adult workers may carry, lift or move depending on their capabilities and nature of the work.

Chap. V discusses about the various welfare facilities required to be provided by factories and establishments for the benefit and convenience of the workers. It includes facilities like washing, drying, sitting, medical, canteen, resting, child care, etc. Chap. VI deals with hours of works for adults.

The various regulations concerning employment of children and adolescents have been discussed in Chap. VII. Sec. 67 prohibits that any child below the age of 14 years shall not be permitted to work in a factory. Therefore, child workers under 14 years are completely disallowed to be employed in any kind of factory.

In *M.C. Mehta’s case*,⁸⁵ the judiciary prohibited child workers below 14 years to work in factories where hazardous process of production of matches and firecrackers is carried out and where such children are directly involved in the production process. The court viewed such employment violated the constitutional mandates for protecting children from exploitation.

⁸³ *Id.* § 2 (b).

⁸⁴ *Id.* § 2 (d).

⁸⁵ *M.C. Mehta v. State of T.N*, A.I.R. 1991 S.C. 417 (India).

Sec. 68, 69 and 70 discusses about the requirement of young workers under 18 years of age to carry fitness certificate while working in the factory issued by a certifying surgeon and such fitness certificate will enable the young worker to be deemed as an adult worker in respect of certain provisions of the Act.

A child worker shall not be permitted to work for more than 4½ hours in a day and shall not be permitted to work during night. The work period of children shall be restricted to two shifts which shall not overspread for more than 5 hours each.⁸⁶ Children shall be granted weekly holidays with exception under Sec. 52. A child worker is not permitted to work in more than one factory on the same day. A female child can only work between 8 AM to 7 PM. The work period of children for each day should be displayed and maintained in the factory clearly.⁸⁷ The factory manager is also required to maintain a register in respect of child workers employed by them which must show the name of the child, type of work, working shift, fitness certificate number, etc.⁸⁸ The working hours of a child workers should be in accordance with the notice and register maintained under Sec. 72 and 73 respectively.⁸⁹

Under the regulations relating to dangerous operations,⁹⁰ the State Government may make rules in case of factories where hazardous processes are carried out; barring children, young workers and women to work in such hazardous operations.⁹¹

Sec. 92 lays down general provision of punishment for violating the statutory provisions, or the rules of the Act, or other orders made under the Act. Such punishment may amount to imprisonment up to 2 years or fine or both. Thus, employing children as workers, violating regulations relating to working condition of children under the Act, etc. may amount to penalty under this section. Sec. 99 penalises with fine the parents, guardians, or other persons, who have custody or control over a child or obtains benefit from the child's wage directly; who permit or force a child to work in more than one factory on the same day.

The First Schedule of the Act provides a list of industries/factories where hazardous processes are involved as defined under Sec. 2 (cb) of the Act. Children and

⁸⁶ Factories Act, 1948, No. 63, Acts of Parliament, 1986 (India) § 71.

⁸⁷ *Id.* § 72.

⁸⁸ *Id.* § 73.

⁸⁹ *Id.* § 74.

⁹⁰ *Id.* § 87.

⁹¹ *Id.* § 87(b).

adolescents are strictly forbidden from working in hazardous processes as under the CLPR Act of 1986.

4.2.2 The Minimum Wages Act, 1948

The Minimum Wages Act of 1948 is a labour welfare legislation introduced with the objective to secure minimum wages for all workers. The Act tries to ensure that workers are not exploited by their employers and get paid a minimum amount of wage. The term 'minimum wage' has not been defined by the statute. However, minimum wage refers to any wage by which a person secures not only his basic needs of food, shelter and clothing but also facilities of education, medical requirements and other amenities.

The Act under Sec. 2 (bb) gives the definition of 'child' as a person below 14 years of age. The Act lays down provisions for fixing minimum wages for all workers including child workers. Thus, children under the Act are entitled to get minimum rate of wages. The provisions for fixation of minimum wages have been given under Sec. 3, 4 and 5. Sec. 3(3) states the fixation and revision of minimum wages may be differently fixed for adults, adolescents, children and apprentices. Hence, the minimum wages of child and adult workers may vary and usually the wages of children are slightly less than adult workers.

The court observed that the fixation of minimum wages at varying rates in respect of different establishments/factories or in different areas by splitting the State into different zones was not against Sec. 3(3) or the Scheme of the statute.⁹² However the government is prohibited from fixing or revising minimum wages arbitrarily.

4.3.3 The Plantations Labour Act, 1951

The Plantations Labour Act of 1951 is controlled by the Labour and Employment Ministry and has been in force since April 1st, 1954. This Act has been enacted for the welfare of plantation workers and regulation of working conditions in plantations. It is applicable in respect of the plantations where 15 or more persons are engaged on any day of the previous 12 months for growing:⁹³

⁹² Chandra Bhawan Boarding & Lodging v. State of Mysore, A.I.R. 1970 S.C. 2042 (India).

⁹³ Plantation Labour Act, 1951, No. 69, Acts of Parliament, 1951 (India), § 1(4).

- Tea,
- Rubber,
- Coffee,
- Cinchona,
- Cardamom, or
- Any other plant grown with the permission of the appropriate government.

‘Child’ has been defined as a person less than 14 years of age⁹⁴. Previously, 15 years was the age limit for a person to be recognised as a ‘child.’ An ‘adolescent’ is a person between 14 to 18 years.⁹⁵ “Young person” refers to both a child and an adolescent.⁹⁶

The Act comprises of provisions concerning the registration of plantations, inspection staff as well as provisions relating to the health, welfare and safety of the plantation of workers. Sec. 13 and 14 authorizes the State Government to formulate rules imposing duty upon the employers to provide facilities of recreation and education for child at the plantation.

The amendment of the Act in 2010 brought several changes relating to the employment of children in plantations. Before this amendment, children could be employed in plantations and could work for not more than 27 hours in a week.⁹⁷ But now, the Act completely forbids any person (child) less than 14 years to be employed as a plantation worker.⁹⁸ The Act previously prohibited children less than 12 years to be employed in plantations. Before the amendment of the Act, children and women were prevented to work between 6 AM & 7 PM but now children cannot be employed at any time of the day or night.⁹⁹ Previously, children and adolescents were required to carry token referring to their fitness certificate when working in plantations but now this provision only applies to adolescent workers.¹⁰⁰

Chap. VII of the statute deals with various penal and procedural provisions. Sec. 35 punishes any person who violates any provisions regarding prohibition, restriction and

⁹⁴ *Id.* § 2(c).

⁹⁵ *Id.* § 2(a).

⁹⁶ *Id.* § 2 (l).

⁹⁷ *Id.* § 19.

⁹⁸ *Id.* § 24.

⁹⁹ *Id.* § 25.

¹⁰⁰ *Id.* § 26.

regulations on the employment of persons as workers in a plantation, with imprisonment up to 6 months or with fine or with both. Thus, if a child is employed in plantation by a person in violation of Sec. 24 of the Act, such person shall be punished.¹⁰¹ The Act also lays down punishment for other contraventions of the Act¹⁰² and punishes repeat offenders.¹⁰³ Sec. 43 empowers the State Government to make rules including the rules for the protection and welfare of children and prevention of child labour in plantations.

4.3.4 The Mines Act, 1952

The Mines Act is the principal legislation dealing with mines in the country. The Act has been introduced in order to regulate and control labour and safety in mines. The Act aims at achieving labour standards in mines by securing health and safety requirements for the workers as well as regulating working hours, leaves, shifts and other conditions of work. The Act pursues to attain fair and healthy working conditions in mines.

The Act does not provide the definition of ‘child’, but defines an ‘adult’ as a person above 18 years. The Act completely forbids persons below 18 years (children and adolescents) to work in or near mines. Thus, the Act totally forbids child labour in any form in mines in accordance with the constitutional provision.¹⁰⁴ Mines constitute ‘hazardous occupations and processes’ under the Schedule of the CLPR Act, which strictly forbids child labour in such processes.

Chap. VI discusses laws relating to working hours and employment of the mine labourers. Sec. 40 is concerned with the non-employment of person less than 18 years of age. After the Amendment Act of 1983, only persons 18 years and above can be permitted to work in mines. Thus, children and adolescents below 18 years are strictly forbidden to work in or near any part of a mine. However, any apprentice or trainee not less than 16 years of age may be permitted to work in mines under proper supervision and approval of the concerned authority.

¹⁰¹ *Id.* § 35.

¹⁰² *Id.* § 36.

¹⁰³ *Id.* § 37.

¹⁰⁴ INDIA CONST. art. 24.

In *Management of GC of BCCL*,¹⁰⁵ an appeal was made before the apex court against the High Court order which dismissed the appeal on the issue of appointment of 11 workers who were medically proven to be below the requisite age to be employed at the time of their employment. The apex court could not discover sustainable findings to reject the appeal as there was no justification to uphold the High Court's order as the workers are now 30 years of age. Thus, the appeal was allowed by setting aside the order.

Minors less than 18 years are forbidden to be present in or near a mine.¹⁰⁶ This section states that no child or adolescent below 18 years of age shall be permitted to be present in a mine or any area near or connected to other areas where mining processes are operating.

In *M.C. Mehta's case*,¹⁰⁷ the judiciary while observing the position of child labour prohibition in the country, cited Sec. 45 of the Mines Act and viewed that this provision prohibited children to be employed in any mine or near an open cast where mining processes are being conducted. The court desired to strongly prohibit child labour in any form in the country through the constitutional mandates and provisions of the CLPR Act.

The Act also penalises persons for employing under-aged persons in mines. Sec. 68 states that if any person administering or controlling a mine employs a minor (child or adolescent) below 18 years of age shall be guilty of contravening Sec. 40 of the Act and shall be fined. Punishment may also be awarded under Sec. 67, in the form of imprisonment or fine or both for violating the statutory provisions of the Act, or any other rules, regulations, etc.

4.3.5 The Merchant Shipping Act, 1958

The Merchant Shipping Act was for the first time enacted in the year 1923 on the basis of the Merchant Shipping Act of 1894 of the United Kingdom. Later on, this Act was replaced by the Act of 1958, which was enacted by the Government of India taking into considerations the various conditions of the mercantile and shipping

¹⁰⁵ *Management of G.C. of BCCL v. Bihar Colliery Kamgar Union*, (2003) S.C.C. (L&S) 30 (India).

¹⁰⁶ The Mines Act, 1952, No. 35, Acts of Parliament, 1952 (India) § 45.

¹⁰⁷ *M.C. Mehta v. State of T.N.*, (1997) S.C. (L&S) 49 (India).

business prevailing in independent India.¹⁰⁸ The enforcement date of the Act was on December 15th, 1958. The object of the Act is to develop and ensure proper maintenance of the mercantile and shipping industry in the country in a way which serves the interest of the country and the establishment of National Shipping Board for the certification, registration, protection and security of ships and to regulate laws relating to merchant shipping.

According to Sec. 2, the Act is applicable in respect of:

- a) any registered Indian vessel, or
- b) any vessel requiring registration under this statute, or
- c) any vessel of persons upon whom provisions of Sec. 21 is applicable.

The Act comprises of a wide variety of provisions relating to shipping board, administration, ship registration and certification, officer certificates and duties of certificate holders, regulation of seamen and apprentices, ships for passengers, measures for safety, security and facilities, nuclear ships, responsibility for calamities and mishaps, responsibility for pollution, navigation, inquiry and investigation, regulation of ships, vessels, boats as well as penal and procedural provisions.

The Act does not provide any definition related to a child but defines the term ‘young person’ as anyone less than 18 years of age.¹⁰⁹ Any person 16 years or above is allowed to train as an apprentice in sea service and the ship master is to provide assistance to such apprentice.¹¹⁰ For the purpose of the apprenticeship, an Apprenticeship agreement is necessary between the master of the ship and apprentice himself or if minor then his parent/guardian. Before execution of the agreement, the ship master may ensure that the apprentice is 16 years and above and possesses valid fitness certificate¹¹¹ and consents and understands the terms of the agreement.¹¹²

Anyone who is below 16 years of age is prohibited to be employed or work in any manner in a ship.¹¹³ Thus, a child or minor under 16 years is totally forbidden from

¹⁰⁸ *Summary of Provisions under Merchant Shipping Act, 1958*, DIRECTORATE GENERAL OF SHIPPING (May. 17, 2019, 12:00 PM), http://www.dgshipping.gov.in/Content/PageUrl.aspx?page_name=ShipManualChap3.

¹⁰⁹ The Merchant Shipping Act, 1958, No. 44, Acts of Parliament, 1958 (India) § 3(59).

¹¹⁰ *Id.* § 91.

¹¹¹ *Id.* § 111.

¹¹² *Id.* § 92.

¹¹³ *Id.* § 109.

working in the shipping/mercantile business but, a person completing 16 years is permitted to work on a ship or sea service as a worker or an apprentice. This provision also prevents engagement of young person to work at night but night work may be permissible if permitted by the Directorate General of Shipping for the purpose of training or special duty, to be conducted keeping in mind the health and safety of the young person. The ship master is also required to maintain a list or register containing all particulars related to the engagement of young persons in his ship.¹¹⁴ The Central Government has been specially empowered under Sec. 113 to formulate rules in regard to the employment of young workers.

Anyone contravening or not complying with the provisions of this Act shall be held guilty.¹¹⁵ Sec. 436(2) enumerates a list of penalties for offences. If a person below 16 years of age is employed to work in sea service by violating Sec. 109, then the master shall be penalised with fine. If a person below 16 years of age is employed in any manner in a ship in violation of Sec. 109 or the parent/guardian falsely represents the age of a young person in violation of Sec. 111, then such parent/guardian shall be penalised with fine. Failing to maintain a register or refusal to produce it by the master shall also make him liable to pay fine.

The Merchant Shipping Act of 1958 is a statute regulating different areas relating to the mercantile and shipping industry. The Act specifically mentions that engaging and permitting young person to work in ships or sea services is forbidden and violation of this prohibition would penalise the offender. Thus, child labour in any form in ships, vessels, boats, high seas, etc. is prohibited by the Act.

4.3.6 The Apprentices Act, 1961

This Act was brought into effect on January 1st, 1963. It was subsequently amended in 1973, 1986 and most recently in 2014. The Act has been introduced for regulating and controlling the training of apprentices and things related. The purpose behind this Act is to realize the growing requirement of skilful workers and craftsman. By permitting individuals to train with persons specialised in various skills, crafts and vocations would prove to be beneficial and productive for the skill development and experience of the trainees and apprentices. The Act seeks to regulate and control the link between

¹¹⁴ *Id.* § 112.

¹¹⁵ *Id.* § 436.

various employers and apprentices. It also ensures health, safety, welfare and other provisions and facilities to the apprentices.¹¹⁶

The Act is applicable in respect of industries and trades as the Central Government may specify and applies to the whole country. Under Sec. 2 (aa), 'apprentice' has been defined as an individual undergoing training of apprenticeship in regards to some skill or craft in accordance of an apprenticeship contract. Sec. 18 has stated that an apprentice shall not be regarded as a worker but a trainee of a designated trade and the general labour laws shall not be application in case of such apprentice.

In *ESI Corp v. Tata Engg*,¹¹⁷ it was observed that the object of apprenticeship is under certain accepted terms the employer intends to provide training and the trainee intends to acquire training. And the trainee is only a learner and cannot be considered as an employee.

In *Patel Pravin Kumar Somnath*,¹¹⁸ the petitioners were trainees in terms of the apprenticeship contract and the company was not obligated to employ them at the expiry of the training duration. The judiciary held that the apprentices were not engaged by the company as workers and they only receive stipends and not wages. The company and the apprentice do not share a master-servant relationship but only connected by an apprenticeship contract which obligates the company to provide training to the apprentices for specific duration of time only.

In *M.K. Tripathi v. LIC*,¹¹⁹ the apex court ruled that if a person is engaged in accordance with the Apprentice Act, he shall not be considered as a worker and such trainee/apprentice has no right to be engaged into the services.

Sec. 3 talks about the main requisite for a person to be an apprentice. A person can receive training as an apprentice in any trade if he has attained 14 years of age and in case of apprenticeship relating to trades designated as hazardous processes such person must attain 18 years. Also, the prospective apprentice must also fulfil certain prescribed educational and health standards and such standards shall vary depending upon the different nature of the trade and different classes of the apprentices. Thus,

¹¹⁶ Shant Kumar Kurbur, *All you need to know about Apprentices Act 1961*, IPLEADERS (May. 15, 2019, 10:30 PM), <https://blog.ipleaders.in/apprentices-act-analysis/>.

¹¹⁷ *ESI Corp. v. Tata Engg. & Co*, A.I.R. 1976 S.C. 66 (India).

¹¹⁸ *Patel Pravin Kumar Somnath v. Gujarat State Land Development*, (1993) 1 L.L.J 916 (Guj) (India).

¹¹⁹ *Mukesh K. Tripathi v. L.I.C*, (2004) S.C.C. (L&S) 1128 (India).

this provision bars any person below 14 years of age to be an apprentice in any trade and prohibits persons below 18 years to train as apprentices in trade which involves dangerous operations.

Under Sec. 4, a contract of apprenticeship is compulsory for receiving apprenticeship training. A person can only receive apprenticeship training if an apprenticeship contract has been agreed upon between the employer and the person himself or in case of minor, by his/her parent/guardian.¹²⁰ Such contract shall come into effect on the day it was agreed upon and shall comprise of the terms and conditions agreed upon by the parties.

Sec. 6 deals with the duration of the training of apprenticeship. The training duration shall be specifically mentioned in the apprenticeship contract and shall be prescribed depending upon different cases and nature of trade where training is undertaken. The training terminates when the training period expires.¹²¹

The Act encompasses various provisions relating to intake capacity of apprentices in regards to specific trade,¹²² practical and theoretical training,¹²³ and training instructions.¹²⁴ It also enumerates the duties of the employers such as imparting proper training, providing efficient staff and facilities, and respecting the duties under the apprenticeship contract;¹²⁵ and the duties of the apprentices such as attending training, performing obligations and respecting the contractual terms, etc.¹²⁶ The statute also provides for payment of stipend at minimum prescribed rates,¹²⁷ working hours, overtime and leaves,¹²⁸ prescribing health, safety and welfare provisions according to the Factories Act and Mines Act depending upon different cases,¹²⁹ and obligation of the employer to compensate in case of injury to the apprentice during training period.¹³⁰

¹²⁰ The Apprentices Act, 1961, No. 52, Act of Parliament, 1961 (India) § 4.

¹²¹ *Id.* § 7.

¹²² *Id.* § 8.

¹²³ *Id.* § 9.

¹²⁴ *Id.* § 10.

¹²⁵ *Id.* § 11.

¹²⁶ *Id.* § 12.

¹²⁷ *Id.* § 13.

¹²⁸ *Id.* § 15.

¹²⁹ *Id.* § 14.

¹³⁰ *Id.* § 16.

Sec. 30 lays down penalties and punishments under this Act. Sec. 30 (1) states that on the contravention of any provisions under the statute, the employer shall be issued a notice seeking reasons for the contravention. If the employer does not respond to the notice or responds unsatisfactorily he shall be punished with fine. Sec. 30 (2) states that the employer shall be penalised if he employs or requires the apprentice to do work unrelated to his training or he is unqualified to do such work or the employer fails to fulfil the terms and conditions of the apprenticeship contract.

4.3.7 The Motor Transport Workers Act, 1961

The Motor Transport Workers Act of 1961 was enforced in March, 1962. The Act has been enacted mainly for securing welfare of the motor transport workers and regulating their working conditions in respect of all States and Union Territories of the country. The Act is applicable in respect of motor transport undertakings which employ 5 or more workers in the motor transport business.¹³¹

Sec. 2 gives the meanings of a number of terms. 'Child' has been defined as a person less than 14 years of age¹³². Previously, 15 years was the age limit for a person to be recognised as a 'child.' An 'adolescent' is a person between 14 to 18 years.¹³³

The Act comprises of various provisions regulating motor transport undertakings. Chap. II deals with motor transport undertaking registration. Chap. III discusses about the appointment and regulation of the various staff for inspection and other purposes in pursuance of the provisions of the Act. Chap. IV deals with health and welfare provisions of workers of the motor transport sector. Chap. V lays down provisions regarding working hours of adult and adolescent workers, rest periods, shifts, weekly holidays, etc.

Chap. VI of the Act concerns with the provisions relating to employment of young persons. Sec. 21 forbids any child from working in any manner or form in any kind of motor transport activities. Thus, by virtue of this provision, the Act completely bars any person below the age of 14 years to work in the motor transport undertaking sector.

¹³¹ The Motor Transport Workers Act, 1961, No. 27, Acts of Parliament, 1961 (India) § 1.

¹³² *Id.* § 2(c).

¹³³ *Id.* § 2(a).

Although, child labour in motor transport sector is prohibited, adolescents are not disallowed from being employed as workers in the sector. Sec. 22 states that adolescents are permitted to work in any motor transport undertaking if they carry at work a token, referring to their fitness certificate granted by the appropriate authority under Sec. 23.

The workers of the motor transport sector shall be paid wages in accordance with the Payment of Wages Act of 1936,¹³⁴ shall be entitled to wages for overtime work¹³⁵ and eligible for leaves annually along with wages.¹³⁶ Sec. 31 punishes any person who violates any provisions regarding prohibition, restriction and regulations of the employment of persons as workers in any motor transport undertaking, with imprisonment up to 3 months or with fine or with both. If a child is employed in any motor transport undertaking by a person in violation of Sec. 21 of the Act, such person shall be punished under Sec. 31. The Act also lays down punishment for repeat offenders.¹³⁷ Sec. 40 empowers the State Government to make rules including the rules for the protection and welfare of children and prevention of child labour in the motor transport sector.

4.3.8 The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

The Beedi and Cigar Workers Act, 1966 was framed on 30th November, 1966, and came into effect on 10th February, 1970. The Act is regulated by the Ministry of Labour & Employment and applicable in respect of all Indian states barring Jammu & Kashmir. The main objective of the Act is safeguarding the welfare of workers in *beedi* and cigar establishments and regulating their working conditions.

Under Sec. 2 of the Act, the meanings of a number of important terms of the Act have been laid down. The definition of ‘child’ has been provided as any person not completing 14 years of age.¹³⁸ This section also defines the term ‘young person’ as anyone between 14 to 18 years of age.¹³⁹

¹³⁴ *Id.* § 25.

¹³⁵ *Id.* § 26.

¹³⁶ *Id.* § 27.

¹³⁷ *Id.* § 33.

¹³⁸ The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, No. 32, Act of Parliament, 1966, (India) § 2(b).

¹³⁹ *Id.* § 2(q).

The *Beedi* and Cigar industry is considered to be a hazardous process. The manufacturing process of this industry greatly impacts the health and safety of the workers who are engaged in it. Therefore, sufficient restrictions and measures are required to be taken when running such establishments. Thus, Sec. 3 of the Act put downs provisions requiring the employer/owner of *beedi* and cigar establishments to acquire and hold valid licences from appropriate authorities without which they would not be allowed to continue operation; while Sec. 4 provides the procedure for acquiring such licence. In order to promote the welfare, safety and health standards in *beedi* and cigar factories, the Act has laid down provisions concerning hygiene,¹⁴⁰ ventilation,¹⁴¹ overcrowding,¹⁴² potable water,¹⁴³ sanitation,¹⁴⁴ washing facilities,¹⁴⁵ crèches,¹⁴⁶ medical facilities,¹⁴⁷ canteen,¹⁴⁸ etc. Sec. 17 prevents workers to work for more than 9 hours in a day or 48 hours in a week. However, adult workers may be allowed to work overtime and receive extra wage for such work.¹⁴⁹ The Act also provides workers with rest periods during work,¹⁵⁰ suitable arrangement of working periods,¹⁵¹ weekly holidays¹⁵² and leaves annually.¹⁵³

Beedi manufacturing is considered to be harmful for the health and safety of children. Thus, the Act prohibits children to work in the *beedi* industry. Sec. 24 strictly forbids employing or permitting children to work in the premises of any *beedi* or cigar factory. Thus, child employees in any form are banned in businesses where *beedi* and cigar manufacturing, etc. are carried out. Sec. 26 also bars women and adolescents to work in *beedi* factories between the period of 7 PM and 6 AM.

Sec. 33 lays down penalties for contravening the provisions of the Act, or rules or orders made in respect of the Act. Sec. 44 empowers the State Government to formulate rules for the purposes of the statute. By virtue of this provision, the

¹⁴⁰ *Id.* § 8.

¹⁴¹ *Id.* § 9.

¹⁴² *Id.* § 10.

¹⁴³ *Id.* § 11.

¹⁴⁴ *Id.* § 12.

¹⁴⁵ *Id.* § 13.

¹⁴⁶ *Id.* § 14.

¹⁴⁷ *Id.* § 15.

¹⁴⁸ *Id.* § 16.

¹⁴⁹ *Id.* § 18.

¹⁵⁰ *Id.* § 19.

¹⁵¹ *Id.* § 20.

¹⁵² *Id.* § 21.

¹⁵³ *Id.* § 26.

government may also formulate rules for the protection and safeguard of children and young persons working or engaged in *beedi* factories.

4.3.9 The Bonded Labour System (Abolition) Act, 1976

The Bonded Labour Act came into force on October 25th, 1975. The Act is essentially a social protection legislation which seeks to abolish the practice of bonded labour from the country along with an outlook towards prevention of exploitation, both economically and physically, of the disadvantaged groups of the society. Thus, by virtue of this Act, the system of bonded labour is completely forbidden and the Act lays down provisions penalising those found engaging in bonded labour and practices related to it. The bonded labour system is prohibited by the Constitution of India under Art. 23 (1). This constitutional provision states that human trafficking, *begar* and other forced forms of labour such as bonded labour are prohibited. It also states that a person shall be punished accordingly if he contravenes this provision.

In *PUCCL case*,¹⁵⁴ in respect of the issue of rehabilitation of bonded labourers, the apex court recognised the practice to be a major problem gripping the country and therefore framed guidelines/directions to the government of the States to adopt effective measures to secure such rehabilitation.

The bonded labour system is an age old practice in which a person and his succeeding descendants/dependents are compelled to work towards extinguishing a debt of their predecessors without adequate wages or no wages at all. The Act of 1976 has defined the 'bonded labour system' as a forced or partly forced system under which a person taking debt comes or assumed to come into agreement with the creditor for:¹⁵⁵

1. Any advanced consideration received by him or his descendants or ascendants, and such advance is due, or
2. Any custom or social obligation, or
3. Any obligation transferring on the person by way of succession, or
4. Any financial consideration obtained by him or any person of his lineage, or
5. Any reason because of his birth in a particular caste or community.

¹⁵⁴ P.U.C.L v. State of T.N, (2004) III L.L.J. (S.C.) (India).

¹⁵⁵ The Bonded Labour System (Abolition) Act, 1976, No. 19, Acts of Parliament, 1976 (India) § 2(g).

Thus, to extinguish such debt under the bonded labour system would warrant:¹⁵⁶

1. a person, his family members, and persons of his lineage to render labour services to the creditor for defined or undefined duration with meagre wages or no wage at all,
2. forfeiture of freedom to work or pursue other employment and livelihood opportunities, for defined or undefined duration of time, or
3. forfeiture of right of movement within India, or
4. forfeiture of availing market value of his property or labour.

Any labour or service carried out by a person under the bonded labour system is known as ‘bonded labour.’¹⁵⁷ The person incurring a bonded debt and liable to render his services under the bonded labour system is known as a ‘bonded labourer.’¹⁵⁸ A “bonded debt” has been described as any debt received in advance or assumed to be received by a bonded labourer under the bonded labour system.¹⁵⁹

Sec. 4 abolishes the system of bonded labour and frees and discharges any labourer under the system. Furthermore, making advancements or forcing a person to provide bonded labour under the bonded labour system is forbidden. According to Sec. 5, any kind of customs, contracts or instruments which give effect to the bonded labour system shall stand void. Chap. III enumerates provisions extinguishing the obligation of any person to pay back any bonded debt. Chap. IV discusses about the authorities responsible for enforcing the Act proficiently. Chap. V mainly discusses about the constitution and functions of Vigilance Committees under the Act.

The Act punishes any person who forces any person to work as a bonded labourer. Anyone compelling another to render labour services as bonded labourers shall be imprisoned for a duration extending up to 3 years along with fine.¹⁶⁰ Anyone advancing bonded debt shall be imprisoned for a duration extending up to 3 years along with fine.¹⁶¹ Punishment is also laid down for enforcing any custom, contract,

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* § 2(e).

¹⁵⁸ *Id.* § 2(f).

¹⁵⁹ *Id.* § 2(d).

¹⁶⁰ *Id.* § 16.

¹⁶¹ *Id.* § 17.

instrument, etc. for the purpose of labour under the bonded labour system.¹⁶² The Act also empowers Central Government to formulate rules for the furtherance of the Act.

The system of bonded labour binds a person, his family and future generations to provide unconditional labour services to a creditor from whom the person had taken bonded debt. Under this system, even small children are forced and compelled to work for the debt taken by their father or forefathers. Bonded Labour is a violation not only of the fundamental rights of a person but also their basic human rights. Bonded child labour is cruel, pathetic and considered as worst form of child labour. The bonded labour system binds innocent children to render labour service without wages, right of movement or education. The ILO's Convention No. 182 recognises bonded labour as worst forms of child labour and requires member states to initiate actions to eradicate it.

In *Sannasomannara Somashekarappa*,¹⁶³ an allegation was made that the petitioner had paid a person in advance for allowing his 4 children to work for the petitioner as bonder labourers for a period of 1 year to graze cattle. The petitioner gave the children food and clothing, and after some time they were released and were enrolled in school. A case was filed against the petitioner under Sec. 16 of the Act. The petitioner made his argument that the advance received by the parents was wages for grazing cattle and moreover, the parents and the petitioner had no creditor-debtor relation as such. The judiciary ruled that such engagement of children would amount to the offence of child labour under other laws but not under the present Act. It further observed that the children were not forced by their parents to work as cattle grazers under the bonded labour system. Thus, there cannot be any prosecution of the petitioner under Sec. 16 of the Act.

4.4 Laws against Child Exploitation and Child Rights Protection

This part discusses about the various other laws indirectly dealing with child labour and promoting the rights of children, their welfare and restricting their exploitation.

¹⁶² *Id.* § 18.

¹⁶³ *Sannasomannara Somashekarappa v. Gorappa Rudraswamy*, (2005) 1 L.L.J. 621 (Karnataka) (India).

4.4.1 Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice Act was enforced on January 15th, 2016. The previous Act of 2000 had many shortcomings, and hence many child rights activists raised their voices and concerns regarding the Act. In order to remove the lacunas of the previous Act, the Act of 2015 was enacted by the Indian Parliament. The principal objective of the Act is the consolidation and regulation of laws in relation to children in conflict with law and children requiring safeguard and special care by providing them with basic necessities such as facilities for their development, safety, care, treatment, socialisation, rehabilitation, etc. and things related thereto for the welfare of such children. Thus, the Act mainly aims to provide and promote welfare, care and protection of children and is based upon the constitutional provisions such as Art. 39 (e) & (f), 45, 47, etc.

According to the Act, a “child” has been defined as anyone below 18 years of age.¹⁶⁴ Thus, a minor (person under 18 years) is regarded as a child for the purposes of the Act. The Act is applicable in respect of two categories of children: “children in conflict of law” and “children in need of care and protection.” Any person below 18 years who has been alleged or has actually committed an offence is known as a “child in conflict with law.”¹⁶⁵ A “child in need of care and protection” refers to a child who is found to be without any shelter or home; or employed in violation of the existing labour laws; or lives with a person who may kill, abuse, neglect, exploit or threaten the life of the child; or has no parents; or parents or other persons are unfit or unwilling to take care of the child; or has ran away from home; or has been abused, neglected, exploited, drugged; or is a victim of armed conflict, etc.¹⁶⁶

Apart from provisions safeguarding and rehabilitating the conflicted children and protecting and promoting children requiring special care, the Juvenile Justice Act of 2015 also comprises of certain provisions for the prevention and regulation of child labour and protection of child labourers. Sec. 76 provides punishment for employing children as beggars. This section states that the employment or use of children as beggars or for the purpose of begging is an offence under the Act and the offender

¹⁶⁴ The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2015 (India) § 2(12).

¹⁶⁵ *Id.* § 2(13).

¹⁶⁶ *Id.* § 2(14).

shall be imprisoned for a period extending to 5 years as well as fined. Furthermore, if a person severs, mutilates or surgically removes any body part of a child for the purpose of doing begging, such person shall be rigorously punished with imprisonment for a period extending to 7 years as well as liable to pay fine. Punishment is also provided under this provision for persons who, having control over the child, abets the commission of offences.¹⁶⁷

According to Sec. 78, a person shall be rigorously punished with imprisonment for a period extending to 7 years and shall also be liable to pay fine for employing or using any child to peddle, carry, vend, supply or smuggle any illegal liquor, drug, substance. Thus, the use of children as smugglers, suppliers or peddlers of illegal substances such as drugs is strictly prohibited by the Act and such use of children amounts to a form of child labour. Exploiting a child by employing him and keeping him in bondage without paying wages is rigorously punishable along with fine.¹⁶⁸

Human trafficking i.e. the act of buying and selling people as commodities is prohibited by the Constitution of India under Art. 23. The article also states that anyone indulging in such activities shall be punished under the appropriate law. Sec. 81 of the Juvenile Justice Act lays punishment for trafficking children. It states that anyone who is involved in the buying and selling of a child for any purpose shall be rigorously imprisoned for a period extending to 5 years and liable to pay fine. Furthermore, if such offence is done by a person having charge of the child, then such person shall be imprisoned for at least 3 years and extending to 7 years. Sec. 83 punishes persons for using children in militant groups, illegal organisations, criminal gangs, or for operating illicit activities, etc. Any person found guilty under this section shall be imprisoned for a period extending to 7 years and fined.

So, it can be rightly held that the Juvenile Justice Act of 2015 tries to provide protection and care to children and prevent immoral practices against children such as child labour and exploitations in the form of begging, drug peddling or smuggling, human trafficking, illicit activities, sexual or physical abuse, etc.

¹⁶⁷ *Id.* § 76.

¹⁶⁸ *Id.* § 79.

In *Anchorage Case*,¹⁶⁹ two British nationals were accused of sexually abusing children several times in a shelter home in Mumbai. The court, on the basis of its inquiry, evidence and testimony of the victims, convicted them for sexually and physically abusing the children.

4.4.2 The Immoral Traffic (Prevention) Act, 1956

The Act has been enacted to prevent prostitution and sex-trade in all forms in India. It aims to abolish and prevent all kinds of immoral activities involving women and children such as human trafficking, prostitution, etc. It prohibits such activities to operate as organised means of livelihood. Before the Amendment of 1986, the Act was known as The Suppression of Immoral Traffic in Women and Girls Act.

The Act lays down the meaning of “child” as anyone below 16 years of age.¹⁷⁰ The term “minor” has been described as a person between 16 to 18 years.¹⁷¹ The Act also mentions the meaning of “prostitution” as sexually exploiting or abusing a person for commercial purposes.¹⁷²

Sec. 3 of the Act punishes for operating a brothel or permitting any properties for such purpose. Sec. 4 punishes any person whose livelihood is based upon income from brothels and prostitution. This section states that where anyone above 18 years earns livelihood from prostitution shall be imprisoned up to 2 years or fined or both and when such income comes from prostitution of children or minors, such person shall be imprisoned for a period of 7 years and may extend to 10 years. A person above 18 years is assumed to be living on the income from prostitution if he lives with or accompanies prostitutes; or has control or influence over a prostitute in a way by which he aids, abets or compels her to prostitution; or acts as a tout or pimp of a prostitute.

Sec. 5 states that anyone who has procured, induced or taken a person for the purpose of prostitution shall be convicted and rigorously imprisoned for a period of at least 3 years and extending to 7 years and shall be fined; but if such procurement, inducement or taking a person is committed against the person’s will, the guilty shall

¹⁶⁹ *Childline India Foundation v. Alan John Waters*, 2011 (2) Crimes 72 (S.C) (India).

¹⁷⁰ The Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 (India) § 2(aa).

¹⁷¹ *Id.* § 2(cb).

¹⁷² *Id.* § 2(f).

be imprisoned for a period of 7 years extending to 14 years. Furthermore, if the person so procured, induced or taken is found to be a child or minor, then the person committing the offence shall be imprisoned for a period extending to 7 years and up to 14 years.

In *Gaurav Jain's case*,¹⁷³ it was stated by the court that in order to establish prostitution, the evidence of persons soliciting is not necessary every time, but the fact that a woman is offering her body for promiscuous sexual intercourse for gain is required to be proved.

4.4.3 The Protection of Children from Sexual Offences Act, 2012

This Act has been introduced with the objective to safeguard children from offences such as sexual assault, sexual harassment and child pornography and to establish proper judicial mechanism in order to deal with such matters. The Act has been formulated to give effect to the commitments given by India as member parties under the UNCRC, which requires the members to adopt measures for the prevention of inducing or coercing children to engage in illegal sexual acts; exploit children for prostitution or other illegal sexual acts; exploit children for pornographic purposes.

The Act describes “child” as anyone less than 18 years of age.¹⁷⁴ The Act does not deal with child labour in general terms i.e. the employment of children in factories or establishment but is concerned with engaging children in sexually exploitative acts such as child pornography.

Child pornography refers to any material or object in which children are displayed or described in sexually explicit manner, and in which sexual organs of children or sexual activity involving children are shown. Child pornography is a heinous practice carried out by sexual predators and paedophiles upon children. In child pornography, sexual predators usually exploit, use or solicit children to perform sexually explicit acts without the child’s willingness, awareness or reason to such acts. The Act has been introduced to prevent abuse of children sexually as well as sexual exploitation of children.

¹⁷³ *Gaurav Jain v. UOI*, 1992 (8) S.C.C. 114 (India).

¹⁷⁴ The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India) § 2(d).

Sexual harassment of children is discussed under Sec. 11 of the Act. The section states that enticing children for the purpose of pornography or giving gratification by a person having sexual intention amounts to child sexual harassment.¹⁷⁵ Anyone committing such sexual harassment upon children shall be imprisoned for a period extending to 3 years and shall be fined.¹⁷⁶

According to Sec. 13, using children for pornographic purposes is an offence. It states that using or exploiting children in any kind of media where the sexual organs of the child is shown or represented in any form; or using such child to perform sexual acts or intercourse; or the child is represented indecently or obscenely, shall be an offence under the Act. Anyone using children for pornographic purposes shall be imprisoned and fined in the manner described under Sec. 14.

4.4.4 The Indian Penal Code, 1860

The IPC is the principal criminal code of India. It is a substantive legislation comprehensively encompassing all facets of criminal law. The British Government was responsible for drafting and formulating the criminal code under the chairmanship of Lord Macaulay. After attaining independence, the Indian government adopted the code to deal with crime and offences in the country. It has since been amended numerous times and is accompanied by several other criminal laws.

In regards to the prohibition of child labour, the Code does not specifically deal with it but consists of provisions which in a way seek to prevent exploitation and immoral use of children in various avenues. The provisions stated below penalise offences such as sexual exploitation, trafficking, compulsion to labour, etc.

Sec. 374 of the Code penalises for unlawful compulsory labour. It states that anyone who induces another to engage in labour without his will or consent shall be imprisoned for a period extending to 1 year or fined or both. Therefore, forcing a person including a child to engage as labour without consent is an offence under this provision.

The Code punishes for trafficking under Sec. 370 and exploiting a trafficked victim under Sec. 370A. Any person who deals habitually with the buying, selling,

¹⁷⁵ *Id.* § 11(vi).

¹⁷⁶ *Id.* § 12.

importing, exporting of slaves shall be imprisoned for life or for a period extending to 10 years and fined under Sec. 371. Sec. 372 and 373 relates to the buying and selling minors for prostitution purposes respectively. Under these provisions, if anyone buys or sells any person below 18 years of age with the intention that he/she shall be engaged or used for prostitution or intercourse or other immoral purposes, then such buyer or seller shall be imprisoned and fined.

4.4.5 The Right of Children to Free and Compulsory Education Act, 2009

The Right of Children to Free and Compulsory Education Act of 2009 (RTE Act) was enforced on April 1st, 2010. The Act was introduced by the government to safeguard and promote the fundamental right to education of children provided under Art 21A of our Constitution. Art. 21A established right of every child between 6-14 years to free and compulsory education as a fundamental right. On the basis of these constitutional provisions, the RTE Act has been enacted to give effect to the educational mandates given under the Constitution. The principal object of the RTE Act, 2009 is to provide free and mandatory educational opportunities to every child between 6-14 years of age.

The reason behind introducing education as fundamental right and enacting the RTE Act is not only to provide children education for their overall growth, development and knowledge but also to ensure that children are not employed or exploited in any manner. “Child Labour” has been described as any work done by children which prevents them from going to schools. So, an ulterior motive behind instituting that right to education of children is to stop them from working in employments not suited for them or detrimental to their growth and development. Thus, the constitutional and statutory rights relating to right to education may be regarded as measures to prevent child labour practices in the country.

The RTE Act has termed a “child” as a person between 6 to 14 years; and includes both males and females.¹⁷⁷ A “child belonging to disadvantaged group” refers to any child who is either disabled or belongs to SC/ST community or socially or

¹⁷⁷ The Right of Children to Free and Compulsory Education Act, 2009, No. 35, Acts of Parliament, 2009 (India) § 2(c).

educationally weaker sections or other classes of people who are socially, culturally, geographically, linguistically backward as the government may specify.¹⁷⁸

Sec. 3 of the Act establishes free and compulsory education as a right of every child between 6-14 years. Such child shall be entitled to pursue education in a neighbourhood/local school until he completes his elementary education. Moreover, such education shall be provided without any payments, fees, charges or expenses, etc. If a child is not admitted or has not completed his elementary education, such child shall be admitted to an appropriate class.¹⁷⁹

Chap. III deals with various responsibilities of the government, authorities and parents of children. The concerned government and authorities have the responsibility to institute schools,¹⁸⁰ manage finances¹⁸¹ and ensure children are admitted and provided education as mandated by the Act. The parents/guardians have the duty to admit their children to pursue education as provided by the Act.¹⁸² Chap. IV discusses about the various responsibilities of the schools and teachers. Chap. VI discusses about the role of various committees and councils to protect child rights.

Today, the importance of education is universally recognised. Education provides children the opportunity to intellectually develop themselves, helps them to develop their skills and makes them responsible citizens of the country. Education not only benefits the child's present but also his future and the future of the country. RTE not only promotes child rights and welfare but also negates child labour. Child labour limits a child to go to school and attain education; on the other hand child education is an instrument to restrict child labour. RTE is now regarded as a potential measure for curbing child labour in the country. At present, child labour is still prevalent in various dimensions but the introduction of RTE as a constitutional and statutory right is a welcome step towards achieving total eradication of illiteracy and child labour from the country.

¹⁷⁸ *Id.* § 2(d).

¹⁷⁹ *Id.* § 4.

¹⁸⁰ *Id.* § 6.

¹⁸¹ *Id.* § 7.

¹⁸² *Id.* § 10.

CHAPTER 5

INTERNATIONAL EFFORTS AND INITIATIVES AGAINST CHILD LABOUR

5.1 Overview

Child Labour is a globally recognised issue. It is prevailing in some form or the other in almost all countries. Child Labour negatively affects the societies and economies around the world. Child labour has been rampant in underdeveloped regions like Africa, Latin America and South Asia in the most pathetic and worst forms. Widespread poverty, absence of regulations and irresponsible government in these regions has made employment and exploitation of children a common practice. However, on a positive note, many developed European countries and the United States of America have banned child work in all forms. They seek to provide a better future for the children and ensure care, welfare and protection to them. At present, many international, regional, national agencies have come about to uphold the idea of ‘children of today, future of tomorrow’. A few international organisations and bodies have adopted steps and measures to protect children, prevent their exploitation, abuse, etc. and promote their rights. UN has undertaken great steps in preparing the fundamental document on basic natural rights of the people in the form of the UDHR. This declaration enumerates the diverse rights that every individual embraces to live a free and dignified life. The declaration also provides the rights of children and the obligation to protect the children against exploitation, slavery, abuse, etc. The UN has also adopted other conventions and resolutions for child labour prohibition and child rights promotion. The ILO is another organisation which has been in the forefront in establishing superior labour standards and better working conditions for all workers. The ILO’s work also involves eradicating child labour, exploitation, abuse, slavery, forced and bonded labour, trafficking, sex-trade, prostitution, etc. The ILO Convention Nos. 29, 105, 138 and 182 are some of the core Conventions of the ILO which endeavour to abolish child labour at the global level. Apart from the UN and ILO, there are several other international agencies, non-profit groups and NGOs which are working to eliminate child labour and related practices.

In this chapter, the actions, initiatives and endeavours undertaken by international organisations such as UN, ILO and SAARC, against child labour, exploitation of children, etc. shall be analysed and discussed in depth.

5.2 United Nations

The United Nations (UN) is the main international organisation established for achieving world peace, cooperation and harmony. The UN was formed at the San Francisco Conference on October 24th, 1945. The principal goals of the global body was to avert future wars from escalating; promote basic human rights of all; ensure justice and adherence of international commitments; and promoting social development and quality living standards for all. The UN has also been dedicated towards ensuring that every person is ensured with certain fundamental liberties and rights in order to live a free and dignified life. The UN along with its organs like the Economic and Social Council, specialised agencies like the ILO and its other bodies have endeavoured to secure the fundamental human rights for all through various resolutions, conventions and treaties. The organisation has also recognised the deplorable conditions of children and their widespread exploitation, abuse and mistreatment and the necessity to uphold their rights and prevention of exploitation, child labour, abuse, etc. In this regard, a number of resolutions and conventions have been adopted by the UN. Some of them have been discussed below.

5.2.1 Universal Declaration of Human Rights, 1948 (UDHR)

The UDHR is a momentous document of the UN which was adopted on December 10th, 1948. It came into being on the backdrop of the destruction and damage that mankind faced during the events of the World War II. The main objective of the document was to lay down certain principles promoting the basic natural rights of all mankind. The UDHR speaks about 30 key principles based upon the notions of equality, liberty, freedom, justice, fairness and reason. These principles cover a wide variety of basic rights and freedoms of men which includes civil, political, economic, social, cultural rights, individual life and dignity, non-discrimination, free speech, emancipation, education, health, privacy, etc. Today, these principles are regarded as the benchmark for the modern human rights all over the world. The principles have inspired countries all around to embrace civil liberties and fundamental rights of

citizens as part of its legal framework. In this part, the principles of UDHR shall be discussed in relation to child rights promotion, and prevention of child exploitation.

The principles of UDHR have been a cornerstone for the protection of weaker sections of the society such as women, children and other socially disadvantaged people. These principles also seek to protect the children of the world, provide them the ability to grow and prosper and secure their future life.

Art. 4 of UDHR is against the practice of slavery. It states that all men should be free from any forms of servitude or slavery. Practices like slavery, bondage and slave trading should be strictly forbidden in any form. Slavery, forced servitude and bondage are some of the cruel practices in which children are also the victims. Such practices are against mankind and efforts should be made to prohibit them and free all men, women and children from the vicious grip of slavery.

Art. 5 states that no man should be cruelly, inhumanly or degradingly tortured, treated or punished. Every person should be treated kindly and empathically, whether man or woman, adult or child.

Art. 6 pronounces that every person shall be recognised as such by the law and it shall treat all equally. Art. 7 provides that everyone shall be equally protected against all forms of discrimination which violates the Declaration. Moreover, under Art. 8, effective remedial measures are laid down in case of infringement of the rights under the law or constitution. Thus, children also protected under this provision and a child by reason of its age should not be discriminated and should be specially safeguarded from all form of exploitation and injustices.

Art. 23 pronounces the all persons shall have the right to work, to freely choose their employment, fair and favourable working conditions and safeguard against unemployment. The Article further deals with just, fair and equal wages without gender discrimination, unionism, etc. Art. 24 provides opportunities for all to rest and leisure and provisions for favourable hours of work and weekly day-offs. Thus, it can be inferred that children and youngsters should not work where the working conditions are not favourable to their age, growth and physical and mental development.

Art. 25 states that every individual should have a decent living standard for the health and welfare of his own self and his family and secure the minimum needs of food, shelter, clothing, medicine, education, etc. Art. 25(2) recognises the extraordinary situation of women and children and they require special attention and support.

Educational rights are discussed under Art. 26. It states elementary education should be provided to all freely and should be mandatory for all. Higher education should also be made accessible for everyone. Education should be able to help persons develop their personalities and strengthen their obedience towards human rights and freedoms. Today, right to education of children has become mandatory in many countries. Such education not only helps the present but also the child's future.

So, the principles of UDHR do not directly deal with child labour but provides a wide range of principles which form the foundation of the basic natural rights of all mankind. These principles have inspired the formation of various other notions protecting the rights of the child and preventing child labour and other forms of exploitation.

5.2.2 Declaration of the Rights of the Child, 1959

The Declaration of the Rights of the Child is a significant resolution of the United Nation for the promotion and protection of the rights of children. This declaration was formulated by the Commission on Human Rights of the UN. The UN General Assembly sanctioned the resolution on November 20th, 1959. The present resolution has been inspired by the Geneva Declaration, 1924 of the League of Nations. The Geneva Declaration was the first document which recognised the existence of child rights and duty of every person to protect those rights. The Declaration of 1959 is an expansion of the previous one and comprises of 10 principles.

The Declaration does not expressly define the terminology of "child." Additionally, the Preamble to the Declaration pronounces the necessity to provide care and protection to the children as well as legal safeguards.¹⁸³ The 10 principles of the declaration have been described as follows:

¹⁸³ *Declaration of the Rights of the Child, 1959*, HUMANIUM (May. 21, 2019, 8:30 AM), <https://www.humanium.org/en/declaration-rights-child-2/>

- Principle 1: providing equal rights for all children without any exception, discrimination or distinction on the grounds of race, colour, gender, language, religion, social or political ideals, birthplace or his or his family's status.
- Principle 2: providing special safeguards, facilities and opportunities for the physical, mental, spiritual, social development and growth of a child in a manner of dignity, freedom and health and to achieve the paramount interest of the child.
- Principle 3: every child has a right to be given a name and assigned a nationality at birth.
- Principle 4: children shall be entitled to certain social securities and welfare provisions such as growing and developing in a healthy manner; provisions for special care and safeguards to the child and mother; provisions for prenatal and postnatal care of the child; and provisions for suitable food, shelter, health facilities.
- Principle 5: providing special provisions for caring, education and treating those children suffering from physical, mental or social incapacities or disadvantages.
- Principle 6: promoting the responsibility of parents and guardians to love, care, nurture and understand their children for their complete and proper growth and development. The society and the government bodies must extend support, maintenance and care to those children who have no family
- Principle 7: children shall be entitled to basic education which shall be provided to them freely and compulsorily. Such education should enlighten him socially, culturally, morally and help him develop skills and the sense of responsibility and reason. The parents have the duty to ensure that their children are able to get educated. Furthermore, children are entitled to enjoy their life through various recreational activities.
- Principle 8: in any cases and conditions, a child should be the first one to be given any kind of safeguards, care, relief, etc.
- Principle 9: children should be safeguarded from all social evils and should not be neglected, exploited, tortured or trafficked in any manner. Children should not

work or be employed in occupations not suitable for their age and capacity. Also, they should not be allowed to work in unsafe and hazardous employment which may affect their physical, mental growth and wellbeing or impact their education,

- Principle 10: children should be safeguarded from all forms of discriminatory practices. Children should be taught the values of peace, harmony, friendship, brotherhood, tolerance amongst all people and should be committed to serve the society.

These principles laid down in the Declaration provide children rights and opportunities for their wholesome growth and development and prevent exploitation and abuse of a child's life. Principle 9 has been introduced specifically to ensure that child labour and exploitative practices relating to children are not carried out and prevent any negative effects on the child's life due to unlawful and dangerous employments or work. This principle is supplemented by Principles 6 and 7 which provide for the duties of the parents and State to support and care for children and secure mandatory educational opportunities for them.

5.2.3 United Nations Convention on the Rights of the Child, 1989 (CRC)

CRC was formulated by the UN General Assembly and the UN adopted it on November 20th, 1989. The principles of CRC have been inspired by the UDHR which proclaims that every child is entitled to special safeguards, care and support due to their physical and mental inabilities. CRC is fundamentally a human rights accord and puts forth certain civil, social, political, cultural and economic rights of the child. The states which ratified this convention are obligated to adopt its principles into their legal system and required to report their progress to the Committee on the Rights of the Child from time to time. India is a signatory of this convention and ratified it on December 11th, 1992. Rights mentioned in the CRC are mainly based upon 4 core principles:

- Children should not be discriminated on any grounds;
- All measures relating to children should be devoted to serve their best interests;
- Children should be ensured of their life, survival and development; and

- Children should be given opportunities to participate in making their views known.

The rights specified in the Convention dealing with prevention of child labour and promotion of child rights has been discussed below:

Art. 1 of the Convention define a “child” as a human being who is less than 18 years of age or such age as the law of the child’s country specifies.

Art. 2 states that all children shall be equally entitled to rights and protections without discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Art. 3 lays down the responsibility of the State to adopt measures for the care and protection of children for their welfare, keeping in consideration the obligations of parents, guardians and other persons concerned for a child, and for this purpose undertaken all legal measures as may be necessary.

Art. 6 requires the States to recognise the innate right of a child’ life; and make efforts to ensure that the scope of the survival and development of a child takes place to the fullest extent

Art. 19 requires the States to undertake actions for protecting children, either physically, mentally or sexually, from all kinds of violence, abuse, injury, neglect, ill-treatment and exploitation. States are directed to adopt policies, programmes and measures to aid, support, rehabilitate and care for the children in need.

Art. 24(1) gives recognition to the State’s duty to ensure children’s right to enjoy high standards of health care facilities. Art. 24(2) obliges the States to undertake steps for the abolition of conventional practices injurious to the health of the children.

Art. 27 acknowledges that children are entitled to adequate living standards, food, clothing, shelter, etc. so that they may grow and develop physically, mentally, spiritually, morally and socially. The parents/guardians have the responsibility to secure such living conditions and the State must aid them in securing their responsibility.

Art. 28 requires the States to implement right to education for all children. Such education shall be mandatory for all children up to the elementary stage and shall be provided free of cost to all. Art. 29 provides that a child's education must develop his overall personality and respect for social values.

Art. 32 requires the States to safeguard children from being economically exploited and to prevent them from working in occupations unsafe and dangerous to their life; or harmful to their growth and development; or interferes with their education. The States are required to adopt legislative, administrative and social policies and actions for the purpose of this article. The State are to regulate child labour and employment and lay down provisions relating to age limits for employment, hours and conditions of work, penal provisions for violation of regulations.

Art. 33 obligates the States to take all possible measures to guard children against the use of drugs, illicit and intoxicated substances and prevent children to be engaged in the manufacture and supply of such substances.

Art. 34 requires the States to undertaken actions and policies to safeguard children from all form of sexual exploitation and abuse. The article prevents inducing, coercing or exploiting children in illegal sexual acts, sexual practices or pornography.

Art. 35 imposes the duty upon the States to adopt measures to prevent the abduction and kidnapping of children, or the trafficking or sale of children in any form.

Art. 36 requires the State to safeguard and care for children and prevent their exploitation which may hinder their welfare and safety.

Art. 37 prevents children from being tortured or treated inhumanly or degradingly. Children should not be punished harshly and their freedom should not be infringed by unlawful and arbitrary means.

Art. 39 requires the States to take steps for promoting physical and mental rehabilitation, recovery and social reintegration of children who were victims of abuse, neglect, exploitation, torture, cruelty, punishment, maltreatment, etc.

Thus, the CRC is a comprehensive human rights resolution of the UN directed to promote and protect child rights. The Convention seeks to eliminate all forms of disparities and discrimination of children on various grounds. The Convention also

seeks to promote welfare and development of the children and imposes duty upon the State and parents to adopt steps for securing a better life for the children. CRC is also focused upon measures to eliminate and curb practices such as child labour, child exploitation, trafficking, abuse, etc. Saving children from being employed in economically exploitative or hazardous occupations is also a principle upheld by the Convention. The Convention requires that the State should undertake legislative, administrative and social measures against child labour and exploitation and provide for their rehabilitation and reintegration with the society. Education as a free and compulsory right of children is another steps towards promoting child rights and crucial steps to deter children from being engaged in work.

5.2.4 International Covenant on Civil and Political Rights, 1966 (ICCPR)

The ICCPR was formulated by the UN General Assembly and was resolved for adoption on the December 16th, 1966 and was enforced on March 23rd, 1976. The Convention comprises of 53 principles relating to various civil and political rights of the people of the world. The core value of the ICCPR is based upon UDHR and the convention seeks to promote the free enjoyment of the rights of mankind. The civil and political principles of the Convention have been adopted into the framework of many nations. The Convention also seeks to promote child rights and prohibits child labour and exploitation. Some of these principles in this regard have been discussed below.

Art. 7 states that no man should be cruelly, inhumanly or degradingly tortured, treated or punished. Every person should be treated kindly and empathically, whether man or woman, adult or child.

Art. 8 is against the practice of slavery. It states that all men should be free from any forms of servitude or slavery. Practices like slavery, bondage, forced labour and slave trading should be strictly forbidden in any form. Slavery, forced servitude and bondage are some of the cruel practices in which children are also the victims.

Art. 24 states that all children shall be equally entitled to rights and protections without discrimination on grounds of race, colour, sex, language, religion, national or social origin, property, disability, birth, etc.

5.2.5 International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR)

ICESCR primarily seeks to grant all human being certain economic, social and cultural rights. It also pursues to promote rights relating to labour, health, education and proper living standards. The Convention comprises of 31 principles and it was enforced on January 3rd, 1976. Apart from various other economic, social and cultural principles, the Convention also pursues to regulate and protect child labour and promote child rights. Some of the provisions focussing upon the welfare and safeguard of children have been discussed below.

Art. 6 recognises a person's right over choice of work and livelihood. Art. 7 gives recognition to just and favourable working conditions so as to ensure equal, minimum and fair rates of wages without distinction on the basis of gender; adequate living standards; safe and proper working environment; opportunities for rest, proper hours of works, off-days, etc.

Art. 10 states that special policies and measures are required for the welfare of the children and youths. They should be equally treated without discrimination. Children and youths are to be safeguarded from any form of social and economic exploitations. They should not be employed in hazardous and unsafe occupations which may affect their health, safety and development. Penal provisions should be laid down against child labour. The States are also obligated to assign minimum age for work of children. In order to prevent indulgence of children into work, mandatory educational rights of children have been recognised by the Convention under Art. 13.

5.2.6 The Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949

This convention of the UN was enforced on July 25th, 1951 with the objective to suppress and prohibit human trafficking and exploitation of persons for prostitution, forced labour and other immoral practices. The Preamble to the Convention recognises that practices such as human trafficking accompanied by prostitution and sex trade are against human dignity and jeopardize the well-being of the people, families and the society as a whole. India became a signatory to the Convention on May 9th, 1950, and ratified it on January 9th, 1953.

The Convention provisions obligate the members to make policies to punish and penalise offenders involved in human trafficking, sex trade, prostitution, etc. It also prescribes procedures and regulations to be adopted for suppressing and eradicating such activities. The Convention requires supervision over those occupations where women and children may fall victims to prostitution, labour, etc.

5.2.7 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000

The UN General Assembly enforced this Protocol on January 18, 2002, with the main resolve to prevent and restrict the sale of any child for any purpose such as prostitution, pornography, sexual exploitation, child labour, etc. Art. 2 of the protocol seeks to define and prohibit the involvement of children in trafficking or sale, prostitution and pornographic business. It also requires the member States to take effective steps against these practices. India signed the Protocol on November 15th, 2004 and ratified it on August 16th, 2005.

5.2.8 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000

This Protocol was enforced on February 12, 2002 by the General Assembly of the UN with objective to prevent the children from being recruited in armed forces. The protocol requires the States to strictly restrict children below 18 years to enlist in the defence forces or deployed in war times or rebellions. The Protocol pronounces that children are physically and mentally immature of joining defence forces and must achieve proper age and levels of growth and development. The Protocol provides an extensive interpretation of term child soldiers in order to cover large numbers of children in armed conflict. India signed the Protocol on November 15th, 2004 and ratified it on November 30th, 2005.

5.3 International Labour Organisation (ILO)

The ILO is a specialised agency connected with the UN. The foundation of the ILO took place on April 19th, 1919 by virtue of the Treaty of Versailles. Formerly, the ILO was part of the League of Nations but later on it became a part of the UN in 1946. The ILO is basically a global labour body which focuses upon examining various economic measures adopted by different States and ensuring that every person is

provided with welfare and development opportunities with freedom and dignity along with equality and economic security. The functions and work of the organisation includes developing and promoting labour standards, living standards and better conditions of work. The organisation also conducts research on labour and social issues of the world, provides technical support in framing social and administrative policies and collects labour statistics on various areas.¹⁸⁴

The ILO also adopted and framed a number of resolutions and conventions for the protection of labour and promotion of their welfare. As of 2019, India has ratified 47 Conventions and 1 Protocol. Out of the 8 core Conventions, 6 of them have been ratified by India.¹⁸⁵ The ILO's Declaration on Fundamental Principles and Rights at Work laid down four key principles of the organisation. They are:

- To secure freedom and right to associate and bargain collectively;
- To eliminate forced and compulsory labour;
- To abolish child labour; and
- To eliminate workplace discrimination.

It has also worked tremendously in protecting rights of children and youths and preventing their abuse, exploitation or engagement in hazardous or forced forms of work and employments. In this part, the four core Conventions preventing child labour and promoting child rights shall be discussed along with the work and efforts of the IPEC programme which has been initiated by the ILO.

5.3.1 Forced Labour Convention, 1930 (C29)

The Forced Labour Convention (C29) is primarily focused upon eradication of all form of forced, bonded and compulsory labour practices. Art. 2 of the Convention illustrates the meaning of “forced labour” as any service or work done by any person involuntarily under any compulsion or penalty. From the above definition, it is certain that forced labour can be done by ‘any person’ and therefore, includes the work done by children unwilling and under compulsion. Hence, the convention extends to safeguard child labour, forced and bonded labour of children, child exploitation, trafficking, etc. Under the Convention, certain work and able bodied adults are

¹⁸⁴ N. JINENDER KUMAR & AJAY BHOLA, INTERNATIONAL LABOUR ORGANISATION 189 (ILO), (2008).

¹⁸⁵ *Ratifications for India*, ILO (May. 22, 2019, 11:30 PM), https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102691.

excluded from the purview of the term “forced labour.” Art. 1 pronounces that every ratifying State must take steps to curb the practice of forced labour in any form as soon as possible. The Convention requires the States to efficiently regulate compulsory labour practices and prevent such labour in dangerous work like mines. At present, 178 nations have ratified the Convention. India sanctioned the Convention on November 30th, 1954 and it is presently in force in the country.

5.3.2 Abolition of Forced Labour Convention, 1957 (C105)

The Abolition of Forced Labour Convention basically follows upon Convention No. 29 and seeks to prevent some types of forced and compulsory labour permitted under Convention No. 29. The ILO has specifically adopted the Special Action Programme to Combat Forced Labour in order to implement Conventions 29 and 105. The Convention requires the ratifying nations to prevent and restrict the usage of forced labour in the following cases:

- as measures of pressure, education or punishment for holding views or opinions;
- as labour for development purpose;
- as labour discipline;
- as punishment for striking; and
- as discrimination on racial, social, religious or other grounds.

At present, 173 nations have ratified the Convention No. 105. It has been ratified by India on May 18th, 2009 and ever since, it has been in force in the country and forced and bonded forms of labour is constitutionally prohibited.

5.3.3 Minimum Age Convention, 1973 (C138)

Minimum Age Convention of the ILO was enforced on June 19th, 1976 in order to set the minimum age limit for work at 15 years. The Convention seeks to ensure that every child is guaranteed their childhood; to make sure that they are not forced to work; and to provide them the opportunity to physically and mentally develop and acquire education and skills of their choice.

Art. 1 requires the ratifying nations to develop policies for the effective eradication of child labour and to gradually increase the minimum working age limit to such level

which facilitates overall growth and development of the children and youths. The Convention seeks to set the working age limit at 15 years. Art. 2 requires States to specify minimum working age limit in respect of employments within their territories. Art. 3 prevents employing persons less than 18 years in work which may endanger the safety, wellbeing and health of children and youths. Thus, child workers in hazardous operations are restricted by the Convention.

The Convention exempts developing nations suffering from economic and administrative inadequacies from the purview of some of the regulations of this Convention. Such nations are also allowed to set the minimum working age limit at 14 years till they become economically and administratively capable.

Under Art 6, any work of children in school or any vocational or technical training or education received by a child or youth shall not be within the purview of the Convention. Art. 7 States that state regulations may allow children between 13-15 years to engage in work which may not hamper their growth or health, or such work which involves school education or vocational training for the benefit of the child. The Convention allows control mechanisms, penal and other measures to be undertaken for enforcing the Convention. The other conventions relating to minimum age has been revised by this Convention.

Presently, Convention No. 138 has 171 ratifying nations. India is one of the newest signatories to the Convention, having ratified it on June 13th, 2017.¹⁸⁶ Although, the ratification is a welcome step, the minimum working specified by India is 14 years only and the country must undertake further measures and steps to progressively raise the age bar to 15 years. In India, the CLPR Act, as amended in 2016, absolutely forbids employment of a child less than 14 years in any work. It further regulates employment of young persons and restricts their employment in dangerous operations.¹⁸⁷

5.3.4 Worst Forms of Child Labour Convention, 1999 (C182)

Worst Forms of Child Labour Convention is an ILO convention adopted to eliminate child labour of the most cruel, pathetic and immoral nature. Child Labour of the worst

¹⁸⁶ *India ratifies both fundamental ILO Conventions on Child Labour*, ILO (May. 22, 2019, 10:30 PM), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_557295/lang--en/index.htm.

¹⁸⁷ *Id.*

kind has a great tendency of degrading the health, safety and morality of a child. The purpose of this convention is to eradicate such pathetic exploitation of children and provide them opportunities to grow with dignity, health and freedom.

Art. 3 identifies the following as “worst forms of child labour” because of the nature of work as well as the severity and magnitude of effort and capacity required for such kind of work:

- Child slavery, bonded child labour, etc.;
- Trafficking and sale of children;
- Prostitution and sexually exploiting children for commercial purposes;
- Children in armed conflicts;
- Children in illegal activities such as drug production and drug smuggling and trafficking;
- Such other work which may hamper a child’s safety, health and morals.

Art. 1 requires the ratifying nations to take prompt and active steps to prevent and eradicate such kinds of child labour. Art. 6 provides for formulation and implementation of policies against such worst kinds of labour abolition. According to Art 2, the Convention shall identify a person as a ‘child’ who is less than 18 years of age. The Convention allows control mechanisms and other measures to be undertaken for implementing and enforcing the Convention.

Presently, Convention No. 182 has 182 ratifying nations. India ratified this Convention on June 13th, 2017, the same day as Convention No. 138. India’s ratification of these conventions would mean that Convention No. 182 now covers nearly every child in the world while 138 now covers almost 80% of the child population of the world.¹⁸⁸

5.3.5 International Programme on the Elimination of Child Labour (IPEC)

The IPEC is a global strategic plan of the ILO which has been operational since 1992. IPEC seeks to gradually abolish child labour by consolidating the abilities of States to deal with child labour issues and initiate global efforts to curb it. Currently, IPEC programmes are operating in 88 countries. India joined the IPEC in 1992 after signing

¹⁸⁸ *Id.*

a memorandum with the ILO.¹⁸⁹ IPEC has been conducting its operations by collaborating with various employer groups, labour organisations, government and non-government agencies, private firms, NGOs, media houses, legislators, judges and jurists, educational institutions, as well as covering children and the society in general within its ambit.¹⁹⁰

IPEC's work mainly covers children in worst forms of labour. It includes slavery, forced labour, bonded labour, dangerous work conditions, etc. It also covers vulnerable child groups such as children of tender age and girl child labour. The IPEC's strategy is founded upon the core ILO conventions. The strategy involves the following steps:¹⁹¹

- encouraging States, groups and partners to recognize and initiate actions against child labour;
- identifying and analysing issues of child labour in a country;
- providing assistance to formulate and initiate policies against child labour;
- providing assistance to States in implementing ILO conventions against child labour;
- consolidating State agencies, organisations and institutional machinery;
- raising awareness on child labour eradication;
- promoting the legislative actions in a State; and
- bringing child labour issues to the forefront of socio-economic projects and policies.

In India, the IPEC has initiated many projects with the objective to curb child labour and provide technical support to government agencies. INDUS is one such project. The Indo-US Child Labour Project (INDUS) is a joint project between the governments of India and United States to provide technical support in curbing the problem of child labour. The project has been executed on the basis of the IPEC programme of ILO to eliminate child labour. It has been targeted towards 10

¹⁸⁹ *About the International Programme on the Elimination of Child Labour (IPEC)*, ILO (Jun. 12, 2019, 10:00 AM), <https://www.ilo.org/ipec/programme/lang--en/index.htm>.

¹⁹⁰ *Id.*

¹⁹¹ HOLLY CULLEN, *THE ROLE OF INTERNATIONAL LAW IN THE ELIMINATION OF CHILD LABOR* 288 (2007).

hazardous areas and covers the states of Uttar Pradesh, Delhi, Madhya Pradesh, Tamil Nadu and Maharashtra. The goals of the INDUS project include:¹⁹²

- detecting child labourers in hazardous sectors through well-organized survey;
- rehabilitating the children from such sectors and providing them proper education;
- provision for vocational training and education for adolescents;
- ensuring alternative employments for the families of the rehabilitated children;
- consolidation of the public education system for children;
- strategic monitoring of the project;
- strengthening institutions at the national and local levels; and
- initiating actions in other states against dangerous child labour.

5.4 South Asian Association for Regional Co-operation (SAARC)

SAARC is a regional organisation comprising of the South Asian countries: India, Nepal, Bhutan, Sri Lanka, Maldives, Afghanistan, Pakistan and Bangladesh. The main objective of the SAARC is to promote cooperation amongst the South Asian nations, maintain peace and stability along with social, economic, cultural development and interactions. SAARC's field of work also involves promoting human rights for all and prevention of exploitation and trafficking.

The SAARC countries have adopted the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution in order to deal with issues relating to trafficking and prostitution of children. The principal goal of this Convention is promoting support between nations so as to efficiently curb child trafficking, prostitution and sexual exploitation of children and measures for the rehabilitation of the victims.

Art. III requires the parties to criminalise offences like trafficking and prostitution and provide suitable penalties in respect of such offences. Art. IV provides for the jurisdiction of courts in dealing with offences under the Convention by taking into consideration certain aggravating circumstances. Art. V deal with the proceedings of the judiciary. Art. VI discusses about legal support in regards to the inquiry,

¹⁹² *Indus*, MINISTRY OF LABOUR & EMPLOYMENT (Jun. 12, 2019, 10:00 AM), <https://labour.gov.in/childlabour/indus>.

investigation, trial, etc. Art. VII provides extradition and prosecution provisions. Art. VIII requires states to adopt measures to restrict child trafficking. Art. IX is concerned with the rehabilitation and treatment of the victims.

CHAPTER 6

CONCLUSION AND SUGGESTIONS

Every child deserves a life full of happiness, wellbeing, security and development. Children suffer from vulnerabilities because of their physical and emotional incapability. For this reason, caring and protecting children is a necessity of the parents, society and the State. The family and parents have a natural responsibility to care for their child and offer them with the prospects to grow and prosper; the society has a moral duty to ensure that children are protected against all social evils, while the State has a higher legal obligation to promote the rights and development of children and safeguard them against physical, mental and moral abuse and exploitation. Such obligation of the State includes making laws and policies for promoting and protecting child rights and preventing evils acts against them.

Child labour and child exploitation are some of the greatest concerns affecting the lives of children in the society today. Child labour is a socially degrading practice of employing children in activities where they are not physically and mentally fit to work. Such practises are not only harmful for the children but also affect the society and the nation. In order to tackle and curb such socially dysfunctional activities, the State has adopted a number of legal and statutory measures. The Constitution of India pronounces child labour, child exploitation, trafficking and bonded labour as unconstitutional and directs the State to adopt measures to prevent them at all cost. The Constitution also provides directives to promote the rights of children which in turn restrict exploitative practices against children. Moreover, constitutional mandates such as compulsory formal education for children in the form of RTE; formulation and application of child specific laws; and initiatives to promote child security and their healthy growth and development are some of the ways through which the State promotes child rights.

Apart from constitutional mandates against child labour, there are several child labour specific and general legislations curbing the child labour menace. The most significant legislation is the CLPR Act. Previously, the Act prohibited child labour in certain sectors and regulated it in others; but now the amended Act has absolutely prohibited all forms of child labour in any sector. This statute has made significant strides in the long path towards complete child labour eradication in India. Other

legislations such as the Factories Act, Mines Act, Immoral Traffic Prevention Act, etc. deal with restrictions and prevention of exploitation of child workers in various sectors.

However, the necessity to prevent child labour is not just a national issue which concerns just the state and its people. Child labour is a global phenomenon and thereby requires the coordinated efforts of the global community. At the international stage, a number of international organisations, such as the UN and ILO at the global level and SAARC at the regional level, have come up with solutions to deal with the problem. The UN has been at the forefront in dealing with the issue. The UN's endeavour to eliminate child labour globally is evident from the various declarations, conventions and covenants it has adopted. They include the UDHR, CRC, ICCPR, etc. Being a member of the UN, Indian laws have adopted most of the edicts of the UN declarations and conventions. Another organisation which has worked prominently in eradicating child labour is the ILO. ILO's commitment to absolutely eliminate child labour is apparent from the numerous initiatives it has undertaken in that regard. The ILO conventions such as Convention Nos. 29, 105, 138 and 182 have laid down guidelines and principles to regulate and prevent child labour. India has just recently ratified 6 out of the 8 core ILO conventions. However, the principles of these conventions still remain to be fully adopted within the legal framework of our country.

In India, the current constitutional and statutory machinery, along with international mandates, have been successful in preventing and regulating of child labour. The efforts of the State in prohibiting the employment of children in all forms of work have been commendable in recent times. The various international conventions and measures have also encouraged the State to adopt modern solutions and policies to deal with child labour in the society. Although, a systematic legal framework is in place in the country to curb child labour practices, yet the problem is still rampant in many unorganised and unregulated sectors such as domestic work, cottage and small scale industries and other establishments. The legal measures have proved effective to some degree and extent but there still remains a big void to fill for the State to match the efforts of the West in eliminating child labour from its system.

On the basis of the above discussion and findings, the researcher would like to put forth the following suggestions which may support the battle for child labour prevention in India:

- Firstly, the applicability of child labour prevention laws upon all sectors, organised and unorganised.

The available statutory measures have been effective in preventing and regulating child labour in sectors like factories, industries, mines, plantations, transport, shipping, etc. However, these measures do not completely cover the unorganised and unregulated sectors where the practice of child labour still persists. Due to lacunas in our legal system, these sectors remain unmonitored and uncontrolled. Hence, the State should take immediate steps to ensure that labour laws apply uniformly upon all sectors, organised and unorganised, and make sure that children are not exploited and deprived of their education and childhood.

- Secondly, the necessity for proper law enforcement and monitoring agencies.

Child labour has been able to persevere in India due to the lack of adequate agencies to enforce the law and monitor its application. The unavailability of efficient organs for law enforcement and monitoring has made it easy for a few employers/proprietors/owners to abuse the law and employ children without getting caught. Therefore, the State should establish special agencies to enforce the child labour laws and standards. These agencies should also monitor and oversee that employers are operating in compliance with the labour laws and standards.

- Thirdly, raising awareness in the society against child labour practices and laws preventing child labour.

The children that are generally employed as workers belong to weaker, disadvantaged and illiterate sections of the society. These people are unaware of their own rights and the rights of their children. They are ignorant of the impact of labour on the life of a child and uninformed about the available measures and facilities provided by the State to promote the rights of children such as education, health, skill development, midday meals, free books, etc. Due to such lack of knowledge and awareness, children belonging to the lower strata are forced into child labour. Therefore, it is necessary for the State to raise awareness against child labour and inform the people about the laws

and the rights that every child should enjoy. Awareness programmes should be initiated at the grass-root level through *Panchayat* meetings, processions, house-to-house visits or through circulars, flyers, and advertisements in newspapers, radio, television, etc.

- Fourthly, penalties and punishments should be made more stringent and resilient.

In order to prevent the practice of employing children in different sectors, the penal provisions should be made severe. The deterrence and prevention of any act requires the penal laws to be strict. Hence, it is suggested that making the penal provisions and punishments more stringent would restrict the employment of children and curb child labour practices.

- Fifthly, promoting child welfare and security laws and ensuring education, food, clothing, shelter and health as a fundamental right.

Child labour laws only restrict, prohibit and regulate the practice of child labour. However, these laws only do half of the work which is necessary for the welfare and security of a child. Therefore, for the purpose of complete promotion of the safety and wellbeing of a child, laws should be made to provide the basic needs and social security to every child. Apart from Right to education as a fundamental right of every child, the right to food, clothing, shelter and medical facilities should be incorporated as fundamental rights of every child, in order to promote the wholesome development and protection of children.

- Sixthly, adoption of the mandates of the conventions and protocols of the UN, ILO and other organisations within the legal system.

The mandates of the various declarations, conventions, covenants, protocols, etc. of different organisations such as UN, ILO, SAARC, etc. should be adopted within the legal system of the country. Some of these conventions such as ILO's Convention Nos. 29, 105, 138 and 182 lay down international labour standards for the prevention of child labour. These labour standards are in line with the western labour policies where child labour is strictly prohibited and regulated. Therefore, the gradual adoption of the mandates of these conventions should be made and should be reflected in the legal machinery of the country for the effective eradication and control of child labour practices.

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