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PROTECTION OF CHILDREN AGAINST CHILD LABOUR IN INDIA: EXAMINING THE CURRENT LEGAL FRAMEWORK

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ABSTRACT:

"The Problem of Child labour is a serious and unnoticed issue in the Contemporary society. The impact of Child labour severely affects the all-round development of a Child and renders the child unable to complete education. The development of the nation depends upon the nurturing of the Child and the way they are brought up. Child Labour is now becoming a social evil affecting the lives of the Children. Due to inevitable circumstances, children are forced to carry out hazardous work, without proper working conditions. ILO estimated that "In 2005, about 246 million around the World were the victims of Child Labour"⁷⁹. Positively, "India has reduced the problem of Child Labour by 2.2% per year during 2001-2011". But, the challenges of Child labour is still prevalent in various sectors of manufacturing, processing or packing factories. This Article explains the Concept of Child Labour System, role of India in eradicating Child labour, Comparative Analysis of Child Labour legislations in India and lastly, the conventions of ILO in relation to Child labour System."

Keywords: Child Labour, Education, Eradication, Hazardous Work and ILO.



⁷⁹ ILO, WORLD REPORT ON CHILD LABOUR-2015, https://www.ilo.org/ippec/Informationresources/WCMS_358969/lang-en/index.htm (29th Aug, 2023: 8:30 AM).



INTRODUCTION:

Children are weaker and vulnerable sections of the Society, who require care and protection at every instance of their life. The Children are subjected to various exploitations at early stage of their life. The problems like: Debt bondage labour, forced labour, physical assault, slavery and Child labour are faced by tender minds in the Society. The recognition of Child rights at international level is a long struggle put forth by various under-developed and developing countries. International Organizations like: International Labour Organization (ILO), U.D.H.R and Convention on Child rights, 1989 have contributed significantly for the protection and upliftment of Child rights.

The term 'Labour' denotes "any activity carried by means of physical or mental capacity in order to carry out some work for monetary purposes". S.E. Thomas defines 'labour' as "all human efforts of body or mind which are undertaken in the expectation of reward". Thus, any work done other than for gratuitous purposes in the expectation of wages signifies the term labour. Similarly, any work done by child in expectation of any benefit either voluntarily or non-voluntarily constitutes 'child labour'. "An individual who is under the age of 18 years, unless under the law applicable to the child majority is attained at an early age"⁸⁰. Minimum Age Convention of 1973 defines Child Labour as "any economic activity performed by a person under the age of fifteen provided, fifteen is not less than the age of completion of compulsory schooling"⁸¹. Similar definition has been adopted by India in its central legislation i.e., Child Labour (Prohibition and Regulation) Act, 1986.

The role of ILO in eradicating Child labour system has been crucial. As because it has streamlined the minimum standards to be adopted by the members internationally. It extended the application of these conventions to all sectors like: Domestic work. Industrial work,

commercial work, underground or hazardous activities etc. ILO specifically formulated Minimum Age Convention (No. 138) in 1973 and Worst Form of Child Labour Convention (No. 182) in 1999⁸². Incidentally Forced Labour Convention 1957 also applies to Children who are subjected to forced labour or slavery.

India is the strongest supporter of Child labour abolition movement across the World. The principles of abolition of Child labour and slavery system is reflected in the Indian Constitution. Legislations like: Factories Act, 1948, Mines Act, 1952, Bonded Labour System (Abolition) Act, 1976, Child Labour (Prohibition and Regulation) Act, 1986 focuses to eradicate Child Labour system across the Country.

FORMS OF CHILD LABOUR SYSTEM RECOGNIZED

BY ILO:

Various instances or forms of Child labour are Practiced in different Countries, such practices are divided into eight major categories by ILO⁸³. All these forms explain the plight of children and their suffering in different situations. Major forms would include:

1. Hazardous Working Conditions:

Children are employed in hazardous working conditions like: Mines, fire crackers industries, chemical factories etc. These conditions are harmful for children both physically and mentally which will deteriorate their health conditions.

2. Domestic/ Household Services:

Children are forced to carryout domestic work involving gardening, washing vessels, cooking food etc. They are often abused physically, verbally and mentally and employed for long working hours without resting time and payment.

3. Street Children:

Orphan or kidnapped children are left in the streets of cities for indulging them in beggary, theft, drug supply or other unlawful activities. Street vending

⁸² ASHA BAJPAI, CHILD RIGHTS IN INDIA, 195. (Oxford University Press, Delhi, 2006),

⁸³ FRANZISKA HUMBERT, THE CHALLENGES OF CHILD LABOUR IN INTERNATIONAL LAW, 19-21. (Cambridge University Press, U.K, 1st edn, 2009).

⁸⁰ Convention on Rights of Children, 1989.

⁸¹ Minimum Age Convention of 1973, No, 138.

business or shoe polishing shops commonly employ children to do their work. Such child is harassed very often and subjected to inhuman treatment when business incurs losses.

4. Informal Economy: In unorganized sectors young children are employed at low wage but work undertaken will be more. Such child is employed in business firms, manufacturing processes, packing agencies etc.

• **Unconditional Worst form of Child Labour:** the conditions of service is hazardous and detrimental to the health and safety of the children. This work undertaken will adversely affect the development of children both physically and mentally. It includes the following forms;

5. Sale and trafficking of Children: it includes employing children for debt bondage, forced labour, exploitation of children for compulsory services etc.

6. Forced Recruitment of Children in Armed Conflict: Indulging a child in armed forces or using such child for warfare is prohibited in all the Countries. But, using a child for criminal activities like: Human bombing, terrorist activities etc. also include under this category.

7. Commercial Sexual Exploitation of Children: Child is forcefully exploited and indulged in prostitution or brothels for gaining monetary benefits etc.

8. Children employed in illicit activities: Child are involuntary subjected to carryout illegal offences like: Drug supply, supply of arms etc.

ROLE OF INDIA IN ERADICATING CHILD LABOUR SYSTEM:

The respect and recognition of Child rights in India can be traced before Industrialization. But, due Colonization and establishment of factories in India, Children are employed in various textiles and factories with no regulatory mechanisms. Children are subjected to violence

and harassment at workplace. In 1881, Factories Act set out minimum age limit for employment in factories which was seven years. With enactment of Employment of Children Act, 1938 the employment of children below the age of 13 years was prohibited completely⁸⁴. But Rege Committee Report estimated that Child Labour was practiced largely in Bidi manufacturing, carpet weaving and small-Scale Industries in India⁸⁵. Subsequently, the prohibition of Child labour was extended to these sectors.

Child welfare Legislations regulating the employment:

1. "The Child and Adolescent Labour (Prohibition and regulation) Act, 1986.
2. The Child Labour Prohibition and Regulation (Amendment) Act, 2016 (CLRA, 2016).
3. The Plantations Labour Act, 1951.
4. Mines Act, 1952.
5. Bonded Labour System (Abolition) Act, 1976.
6. The Right of Children to Free and Compulsory Education Act, 2009"⁸⁶.

Features of Child Labour Regulation (Amendment) Act, 2016:

1. There is complete Prohibition of employing child under the age of 14 years and Adolescents in any establishments involving hazardous working conditions⁸⁷. While, Adolescents who are in between the age of 14-18 years are permitted to involve in non-hazardous work with the directions or regulations from the Government.
2. The Child is permitted to carry out work or help family business without affecting the school attendance in non-hazardous working conditions. Child may help enterprise as

⁸⁴ USHA RAMANATHAN, EVOLUTION OF THE LAW ON CHILD LABOUR IN INDIA, 5 (International Environmental Law research Centre, 2009).

⁸⁵ Labour Investigation Committee Report (1944-1946).

⁸⁶ LOK SABHA SECRETARIAT, CHILD LABOUR https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/child_labour.pdf (Aug 29, 2023: 9:30 AM).

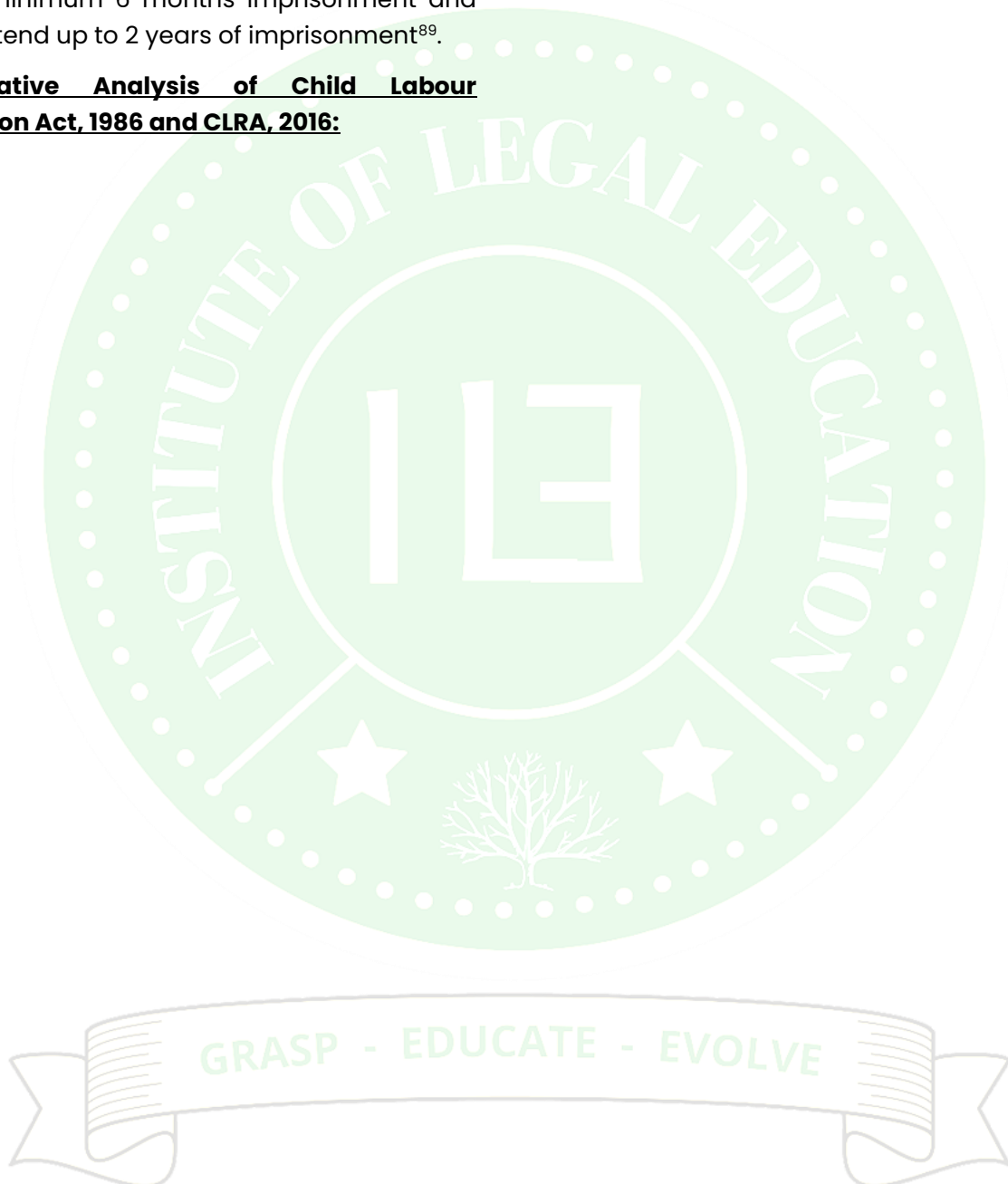
⁸⁷ The Child Labour Prohibition and Regulation (Amendment) Act, 2016 § 3, 3-A (Act no. 35/2016).



artisans, artists in audio-video platforms or advertisements or for any entertainment activities etc.⁸⁸ However, the Government has to regulate such non-hazardous activities.

3. The principal or employer or parents of such child are held liable for the violations of provisions of this Act. The Punishment for this will be minimum 6 months imprisonment and could extend up to 2 years of imprisonment⁸⁹.

Comparative Analysis of Child Labour Prohibition Act, 1986 and CLRA, 2016:



⁸⁸ The Child Labour Prohibition and Regulation (Amendment) Act, 2016 §3(2) (Act no. 35/2016).

⁸⁹ The Child Labour Prohibition and Regulation (Amendment) Act, 2016 §18 (Act no. 35/2016).



The Child Labour Prohibition and Regulation Act, 1986	The Child Labour Prohibition and Regulation (Amendment) Act, 2016:
1. It seeks to regulate employment of children in certain establishments and regulates the working conditions of children in non-hazardous work.	It seeks to prohibit employment of children and adolescents in Hazardous establishments completely and regulates employment in non-hazardous enterprises.
2. Children are permitted to work in hazardous situations if the work is of family enterprises or business.	There is complete prohibition of child or adolescent employing in hazardous occupations even if it is family business.
3. The Hazardous occupations was recognized up to 83 establishments.	Hazardous occupations are not only limited to 83 establishments, but much larger in number.
4. Employment of Child labour was non-cognizable offence.	Employment of Child labour is a Cognizable offence; Now police can arrest a person without warrant.
5. Right to compulsory education was not a Constitutional or statutory right.	Right to Education to Children is a compulsory Statutory right.
6. Minimum punishment was 3 months of Imprisonment and could be extended up to 1 year of imprisonment with/without Rs. 20,000/- fine.	Minimum punishment is increased up to 6 months of Imprisonment and could be extended up to 2 years of imprisonment with/without Rs. 50,000/- fine.
7. No provision for Child Labour Rehabilitation Fund.	Separate provision for constituting Child labour and Adolscent Rehabilitation Fund.

INDIA'S RATIFICATION OF ILO CONVENTION ON CHILD LABOUR:

The International Labour Organization (ILO) took a progressive measure in order to eliminate the problem of child around the World. ILO framed two major conventions on child labour: namely Minimum Age Convention (1973) and Worst form of Child labour Convention (1999). In 2017, June 13th India ratified these conventions formally and adopted the considerations made by the ILO in the Conventions⁹⁰.

Minimum Age Convention (1973) seeks to "impose an obligation on member States to formulate a national policy of prohibiting child labour in the establishments and to raise minimum age for admitting into employment of

children"⁹¹. While, Worst form of Child labour Convention (1999) seeks "to prohibit employment of children in hazardous working conditions like: slavery, illicit activities, sexual exploitation or any hazardous work that affects mental and physical health of a child"⁹². These Conventions intends a member States to constitute a mechanism for proper execution and implementation of its provisions.

India's formal ratification to ILO conventions has strengthened its commitment towards eliminating Child Labour System. The Government of India has announced various schemes for the benefit of children like: Sarva Shikshana Yojana, Mid-day meal schemes, Scholarships for Students etc. National policy on Child labour rehabilitation, 1987 provides an

⁹⁰ Dr. Aruna Sri Lakshmi, *India's Ratification of ILO Conventions 138 and 182 – A way forward to eliminate Child labour*, 2(1) 33 (JOURNAL ON RIGHTS OF CHILD, NLUO, Nov, 2017).

⁹¹, Minimum Age Convention (1973) ILO (No. 138) Article 1

⁹² Worst form of Child labour Convention (1999) ILO (No. 182).



action plan for execution and rehabilitation process of Child labour⁹³.

Apart from these measures, Indian Judiciary took a major step in protecting Children rights in the employment. According in M.C. Mehta v. State of Tamil Nadu & Ors, the Supreme Court directed “the Government to submit survey report on Child Labour and mandated the State to constitute Child rehabilitation welfare fund for the benefit of victims of child labour”⁹⁴. Further, the Apex Court through liberal interpretation included Construction work within the purview of Hazardous employment and provided relief to the Children⁹⁵. In Bachpan Bachoa Andolan case⁹⁶, the Supreme Court examined the lacunae’s involved in Child labour legislation like: Poor implementation mechanisms, lack of co-ordination, lesser punishments etc. Hence, ordered the State to examine the legislation for effective eradication of Child labour system.

CONCLUSION:

The development of personality of Children is the reflection of the Country’s future. Due to unavoidable situations of poverty, lack of parental care, education etc. large number of children are forced to carry out various works. “In 2021, ILO estimated that around 10.1 million Children in India are employed in various sectors who are below the age of 14 years”⁹⁷. India as compared to earlier statistics has achieved its goal for reducing Child labour, but still large number of Children are employed in informal economy. The Problem of Child Labour cannot be curbed only by the Government authorities, but it can be possible by mutual co-operation of people, parents, NGO’s and State. Proper parental care, educational facilities, awareness programs, Child counselling, implementation of child welfare schemes are

the measures to be adopted in coming days for combating Child Labour System.

⁹³ Ministry Of Labour and Employment, Issues on Child Labour, <https://labour.gov.in/sites/default/files/PolicyofGovernmentontheissueofChildLabour.pdf> (29th Aug, 2023: 1:09 PM).

⁹⁴ AIR 1997 SC 699.

⁹⁵ P.U.D.R v. Union of India (1982) 3 SCC 235.

⁹⁶ Bachpan Bachoa Andolan v. Union of India (2011) SC 3361.

⁹⁷ I.L.O, Fact sheet- Child Labour in India, https://www.ilo.org/newdelhi/whatwedo/publications/WCMS_557089/lang-en/index.htm (30th Aug2023, 9:30 PM).