

A Legal Frame Work for Combating Child Labour: A Critical Study with Reference to India.

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DOI: <https://doi.org/10.51244/IJRSI.2025.120500192>

Received: 29 May 2025; Accepted: 10 June 2025; Published: 24 June 2025

ABSTRACT

Due to age factor, children are underage or lower age, they are vulnerable and depending upon their parents and guardians for their livelihood. However, due to poverty, backwardness and illiteracy of parents, children have been undergone to vulnerable which leads child labour, exploitation, misuse and abuse of children. Besides, child labour prevents the children from their physical, mental growth and over all personality development. Indeed, children are the assets of society and a well development of future course of society depends upon the children only. Perhaps, industrialization and migration were made children more vulnerable and deprived of their rights. However, it is the obligation of the state and society to protect the rights of children to combat against child labour, because children are also considered as human beings and all human rights are equally applicable to them. Indeed, at the International level Several ILO Conventions, United Nations Human Rights Declarations, Covenants, Conventions and Protocols were adopted to combat against child labour. Similarly at the national level several Constitutional Provisions, separate Legislations and several Governmental measures are also provided to regulate child labour and protect the rights of children.

Objectives of The Study: The present study is focused on how children's children are being safeguarded against child labour in India and whether International, National Laws have been properly implemented, if not what kind of challenges and how to overcome from such challenges.

Methodology: The Researcher has followed the Doctrinal and Analytical method of Research.

Findings: Even though, several International and National Laws are been existed, child labour is being continued especially among the children of migrant workers in India. There is no specific legal provision to prevent child labour in the field of Agriculture. Apart from it, domestic child labour is being continued in urban areas and no mechanism is addressed to prevent it.

Conclusion: Even though, there are several International Conventions and National Legislations have been enacted, some children's rights have been in dangerous situation and they are more vulnerable and facing a lot of violence and exploitation in India. Perhaps, it is a kind of violation of fundamental rights of human beings guaranteed under Articles 14, 21 and 24 of the Constitution of India.

Keywords: Child Labour, Conventions, Constitution, ILO, Legislations, Rights and UNO.

INTRODUCTION

Child labour is a kind of evil practice, which prevents children from enjoying their childhood and it deprives of their physical and mental development, but not all work done by children is not a child labour. For example, whenever children assist their parents out of school timing in their family work or working for their pocket money is not child labour. It means any child is employed in an employment by an employer as a regular workman for wages without attending school during his tender age is known as child labour. Agriculture and industry are major sectors for child labour and male children dominance than female children in this field. Indeed, ILO 2020 report estimated that more than 160 million children are engaged in child labour in the world wide and in particularly Africa and Asia represent highest number of child labour. Among them 93 millions are boys and 67 millions are girls. Even in India, it is estimated that the child labour around 7.8 millions. The

UNO is declared 25th June of every year as “world day against child labour”. The 2001 census report of India revealed that 1.26 crore working children from age group of 5 to 14 out of 25.2 crore total child population in India and further 2011 Census report stated that 10.1 million child labourers aged between 5 to 14 years representing 3.9% of the total child population. The UNICEF report says that the number of children in child labour has risen to 160 million in worldwide with increase of 9 million children during the covid pandemic. As per the 2012-2019 Periodic Labour Force Survey reveals that 2 percent of all children close to 5 million children aged 5-17 were engaged in economic activity in India. As per the NCRB data only 613 cases were registered in 2021 under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

Objectives of The Research Paper:

The research paper covers on the protection of rights children from child labour at both the global and national level. The objectives of this paper are as follows;

1. To examine the International legal framework to combat child labour.
2. To analyze the Constitutional and Legislative provisions to regulate child labour in India
3. To know the causes and impact of child labour upon the children and society.
4. To trace out the Governmental measures for the protection of children against child labour.
5. To trace out the effective implementation of child labour laws in India.
6. To find out solutions in the direction to protect the rights of children against child labour.

The Methodology Adopted in The Research Paper:

The methodology adopted by the researcher in the present research paper is a doctrinal method of research, and the topic is related to international and national legal frame work to combat the child labour. In this doctrinal research, the researcher has confined to study the reasons for child labour and to find out solution for the regulation of child labour. Indeed, the researcher has followed the Analytical method of research in this research paper.

Hypothesis of The Research Paper:

The researcher has undertaken the present study in order to find out the International Legal framework and to review the Constitutional and legislative provisions to combat the child labour and to protect Human rights of children. Therefore, the researcher has framed the following hypothesis,

1. The existing international legal frameworks relating to combat child labour are inadequate.
2. The roles of Appropriate Governments are inadequate to combat child labour in India.
3. The implementations of legal provisions are insufficient.
4. The role of parents and community are ineffective to combat child labour in India.

Review of The Literature:

The review of literature provides an excellent beginning point to the research paper; perhaps, the area of research is focusing on the issue of child labour. To carry out this research work, the researcher has referred relevant literature such as Books, Constitutional provisions, Enactments, ILO conventions, journals, Precedents and UNO Conventions relied upon the materials relating to this area.

A Case Study on Combating Child Labour:

Meaning of Child Labour:

There is no strict demarcation to determine child admission in to employment. However, as per the ILO Convention and Indian Constitution, child means any person it may be male or female below the age of fourteen years of age is a child and such children are prohibited to any work. Child Labour means “any work which deprives children from their childhood, potential, dignity and harmful to physical and mental development is a child labour”.

Causes for Child Labour:

There are several causes for child labour and the following are the major causes;

Poverty is the major cause for child labour and children from poor families to support their families financially; they work in agriculture, factories and informal sector of economy.

Backwardness, illiteracy and lack of awareness to parents about child labour and its impact leads to practice child labour, even parents encourage for child labour as a customary practice.

Lack of accessibility to education particularly at rural areas, in slum areas and children of migrant workers do not have accessibility to education and they prefer work instead of going to school.

Development of informal sector and small business sectors employ children because child labour can exploit easily by paying low wages and getting heavy work and labour laws are also not enforceable in such employment.

Lack of access to get government jobs and formal employments stimulate to children enter into child labour.

Impact of Child Labour:

It exposes to health risks of children because of hazardous working conditions, long hours of work results in physical and mental strain, illness and injuries etc.

It deprives education and working children are denied to access to education and limiting their future opportunities.

It hinders personality development and it prevents childhood development, their physical and emotional growth also.

It violates fundamental human rights of children and denying their right to education, health, safety and security.

It leads to poverty and low income, which affects long term high earnings also.

It is an evil practice which hinders national development also by affecting less skilled work force and reduces the production and economic of development of the country.

It leads heavy burden upon parents, society and to the Governments also to protect their risks due to child labour.

Stakeholders of Child Labour:

In a global state, the foremost stake holders to combat against the child labour are the UNO, ILO, UNICEF, the Central and State Governments, and then Non-Governmental Organizations, Child Welfare Committees, Trade Unions, Employers, individuals, Parents and Community at large are the main stakeholders to combat child labour.

International Legal Provisions to Combat Child Labour: The practice of child labour is the gross violation of human rights of children across the globe, which has resulted in the adoption of several International Conventions by the ILO and the UNO. The following are the important ILO Conventional provisions to combat child labour and the protection of rights of children;

Ilo Conventions to Combat Child Labour at Global Level:

After the establishment of ILO, it has adopted several Conventions on different issues of labour, but there are two important ILO Conventions on combating child labour, they are as follows;

ILO Minimum Age Convention number-138 which deals with Minimum Age and it was adopted by ILO in 1973. The aim of this convention is fixing minimum age for entry into work or employment and to establish national policies for the elimination of child labour and its effective abolition of child labour. As per Article 3 of the Convention, the minimum age for admission to any employment or work which is carried out is likely to jeopardize the health, safety or morals of profession shall not be less than eighteen years. However, under Article 7 of the Convention, national laws may permit the employment or work of persons between thirteen to fifteen years of age.

Similarly, ILO Convention number 182 on worst forms of Child Labour was adopted in 1999, accordingly all ILO member states have an obligation to respect, promote and realize the abolition of child labour, even though, the members states not ratified the conventions. As per Article 3, the purpose of Convention to determine the worst forms of child labour and includes all forms of slavery, trafficking of children, debt bondage, forced labour, recruitment of children for use in armed conflict, child prostitution, for the production of pornography, procuring child for illicit activities, work which is carried out is likely to harm the health, safety or morals of children. However, as per Article 4 of the Convention, the type of work referred under Article 3, shall be determined by national laws or regulations after the consultation with the organizations of employers and worker concerned.

Apart from the above, the UNO adopted, the United Nations Convention on the Rights of the Child in 1989, which is the most important convention to protect the rights of child. According to Article 28 of the CRC states parties have to recognize the rights of child in education equally and to provide primary and secondary education freely and compulsorily to all children.

Similarly, **Article 32 of the Convention on the Rights of Child** states that state parties recognize the protection of rights of the child from economic exploitation and in the form of hazardous, child's education, Child's health or physical, mental, spiritual, moral or social development. Further, it is stated that states shall take legislative, administrative, social and educational measures, regulation of the hours and condition of employment and to ensure the implementation by providing appropriate penalties.

Even International Covenant on Civil and Political Rights, 1966, provides provision under Article 24 for equal rights to every child without any discrimination as to race, colour, sex, language, religion, national, social origin, property or birth, the right to such measures of protection as are required by his status as a minor on the part of his family, society and the state. It is mandatory to the state parties to implement the provisions of this Covenant at their national level.

Another International Covenant on Economic, Social and Cultural Rights, 1966, provides provision under Article 13 that the state parties of the present Covenant recognize the right of every citizen to education. The education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect of human rights and fundamental freedoms. Accordingly primary education shall be compulsory and available freely to all. It is also mandatory to the state parties to implement the provisions of this Covenant at their national level.

The Universal Declaration of Human rights 1948 is the foundation for human rights, which states under Article 25 that everyone has the right to education and education shall be free at least in the elementary and fundamental stages. As per Article 26 everyone has the right to a standard of living adequate for the health and well being of himself.

Therefore, there are several international conventions specifically ILO Convention, UN Convention on the Rights of Child, ICCPR and ICESCR etc... are some instruments which empowered the state parties by making legal provisions to combat child labour at their national level.

National Legal Perspective to Combat Child Labour:

After the independence to India, with the result of promulgation of Constitution, there are several provisions enshrined in the Indian Constitution to protect the child rights and they are as follows;

Constitutional Frame Work to Combat Child Labour:

Indian Constitution guaranteed certain fundamental rights in the part-III and certain other rights in the part-IV as the Directive Principle of State Policy, which are applicable to all citizens including children also and some special constitutional provisions in this direction are as follows;

Article 24 states that Prohibition of Employment of Children in factories. Accordingly no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Article 23 states that prohibition of forced labour. Accordingly, any form of forced labour is prohibited and contravention of this provision shall be an offence which is punishable in accordance with law.

Article 39 (e) says that the health and strength of men, women and under age of children are not abused and not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 39(f) states that the children are given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity and childhood and youth are protected against exploitation, moral and material abandonment.

Article 45 states that provision for early childhood care and education to children below the age of Six years, but subsequently based on the Supreme Court decision in *Unni Krishnan v. State of A.P.*, (1993)1 SCC 645, a new provision was made by bringing Eighty Sixth Amendment to the Constitution in 2002 and inserted Article 21-A.

Article 21-A, Right to education is a fundamental right. Accordingly, the state shall provide free and compulsory education to all children below the age of six to fourteen years in such manner as the state may by law determines.

Apart from the above special provisions, the other fundamental rights are also equally applicable to the children. In case of violation of fundamental rights, the Supreme Court under Article 32 and High Courts under Article 226 have empowered to protect such rights. So that, an aggrieved person can approaches either of these two to protect His/her fundamental rights.

Legislative Provisions to Combat Child Labour in India

After the independence in India, the Government of India has enacted several legislations to combat the child labour and to protect the rights of children also and they are as follow;

The Child Labour (Prohibition and Regulation) Act, 1986:

This act was enacted on 23rd December, 1986 with the objectives to define who is a child and to ban the employment of children below the age of fourteen years in the Part-A and part-B of Schedule occupations and workshops. It also regulates the conditions of work of children in schedule employments and laid down penalties for violation of the provisions of this act. The important provisions of this act as follows;

Section 2 (ii) of the Act defines child which means “a person who has not completed his/her fourteenth year of age” is known as a child.

Section-3 of the act says that prohibition of employment of children in certain occupation and processes. Accordingly, no child shall be employed to work in any of the occupations set forth in Part-A of Schedule or in any workshop set forth in part-B of the Schedule. However, this section is not applicable to any workshop is carried on by the occupier with the aid of his family or to any school established by or receiving assistance or recognition from government.

Section 7 deals with the working hours. Accordingly, no child shall be required or permitted to work on any day exceeding 6 hours including interval for rest at least one hour and time spent for waiting period. Similarly, no child shall be permitted to work between 7p.m. to 8 a.m, work for overtime and to do any work in any establishment work already done by him in another establishment.

As per section 9 every occupier in which a child employed to work before the commencement of this act shall with in a period of thirty days from such commencement send to the inspector within local limits of the establishment.

Section 10 says that if any dispute is relating to the age of any child employed, the Inspector has authorized to refer to the medical authority.

Section 11 states that the employer shall be maintained a register in respect of children employed to work and that register to be available for inspection by Inspector during working hours. The register includes the name and date of birth, hours of work, intervals of rest and the nature of work.

Section 13 says that the appropriate Government may by notification in the official Gazette make rules for the health and safety of the children employed.

Section 14 states that whoever employs any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term not less than three months but which may extend to one year or with fine shall not less than ten thousand rupees and which may extend to twenty thousand rupees or with both and if commits alike offence after wards he shall be punishable with imprisonment for a term shall not be less than six months but which may extend to two years. If an employer fails to comply or contravenes any other provisions of this Act shall be punishable with simple imprisonment which may extend to one month or with fine may extend to ten thousand rupees or with both.

Subsequently, on 26th July, 2016, the Child Labour (Prohibition and Regulation) Amendment Act, was amended and included several new provisions. The important such provisions are, Section 3 (1) says that no child shall be employed or permitted to work in any occupation or process and Section 3A says that no adolescent shall be employed or permitted to in any of the hazardous occupations or processes set forth in the Schedule. Further, section 14 (1) says that whoever employs any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term shall not be less than six months but which may extend to two years or with fine shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees or with both.

Therefore, now, no child below the age of fourteen years shall be employed, if any employer employed the child he shall be punished. Even though, child labour is being continued till today.

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

This Act was enacted on 26th August, 2009, to provide free and compulsory education to all children from six to fourteen years of age because to combat child labour. The important provisions of this are follows;

Section 3 of the Act has made education as a right of child to free and compulsory education. Accordingly, every child of the age from six to fourteen years shall have the right to free and compulsory education in a

neighborhood school and no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.

Section 4 provides special provisions for children who have above six years of age not admitted in any school or not completed elementary education, then he or she shall be admitted in a class appropriate to his or her age by giving special training.

Section 10 imposes duty upon parents and guardians to admit his or her child to an elementary education in the neighborhood school.

Besides, Section 11 says that the Appropriate Governments to provide for pre-school education to the children above the age of three years for elementary education and to provide early childhood care and education until they complete the age of six years.

Section 12 of the Act provides provision for Twenty five percentages of seats to the children belonging to SC, ST, Other Backward classes in the neighboring school by providing such expenses to the school management to provide free and compulsory education to all children.

Section 17 says that no child shall be physical punishment or mental harassment.

Section 31 provides provision for Monitoring of child's right to education through National Commission for Protection of Child Rights and State Commission for Protection of Child Rights.

Therefore, the Right of Children to free and compulsory education Act, 2009 made it compulsory to admit any child to education which avoids child labour. Even in case of dropout of students the appropriate governments and local authorities are held responsible for such dropout cases to take care of such children for readmitting them into schools.

The Factories Act, 1948:

This Act was enacted on 23rd September, 1948 and the important provisions for combating child labour as follows;

As per Section 67 of the Act, no child who has not completed the age of fourteenth year shall be require or allowed to work in any factory.

As per Section 68 says about Non-adult workers who has completed his fourteenth year and below eighteen years or an adolescent shall not be required to work in any factory unless a certificate of fitness granted by a certifying medical surgeon with reference to him under section 69.

Section 71 says that no child shall be employed to work in any factory for more than four and half hours in any day and during the night.

Section 73 imposes an obligation upon the manager or employer in which children employed shall maintain a register of child workers and that to be available to inspectors at all times during working hours for inspection.

Section 92 imposes penalty upon an employer who contravenes the provisions of this act shall be punished with imprisonment for a term which may extend to two years or with a fine extend to one lakh rupees or with both also and if the contravention is continued after conviction further to impose fine one thousand rupees for each day on such contravention is so continued.

Therefore, the Factories Act prohibits child labour and imposes punishment against employer in case of contravenes of the provisions of this Act.

The Role of Judiciary on Combating Child Labour in India:

As per Article 50 of the Constitution, the Indian judiciary is an independent judiciary and judicial review power is entrusted to both the Supreme Court and High Courts to review the decisions of the organs of governments like Legislature and Executive. Therefore, these courts play a pivotal role to protect fundamental human rights and particularly the child rights. As per Article 32 and 226 the Supreme Court and the important judicial decisions in this direction as follows;

In People's Union for Democratic Rights v. Union of India (1982), the Apex Court held that matchbox factories are hazardous and the court recognized that child labour in matchbox factories considered as a hazardous industries, which was violation of the fundamental rights of children under Article 24 and it must be effectively enforced to ensure the well being and development of children

In the case of M.C.Mehta v. State of Tamil Nadu (1997), the Hon'ble Supreme Court held that firecracker is a hazardous industry and the court prohibited the employment of children in hazardous industries for enforcing Article 24 to protect the rights of such children and directed the Government to take necessary measures to eradicate child labour.

Again in Bachpan Bachao Andolan v. Union of India (2011), the Supreme Court held that the issue of child labour under Article 24 and to eradicate child labour in various industries including carpet weaving. In this case the court reiterated the importance of implementing and enforcing the provisions of Article 24 to eradicate and protect the rights of children. The court directed the Government to take measures for the rescue, rehabilitation and education of children involved in labour.

Therefore, the Supreme Court plays a vital role to protect the fundamental human rights of children.

Critical Analysis on Combating Child Labour:

Even though, there are several international and national legal provisions, child labour is being continued across the globe including India also.

As per the global estimation of child labour, nearly 160 million children are in child labour, among them 63 millions belong to girls and 97 millions belong to boys.

The ILO and UNICEF reports reveal that across the world more than one third of children in child labour who are out of school despite of compulsory education by national laws.

Child labour is being continued especially among the children of migrant workers in India.

No specific legal provisions to prevent child labour in the field of Agriculture child labour.

Domestic child labour is being continued in urban areas and no mechanism is addressed to prevent it.

The UNICEF report stated that the child labour is slowly declining in India, because of implementation of various kinds of child welfare legislations and Governmental child welfare measures. Anyhow, till today child labour is being practiced and prevailed in India and we need to address it with effectively.

Challenges for Combating Child Labour Laws:

Difficulty to trace the children of Migrant Workers those who are not joined to schools or dropped from schools due to their parents are being migrated to either interstate or within the state.

Difficulty to enroll the children of migrant workers in schools and those parents are temporarily migrating from one place to another place.

Negligence by Governments for reenrollment of children of migrant workers whose parents are being migrated.

Low family income and poverty of parents leads to child labour

Parental support and cooperation is very much required for combating child labour, but lack of cooperation in this direction.

No specific Law to prevent child labour in the field of Agriculture to take action against Agriculturists who engage child labour.

Due to flexibility of work and wages to children, owners prefer for child labour.

Lack of coordination between the states to combat child labour in case of migrated children.

Lack of coordination among different departments of governments such as education, labour, child welfare departments

There is lower number of registered cases of child labour (as per NCRB) as against the real child labour practice.

RECOMMENDATIONS

To introduce child labour awareness curriculum in Primary Educational Level.

To conduct awareness campaigns and to create awareness among Public, Parents and Employers about child labour and its consequences.

To take special care and concentrate upon the children of migrant workers not to involve child labour and provide education facilities to such children.

Special attention to be taken by educational departments while children are dropout from schools and not to involve child labour.

Integrate and coordinate the departments of education, agriculture, labour and child welfare.

To implement self-help schemes and self-employment schemes for poor families to overcome poverty.

To make the Parents are more responsible and frame strict legal provisions to impose fines and punishments against them.

To impose responsibility on Local Governments to implement child welfare legislative measures effectively.

By providing financial assistance and involving NGOs for their activities in creating awareness and preventive actions on child labour.

To bring an amendment to the Child Labour Act to impose more penalties against employers.

To mprove the accessibility of education at remote rural areas, backward areas and slum areas in urbans.

Periodical check the dropout of students from schools and to take immediate actions to address such issue and not to involve in child labour.

To provide financial assistance to women and women self-help groups for their self employment to boost and strengthen their children's education.

CONCLUSION

Based on the above discussion, it is concluded that mere making of several International and National legal provisions are inadequate and insufficient. Perhaps, without parents and public support, we can't combat

against child labour effectively. Therefore, Governments must integrate and include all stake holders to create awareness among parents, employers and public about the consequences of child labour through its agencies, Commissions, NGOs and educated people.

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