



# CHILD LABOUR IN INDIA - A CONCEPTUAL STUDY

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## Abstract

The world is advancing, with new technological advances, developments, and various laws and regulations established by the constitution. However, the issue of child labour persists not just in developing but as well as in developed countries. The problem of Child Labour is always present in society in numerous forms and practices. However, there is not so much done to absolutely remove the problem of child labour. The future of a country depends on its children so it is the duty of society to take good care of children so that they can become responsible members of society. Ensuring that children have basic rights to education, leisure and recreation, and taking appropriate steps to protect them from exploitation, is a social challenge. India has many constitutional and legal provisions regarding child labour. These legal provisions cover various aspects such as workplace, minimum age, working hours, breaks and medical facilities. Despite so many constitutional provisions and laws, the issue of child labour remains the same. This is due to the insufficient enforcement of the child labour laws. It is hoped that the judiciary has intervened in various child labour issues. It has made some concrete efforts to protect children from the exploitative tendencies of the employer. This issue is important and is considered to require critical examination.

**Key words:** Child Labour, Constitutional law, Employment, Development, Conventions.

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## INTRODUCTION: CHILD LABOUR

Child labour is defined differently in different countries. Furthermore, not all laws and regulations governing the employment of children are the same. The term 'Child labour' consists of two parts. The term 'child' refers to a person's chronological age whereas the term

'labour' refers to the type of work, quantity and income capacity. When defining the term Child Labour, its meaning is related to these factors. However, child labour either paid or unpaid can be widely defined as a member of the workforce. Child labour', 'employed child', or 'working child' are all terms that are frequently used interchangeably. In this regard, it is the

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same as any work a child does for a good cause. According to Homer Folks, Chairman of the United Nations Child Labour Commission "child labour is defined as any work done by children that impedes their development and ability to achieve full physical development as well as the minimum desired level of education or recreation" (Willoughby, 1890). Work that deprives children of their youth, potential, and dignity while also harming their physical and mental development is commonly classified as child labour.

Child Labour refers to work harmful to the children emotional, physical, social, or moral well-being of children. It means and includes the work:

1. That puts one's mental, physical, social, or moral well-being in jeopardy.
2. That interferes with education.
3. That takes away their opportunities of education.
4. That forces them to leave school.
5. That makes them work long and hard hours in addition to attending school.

According to the International Labour Organization (ILO) - "Child labour is defined as work that is cognitively, physically, socially, or morally dangerous to children and interferes with their education:

1. by denying them the right to attend school;
2. by making them try to mix school attendance with too long and demanding activities."

V.V. Giri defined child labour in two ways as 'a business practice' and then as 'a social evil.' The first means hiring children to supplement the family's income and the second, a wide range of aspects that take into account the vulnerabilities of children, this equates to a denial of development opportunities" (Chtatterjee, 2016) while second one is itself clear.

According to the Indian Census, a child worker is someone under the age of fourteen who works for the most of the day (Chtatterjee, 2016).

From the above definitions, three things therefore are necessary to be excluded for employment of a child within the notion of 'child labour'-

1. Employment of the child in any gainful

occupation;

2. The work, to which the child is exposed, must be harmful; and
3. Lastly, the child's opportunity for development must be denied.

### FORMS OF CHILD LABOUR

The various forms of Child Labour that can be classified are as follows:

**Slavery-** is a term used to describe a situation in which one person is owned by another and forced to labour for them without having any control over their fate. A slave is someone who is enslaved from the moment of capture, purchase, or birth and who is unable or unwilling to labour (Lieten, 2006).

**Child trafficking-** is defined as the illicit conveyance (trade and movement) of minors for the purpose of labour or sexual exploitation. Forced labour, prostitution, and recruitment as child soldiers and beggars are all reasons why children are trafficked.

**Debt bondage-** is a form of forced labour in which people are forced to work in order to repay loans that they cannot repay with money or products. An impoverished family may, for example, offer a child to someone to pay off a debt, and the youngster may be forced to work for years to repay the obligation.

**Serfdom-** is when someone is forced to live and labour on someone else's land, usually for little or no pay.

**Forced Labor-** Forced labour occurs when a person is forced to work against their will. Children are forced to fight and work as chefs, porters, and messengers in military conflicts, for example. These youngsters are frequently compelled to kill or damage others, and they are abused and exploited.

### CAUSES OF CHILD LABOUR

Child labour is caused by two key factors: illiteracy and poverty in the family. A lack of proper tools for raising awareness of the effects of child labour is one of the reasons for the growing problem of child labour. High unemployment and underemployment rates



have an impact on child labour. Children who drop out of school or are expelled owing to family debt are more likely to work as children. Girls from low-income families are more likely to be forced to work as children. In Indian reference, the major causes of Child Labour are:

**Poverty:** Poverty is both the cause and the result of many societal problems, particularly in a country like India's unequal wealth distribution, resulting in chronic poverty and child forced labour. Parents in impoverished areas are caught between sending their children to school to study and sending them to work to supplement their families' meager income (Deshta, 2000).

**Previous debts:** Poor take loans to meet their needs but due to their poor financial conditions could not be able to pay them back. Hence, they indulge their children in work to assist them in paying off their debts.

**Professional needs:** Some industries, such as the Bangle industry, require soft and delicate hands, so children are more likely to be hired for such jobs than adults.

**Lack of access to education:** The school should have the right class size, a curriculum tailored to the local situation, and an affordable environment for the rural communities. Sending children to school and freeing them from harmful work is one thing, but it provides them with a quality education available to everyone.

**Forced begging:** When parents and children are unable to find work and support themselves, they force their children to beg. They even have their children handicapped in order to defraud the public.

**Cheap & easy availability:** In developing countries like India, poverty and unemployment are the biggest problems. As a result, parents force their children to work on low wages. Employers want more production at lower labour costs that can be easily obtained by hiring children.

**Educational backwardness:** India's socio-

economic population is illiterate, because of which they participate in the illiteracy of their children and deprive them of all educational opportunities.

## PROHIBITION OF CHILD LABOUR

### Prohibition of Child Labour and International Efforts

Child Labour is a complicated issue that cannot be explained by a single factor. In order to solve these problems, the world cannot develop unless the situation of children is improved, so a systematic and planned strategy is required, and various attempts are being made at the international level from time to time. At the International level, the roles played by United Nations (UN) and ILO are really remarkable. The International Covenant on Economic, Social, and Cultural Rights was established by the United Nations General Assembly in 1966, underlining the need for particular measures to safeguard and support all children and young people.

The United Nations named 1979 the 'International Year of the Children,' twenty years after the Geneva Declaration on the 'Rights of the Child,' with the goal of promoting the protection, survival, and development of children. Furthermore, the United Nations enacted a new Convention for Children in 1989, which had fifty-four Articles on the Rights of the Child, providing a wide spectrum of human rights for children. As a result, the UN has done its utmost to address the issue of child labour by ensuring that children's rights are protected. Because it believes that if all of a kid's rights are completely realized, the problem of child labour will resolve itself.

In addition to the UN, the ILO provides yeoman services worldwide to protect child labour. The ILO has issued a number of conventions and guidelines relating to children and young people, such as the minimum age of employment, medical examinations, night work, apprenticeships, and working conditions. The two most important ILO conventions are given below:

1. Conventions concerning minimum age for Admission to Employment, 1973 (Convention no. 138) (Kumar):
2. Convention concerning the Prohibition and



### Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (Convention No.182) (Kumar)

The first Convention supersedes prior measures that only applied to a certain economic sector. Each Member State is expected to implement national policies aimed at guaranteeing the effective eradication of child labour and raising the minimum age of employment, according to Article 1 of this Convention. Article 2 of this Convention states that no child may work before the completion of compulsory schooling and that no child shall be allowed to be under fifteen years of age. According to Article 3 of the agreement, the minimum age for entrance to any sort of employment or work that may be hazardous to the health, safety, or morals of young people by its nature or the conditions under which it is done should not be less than eighteen years of age. However, under Article 7, a National law or Regulation may permit the employment of children aged thirteen to fifteen years to perform light work that is not harmful to the child's development or health, and may also authorize the employment or work of persons who are fifteen years of age or older but have not completed the required schooling, and so on (Kumar).

In addition to and consideration of the minimum age conventions and recommendations thereof & national and international action including international cooperation and assistance, it was felt necessary to adopt a new document on the prohibition and abolition of the worst kinds of this child labour. The Admission to Employment Act of 1973 remains the primary tool in the fight against child labour; however, effective elimination of the worst forms of child labour necessitates immediate and comprehensive action, the value of free basic education, and the exclusion of children involved in all of this work. It recognizes the necessity of rehabilitating them and assisting them in reintegrating into society. On June 17, 1999, the Convention was ratified (Kumar).

**Prohibition of Child Labour and Indian Laws Constitutional Provisions for Child Labour:**  
The Constitution of a country is required to

reflect the wishes of its citizens and to provide a solution to the problem. The Fundamental Rights established by the Indian Constitution serve as the constitution's conscience and represent the people's inherent fundamental rights. As a result, the Indian Constitution includes several particular provisions relating to children's welfare. Article 15(3) of the Indian Constitution instructs the state to make specific provisions for women and children, implying that it was written with women and children's welfare in mind (Kumar). The Right to Life, as defined by Article 21 of the Indian Constitution, includes more than just physical survival, and not just the right to continue a person's animal existence. This includes the right to a dignified lifestyle. It also includes the right to labour without being enslaved or subjected to other harsh working circumstances. As a result, the government must ensure that no one's fundamental rights, whether adults or children, are violated. The employment of children under the age of fourteen in factories, mines, or other hazardous activity that poses or entails a risk to the child's physical or mental health is prohibited by Article 24 of the Indian Constitution. Article 21A of the Indian Constitution guarantees all children aged six to fourteen years free and compulsory education as a basic right. The fundamental right to free education will take precedence because the state now has a constitutional responsibility to provide free and compulsory education to all children aged six to fourteen years. If the state fails to achieve its commitments, anybody may seek constitutional remedies from the state for abuses of fundamental rights under Article 32 and 226 of the Constitution. Article 39(f) mandates the state to create the social and economic conditions and infrastructure necessary for children's healthy growth, as well as to offer facilities and a climate conducive to the exercise of rights and the preservation of dignity. The state is also mandated to safeguard children against exploitation, as well as moral and material abandonment. Article 43 of the Indian Constitution requires the State, by appropriate legislation and the like, to offer not only to work for all employees (including child labourers), but also living wages, a fair quality of life, and complete leisure, social, and cultural possibilities. It indicates that measures must be



made to guarantee that workers are in a safe working environment. Article 45 of the Indian Constitution mandates, the government should provide free and compulsory education to children under the age of fourteen. This article's major purpose is to eliminate illiteracy and make education mandatory.

**Statutes Prohibiting Child Labour:** In India, a number of legislative enactments, in addition to constitutional safeguards, exist for the welfare of children, to protect them from the current exploitative system, and to eradicate child labour from society. These may be discussed as follows:

### 1. The Factories Act, 1948

The act forbids the employment of a kid under the age of 14 in any factory. The act establishes a few further restrictions on the employment of young people aged 14 to 18 in order to protect their health and safety. A certificate of fitness from a certifying surgeon is essential for such young people. The statute places limitations on the working hours of these young people. As a result, a youngster between the ages of 14 and 17 years old is not permitted to work at night. Their employment in dangerous occupations is likewise restricted, and they must work for a maximum of four and a half hours every day. A factory manager must keep track of all child workers and provide the relevant information. There is also a ban on employing children in the pressing of cotton when a cotton opener is present.

### 2. The Plantations Labour Act, 1951 (Kumar)

"No child under the age of twelfth year shall be required or authorized to work in any plantation", says Section 224 of the Act. Section 25 also prohibits the use of children after hours without prior approval from the government. Again No youngster or adolescent is ever forced or allowed to work on a plantation. Provided, however, that there is a certificate of conformity issued at the time the employer has a reference to the plant referred to in Section 27 and is carried by such child or adolescent while working in the plant. Such a child or adolescent is working with a token that provides a link to such a certificate. According to Section 34 of the

above mentioned act, anyone who uses or recognizes a fraudulent medical certificate faces a maximum penalty of one month in prison and a fine of fifty rupees (Kumar).

### 3. The Merchant Shipping Act, 1958

It is applicable to seagoing vessels. It also has several provisions that govern the employment of children. It prohibits the employment of a person under the age of 14 in any position on a ship, with the exception of: A school ship or training ship operating under regulated conditions, or a ship in which all persons engaged are members of the same family. Where such individuals will be employed on a part-time basis and will be under the supervision of his father or another adult male relative or in a house commerce ship with a gross tonnage of less than 200 tones.

### 4. The Mines Act, 1952

Section 45 of this Act states that, "There shall be no child labour in any mine." In addition, children cannot be hired in any part of the mine, whether underground or open-pit mines. Children shall not be present in any part of the ground mine where mining work is carried out or continued after the date set by the Central Government by notification in the official gazette. Furthermore, Section 65 of this Act imposes a penalty of up to one month in prison or a fine of up to two hundred rupees on individuals who intentionally authorize or use a fraudulent fitness certificate issued under Section 4.

### 5. The Motor Transport Workers Act, 1961

According to Section 21 of the Motor Transport Act of 1961, no child shall be required or allowed to work in any other motor transportation company in any capacity. Furthermore, Section 22 of the Act prevents an adolescent from working as a vehicle transport worker for a motor transport firm unless the adolescent has a certificate of fitness, which must be left with the employer or carried at all times by the adolescent. As proposed in Section 30, anyone who uses or authorizes the use of a fraudulent medical certificate faces a penalty of up to one month in prison and a fine of up to fifty rupees (Chatterjee, 2016).



## 6. The Child Labour (Prohibition and Regulation) Act, 1986

A child is defined as someone under the age of fourteen years old, according to the Child Labour (Prohibition and Regulation) Act of 1986. The act's principal goal is to prevent children from working in jobs or processes that are risky or detrimental to them, taking into account their young age and developing personalities. The Act makes it illegal to employ children in any of the vocations listed in Part A of the schedule, as well as in any workshops where any of the activities listed in Part B of the schedule are carried out. No child shall be permitted or obliged to work between the hours of 7 p.m. and 8 a.m., or to work overtime. There are provisions in the statute that deal with offences and penalties. In situations of child labour in violation of this act, the penalty is imprisonment for at least 3 months and up to 1 year, or a fine of not less than Rs. 10,000 or up to Rs. 20,000, or both.

### JUDICIAL APPROACH TOWARDS CHILD LABOUR

The judiciary, providing innovative and inspiring judgments, has been the foundation of social justice. This concept of social justice would remain a myth if children were not given any protection. Combining constitutional and legal provisions, the Supreme Court has ensured the full protection of children's rights in line with India's international obligations, where necessary to eradicate the exploitation of children. But the biggest problem is child labour and exploitation. Given the fact that malaise cannot be eradicated, courts, especially the Supreme Court, have provided a way for its regulation.

Throwing light on the problem of Child Exploitation in Sathyavan kottarakkara (Sathyavan Kottarakkara v. State, 1997), the High Court held: Any form of child exploitation that tends to exploit children physically, mentally or otherwise is objectionable. In order to achieve the goals set by the makers of the Indian Constitution, which are reflected in the various articles of the Constitution, namely Articles 21, 39, 41, 45 and 46, all attempts in this direction must be stopped.

In the case of PUDR (People's Union for Democratic Rights and others v. Union of India,

1982), also known as the Asiad case, the plaintiffs were the People's Union for Democratic Rights and Others. In this case, Bhagwati J. was of the opinion that employing children under the age of fourteen years for all types of construction work is also considered prohibited due to its inherent danger, despite the fact that it is not specified in the act's schedule.

A public interest lawsuit was brought in Bandhua Mukti Morcha (Bandhua Mukti Morcha v. Union of India, 1997), alleging that children under the age of fourteen were working in the carpet industry in the state of Uttar Pradesh. The report of the Supreme Court-appointed commissioner confirmed the compulsory employment of a large number of children, mostly from Schedule Castes and Schedule tribes, brought from Bihar to work. The court ruled that the State is obliged to provide children with socio-economic justice and facilities, as well as appropriate opportunities for self-development.

In M.C. Mehta case (M.C. Mehta v. State of Tamil Nadu, 1997), in 1997, the Supreme Court issued directions to State Governments to fulfill the legislative intent behind the enactments and ordered the establishment of a 'corpus fund' with a donation of 25,000 rupees from the employers of child labourers employed in hazardous industries. In addition, the offending employer will be fined Rs. 20,000 for violating the Act of 1986. With this decision, the Apex Court effectively banned the 'all India evil' of hazardous industries and directed the Governments to ensure compulsory education for the children. In terms of non-hazardous industries, the inspector must ensure that the child's working hours are no more than six hours per day and that it receives a minimum of two hours of education per day. It also clears that the employer bears the entire cost of the education (Chtatterjee, 2016).

### CONCLUSION

Child labour is considered dangerous and harmful to children, both physically and mentally, by sociologists, development workers, educationists and medical professionals. Child labour is typically understood in two ways: first, as an economic practice, and second, as a social blight. Child



labour is primarily caused by poverty and overpopulation, both of which are aspects of economic development and cultural crisis. However, there are several provisions in our Constitution and other Laws that address child labour issues and protect the children's interests. Several national and international efforts have been made to contain these threats. At the same time, the judiciary has also played an outstanding role in this regard. However, child labour is deeply ingrained in our society and cannot be eradicated in a short period of time. As a result, there is a pressing need to create an atmosphere in which underprivileged child workers, rather than being forced to work, can attend school and properly complete their studies.

### **Following suggestions are important in this regard**

1. Child labour cannot be treated as a stand-alone issue. It is a complex socioeconomic demographic phenomenon that can be minimized and eliminated by a variety of government and public initiatives aimed at both societal and individual issues.
2. To entirely abolish child labour, child work must be regulated and humanized in a progressive manner, so that young workers are protected from conditions that impede their physical and mental development and deprive them of educational and better career possibilities.
3. Adoption and implementation of protective labour legislation, as well as improvements in working conditions and enhanced welfare services, are among these initiatives.
4. Child labour is a result of poverty, and it should be approached with care and understanding. The gradual removal of this problem is feasible through improvements in wealth distribution and social awakening, which are measures that can be directed at the entire society rather than just the children.
5. The economic discrepancy can be reduced by creating more jobs, implementing agrarian reforms, enforcing minimum wages, enacting legislation, providing social security, and providing a pension for farm employees, among other things.
6. Furthermore, the implementation of

universal compulsory education and the provision of training and apprenticeship systems can all help to reduce and eventually eliminate child labour. This strategy would not only eliminate illiteracy but would also create possibilities for adult learners to gain skills and find better jobs (Sharma, 2008).

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