



# International Journal of Research Publication and Reviews

Journal homepage: [www.ijrpr.com](http://www.ijrpr.com) ISSN 2582-7421

## Child Labour in India: Legal and Constitutional Provisions

*Ratna Binodini Amiya Priyadarshini Das*

LLM

Former Economist, in Commissioner of Commercial Tax, Odisha, Cuttack

[ratna.bapdas@gmail.com](mailto:ratna.bapdas@gmail.com)

### ABSTRACT

**International Labour Organisation (ILO)** defines the term child labour as, work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children, or work whose schedule interferes with their ability to attend regular school or work that affects their ability to focus during school or experience a healthy childhood. This paper focuses on various concepts and studies associated with child labour, their socio-economic issues. Various causes of child labour like the curse of poverty, lack of educational resources, Social and economic backwardness, Addiction, disease or disability, inadequate family income, large families, poverty, illiteracy etc.. Consequences of Child Labour such as general child injuries and abuses like cuts, burns, and lacerations, fractures, tiredness and dizziness, excessive fears and nightmares, drugs and alcoholism, physical abuse, emotional neglect etc. The Policy initiatives taken by Government of India through various programmes, NGO's and major National Legislations had a great impact on the situation of child labour and for the protection of child rights and elimination of child labour in India. From several decades, legislation of India has tried to control and regulate labour. For several decades in India, laws exist to regulate and control to child labour. The main concern of the legislation was to regulate working hours for children, to prescribe the lowest age limit for working of children, to ensure the life, health of the child workers, and to restrict the working of children in dangerous work. Child Labour legislations are which restrict the working of children below the age group of 14 years and 15 years in some of the prescribed occupations. In absence of provisions to resolve the problem and due to lack of political will, the number of child labour in total labour force of the Nation is keeping on increasing. Since, 1881, an oversized numbers of laws were enacted that gives the legal protection to the operating youngsters. The Child (Pledging of Labour) Act, 1933 followed by the Employment of Child Act, 1986. Various recommendations given by a series of Commissions and because of which Child Labour (Prohibition and Regulation) Act, 1986 enacted.

**Keywords:** poverty, illiteracy, health hazardous, Child Labour, Constitution, Laws, Social factors, Constitution Laws, Acts.

### INTRODUCTION

"Child" as defined by the [Child Labour \(Prohibition and Regulation\) Act, 1986](#) is a person who has not completed the age of fourteen years. A child of such tender age is expected to play, study and be carefree about his life. But as a fact of nature, expectations hardly meet reality. Children, by will or by force are employed to work in harsh conditions and atmospheres which becomes a threat to their life. Child labour leads to underdevelopment, incomplete mental and physical development, which in turn results in retarded growth of children. Looking at the [2011 census](#), clearly shows that the number of child labourers in India is 10.1 million, out of which 5.6 million are boys and 4.5 million are girls. As children form the future youth of India, it is highly crucial to provide all the things they need, ranging from basic needs such as shelter, food, and clothing to social needs such as education and other things. To achieve this, appropriate legislative measures are needed in a complex society like India. With regard to India, several legislations have been enacted to control the menace of child labour. Towards the end of the article, you'll get an idea of all the relevant legislations and regulations in India. Government has taken various protective measures to deal with this problem through strict enforcement of assorted legislative provisions along with simultaneous rehabilitative policies. Several committees, sub-committees and commissions have been appointed from time to time by the government to find out ways and means to prevent child labour

### OBJECTIVES

The following objectives has undertaken for the study;

- 1) To study the causes and consequences of child labour.
- 2) To study the legal provisions and efforts against child labour .
- 3) To find out some solutions for removing child labour.

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## METHODOLOGY

For analysis this study is based on mainly secondary data on census of India, 2011 and some data collected from different books, journals and internet etc.

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## CAUSES OF CHILD LABOUR

Significant causes of child employment that can be understood keeping in mind the Indian scenario, are:

### POVERTY:

In developing countries it is impossible to control child labour as children have been considered as helping hand to feed their families, to support their families and to feed themselves. Due to poverty, illiteracy and unemployment parents are unable to bear the burden of feeding their children and to run their families. So, poor parents send their children for work in inhuman conditions at lower wages. The majority of the nation's population lives in poverty. Due to their inability to pay for their children's education, poor parents force them to start working at a young age. In reality, they are fully aware of the impact caused by frequently losing close ones to poverty. They employ their young children in homes, businesses, and factories. They are required to work as soon as possible to raise the income of their low-income households. These choices are made just to provide a meagre life for their family. However, such choices destroy children's physical and emotional health since they rob them of their childhood at a young age.

### PREVIOUS DEBTS:

The poor economic conditions of people in India force them to borrow money. The illiterate populations go to money lenders and sometimes mortgage their belongings in turn of the debt taken by them. But, due to insufficiency of income, debtors find it very difficult to pay back the debt and the interest. This vicious circle of poverty drags them towards working day and night for the creditor and then the debtors drag their children too in assisting them so that the debts could be paid off. Some children are forced to work in order to support their families because they are under pressure to provide food and shelter as well as to pay off debt that their parents owe. Some children, meanwhile, are sold into slavery against their will.

### PROFESSIONAL NEEDS:

There are some industries such as the 'bangle making' industry, where delicate hands and little fingers are needed to do very minute work with extreme excellence and precision. An adult's hands are usually not so delicate and small, so they require children to work for them and do such dangerous work with glass. This often resulted in major eye accidents of the children.

### NO SPACE FOR ALTERNATIVES :

According to the International Labour Organization (ILO), a significant contributing factor that pushes children into hazardous labour is a lack of available alternatives, such as affordable schools and high-quality education. Children are bound to work because they are dissatisfied and have no other means of earning. There are not enough acceptable school facilities in many localities, especially rural ones where child labour is rampant. Even when schools are available, they are frequently too far away, challenging to reach, expensive, or the quality of instruction is so low that parents question whether attending school is actually worthwhile. Even after 75 years of independence, there are still a number of children whose right to education is denied owing to their situations. This can only be managed by the effective implementation of national schemes.

### SOCIAL CAUSES

The primary cause of child labour in India is also the country's social and economic backwardness. Parents who are socially backwards do not send their children to school. As a consequence, their children are compelled into child labour. Many times, parents are unaware of different programmes for children's education because of illiteracy. Child labour has been fostered by a lack of education, illiteracy, and, as a result, a lack of understanding of rights among children. Additionally, illiterate parents are unaware of the effects child labour has on their children. Rural households have a compulsive reason for including children in a variety of duties due to the situations of poverty and unemployment. In actuality, India's child labour issue is still perpetuated by the remains of the feudal, zamindari system.

### FAMILY TRADITION:

The cultural tradition in many countries is that children follow their parent's footsteps with regard to their profession. Subsequently, it ends in child labour as they tend to learn and practise that skill from a very young age, especially where informal economy and small household businesses exist. Similarly, the education of girls is often undervalued, leading to pressure on these girls to engage in child labour, such as domestic duties.

### ADDICTION, DISEASE OR DISABILITY :

Due to addiction, illness, or disability, there is often no income in the family, and the child's wages are the only source of support. Additionally, when the population grows, unemployment rises, which has a negative effect on initiatives to prevent child labour. In order to boost the family's income, parents are prepared to send their children to work instead of enrolling them in school.

### POOR COMPLIANCE WITH LAWS :

In today's culture, regulations guarantee that people have the right to a good education, access to quality healthcare, and self-care. Every person has the right to play the game he likes, and enjoy all the means of enjoyment, and when he develops, to acquire work where he may earn well and contribute to society and nation. But child labour is still being used in India since the regulations are not being followed properly. Only rigorous adherence to the relevant laws will make it unlawful.

#### **DISCRIMINATION BETWEEN GIRLS AND BOYS :**

There's a general belief that boys are stronger than girls and that they cannot be compared on an equal footing. In our culture, there are numerous instances where girls are denied the opportunity to pursue their education. Girls who are considered as being weaker than boys are denied access to education and school. Girls are often seen working alongside their parents in households that are labourers.

#### **OTHER MINOR CAUSES :**

Some shops, businesses, and factory owners hire them out of a desire for cheap labour so that they may pay them less, which amounts to hiring cheap labour. Shopkeepers and other small company owners make them work just as hard as older people while only paying them half as much. Child labour also reduces the likelihood of theft, greed, or money misappropriation. Child labour has been encouraged in India as a result of the growth of globalisation, privatisation, and consumerist culture as well as the demand for inexpensive labour and its connection to the financial needs of low-income families.

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#### **CONSEQUENCES OF CHILD LABOUR:**

Children are exposed to accidental and other injuries at work. They should thus be protected to prevent social, economic and physical harm, which persist to affect them during their lifetime. Such injuries include General child injuries and abuses like cuts, burns, and lacerations, fractures, tiredness and dizziness, excessive fears and nightmares. Physical abuse that involves corporal punishment, emotional maltreatment such as blaming, belittling, verbal attacks, rejection, humiliation and bad remarks. Emotional neglect such as deprivation of family love and affection, resulting in loneliness, and hopelessness. Physical neglect like lack of adequate provision of food, clothing, shelter and medical treatment. Lack of schooling results in missing educational qualifications and higher skills thus perpetuating their life in poverty. Competition of children with adult workers leads to depressing wages and salaries.

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#### **LEGISLATIVE AND CONSTITUTIONAL PROVISIONS:**

##### **1. Legislation for Child Labour in India**

The first protective legislation for child labour in India was seen in 1881 in the form of Indian factories Act which had the provisions prohibiting employment of children below 7 years, limiting the working hours for children to 9 hours a day and providing 4 holidays in a month and rest hours. This was actually made by the ruling British Government to decrease the production in Indian industries through some legal restrictions. It may be submitted that the labour legislations in India including protective legislation for children have been greatly influenced with the result of various Conventions and Recommendations adopted by International Labour Organisation. Besides Constitutional provisions, there are several legislative enactments which provide legal protection to children in various occupations.

##### **2. Constitutional Provisions Regarding Child Labour:**

The framers of the Constitution of India deemed it necessary to include special provisions in the Constitution for the protection of the rights of working children. Several articles of Indian Constitution provide protection and provisions for child labour. **Article 15 (3):** The State is empowered to make the special provisions relating to child, which will not be violative of right to equality. **Article 21:** No person shall be deprived of his life or personal liberty, except according to procedure established by law. The Supreme Court held that „life“ includes free from exploitation and to live a dignified life. **Article 21A (Right to Education):** The State shall provide free and compulsory education to all children of the age of six to fourteen years, in such manner as the State may, by law, determine. Where children are allowed to work, in such establishment, it is the duty of employer to make provisions for the education of child labourer. **Article 23:** Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence punishable in accordance with law. **Article 24 (Prohibition of Employment of Children in Factories, etc.):** No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. The Supreme Court held that “hazardous employment” includes construction work, match boxes and fireworks therefore; no child below the age of 14 years can be employed. Positive steps should be taken for the welfare of such children as well as for improving the quality of their life. **Article-38 (1):** Provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively, as it may secure a social order in which justice, social, economic and political shall be ensured. **Article 39 (e):** The State shall, in particular, direct its policy towards securing the health and strength of the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. **Article 39 (f):**The State shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity; and that childhood and youth are protected against exploitation and against moral and material abandonment. **Article-42 and 43:** It provide for securing just and human conditions of work and hold out a promise that the State shall endeavor to secure, by suitable legislation, economic organization or in any other way, for all workers, a living wage with specified conditions of work ensuring a decent standard of life and full employment of leisure and social and culture opportunities. This definitely includes child laborers in widest sense. **Article-45:** The constitution provide free and compulsory education for all children until they complete the age of 14 years. The general provisions under Article, 38, 42, 43, 45 and 47 of

Directive Principles of State Policy, although do not deal directly with child welfare but provides strategy for indirectly promoting welfare of children.

**Article-46:** It makes provisions for promotion, with special care of the educational and economic interest of SC and STs and other weaker sections of the society. **Article-47:** Lays emphasis on raising standard of living of people by the State. These also include children in their purview. While assessing the progress and implementation of these provisions, it is noteworthy that child labor is increasing day by day. **Article 51A (e):** It shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child or ward as the case may be, between the age of six and fourteen years.

### 3. Beneficial Law for Children:

**Children Pledging of Labour Act, 1933:** This Act was enacted to prevent the practice of pledging the child under 15 of age. According to this Act any agreement relating to the pledge of the service of a child is void and any person entering into any such agreement is to be punished. **The Factories Act, 1948:** The Act prohibits the employment of children below the age of 14 years. An adolescent aged between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorized medical doctor. The Act also prescribes four and a half hours of work per day for children aged between 14 and 18 years and prohibits their working during night hours. **The Plantation Labour Act, 1951:** This Act has not only limited working hours for the child to 27 a week but also provides for one day leave for each period of seven days work in addition to certain other welfare provisions. **The Mines Act, 1952:** This Act defines a child to be a person who has not completed the age of 15 years and an adolescent means who has completed 15 years of age but is less than 18 years of age. This Act also provides that an adolescent who has completed the age of 16 can only be employed in any part of the mine if it is under ground, after obtaining a competent medical certificate and that too for only four and half hours on any day, save between 9 p.m to 6 a.m. This Act also prescribes the penalty on the violation of the provisions of law. **The Motor Transport Workers Act, 1961:** This Act prohibits employment of children below 15 years of age in motor transport undertakings; however, an adolescent can work subject to Production of certificate of physical fitness in such organization. **The Apprentices Act, 1961:** This Act provides that a person who is less than 14 years of age will not qualify for apprenticeship training but this rule is not applicable for those apprentices who are receiving vocational training. **The Employment of Children Act, 1938:** Its successor, the Child Labour (Prohibition and Regulation) Act, 1986, are substantially the same. The latter aims at identifying more hazardous processes and industries with a view to banning child labour in these units and regulates working conditions for children in non-hazardous units.

The new Act of 1986 has prescribed various valuable provisions for prohibiting and regulating the child labour. The main objects of this Act are as under:

1. To bring uniformity in the definition of child in the related laws.
2. To ban the employment of children in specific occupations and processes.
3. To enable modification of scope of banned industries and processes by laying down a procedure

- **International Programme**

The International Programme on the Elimination of Child Labour (IPECL) was launched as a global programme by the International Labour Organization (ILO) in December 1991 with the aim to work towards the progressive elimination of child labour by strengthening national capacities. IPECL's priority target are bonded child labourers, children in hazardous working condition and occupations, and children who are particularly vulnerable, i.e. very young children (below 12 years of age) and working girls. Since 1999 and the adoption of Convention 182, children in prostitution has been added to the list of priority groups. IPECL has also targeted indirect elements to help facilitate and support the withdrawal of children from the work force, and assist their integration into educational programmes. Focus is also placed on research and training institutions in government and non-government sectors, workers' and employers' organizations, factory and labour inspectors and the communities and families of the children

- **National Child Labour Programme**

A National Policy on Child Labour was announced in 1987 which emphasised the need for strict enforcement measures in areas of high child labour concentration. In order to translate the above policy into action, the Government of India initiated the National Child Labour Project Scheme in 1988 to rehabilitate the working children starting with 12 child labour endemic districts of the country. Under the Scheme, working children are identified through child labour survey, withdrawn from work and put into the special schools, so as to provide them with enabling environment to join mainstream education system. In these Special Schools, besides formal education, they are provided stipend @ Rs.100/- per month, nutrition, vocational training and regular health check ups. In addition, efforts are also made to target the families of these children so as to cover them under various developmental and income/employment generation programmes of the Government. The Scheme also envisages awareness generation campaigns against the evils of child labour and enforcement of child labour laws. It is seen that the level of enforcement in the States of Tamil Nadu, Andhra Pradesh, Maharashtra & West Bengal is encouraging, whereas that in UP, Rajasthan, Madhya Pradesh & Orissa it is very low.

- **RECENT LAWS:**

- ❖ **Subsequently the act was amended in 2016** with the enactment of the Child Labour (Prohibition & Regulation) Amendment Act 2016 prohibiting the employment of Children below 14 years in all employment and also with the provisions for prohibition on employment of adolescents(14-18 Years) in the scheduled hazardous.

- ❖ **Child Labour Prohibition and Regulation Amendment Rules 2017**, is to spread awareness on prohibition of employment of child and adolescents. The Rules establish a wide and specific framework for child and adolescent worker prevention, prohibition, rescue, and rehabilitation.

- **SOLUTIONS TO STOP CHILD LABOUR**

1. **National government agencies**

- a) National Agencies need to ratify the UN Convention on the Rights of the Child. (CRC)
- b) An effective legal system needs to be introduced to check employment of children below 14 years through proper legislation
- c) Economic sanctions to be enforced on countries that allow the employment of children for the manufacturer of export products
- d) Proper monitoring and implementing authorities to be set up to implement various acts passed by the National Government.
- e) National social welfare schemes to be introduced to supplement income for poor families whose children are removed from work sites

2. **N.G.Os**

- a) NGOs have a Key role in raising awareness and informing people about the misuse of children, denying them the fundamental rights of shelter, food and education. UNICEF has clarified the role of NGOs as essential players in many of the intervention stages with direct involvement in identification and rescue operations.
- b) Assist governmental agencies in implementing 1206 Educ. Res. various pieces of legislation
- c) Identify areas where child labour exists and bring to the notice of Government.
- d) Undertake advocacy with national governments for the implementing of strict legislation to ban child labour .
- e) Organise rehabilitation centres to shelter children removed from work sites.

3. **Civil society / peoples forum**

- a) Civil society can play an active role in identifying and alerting authorities to child labour sites
- b) Create awareness among parents and the public about the effect of child labour on children.
- c) Motivate parents to send their children to school
- d) Organise counselling sessions for children and parents
- e) Organise joint protests, rallies, hoardings etc. against employing children below 14

4. **Corporate entities**

- a) Include banning of child labour in their mission
- b) Introduce welfare schemes for children
- c) Allot separate welfare funds as part of corporate social responsibilities to help organisations working for the cause to ban child labour
- d) Put up hoardings giving messages on the benefits of banning child labour

5. **Individual social service activists**

- a) Resist any form of child labour
- b) Openly oppose child labour activities which comes to their notice without any fear
- c) Be very assertive in expressing displeasure to shop owners and organisations that employ children for labour. In India, there are many international and national NGOs campaigning for the abolition of child labour. A few important NGOs in the field are:
  - a) Child right resource centre (CRRC)
  - b) Campaign against child labour (CACL)
  - c) Child Line

6. **Some more measures are:**

- Income of the families should be Increased.
- Education for all children irrespective of their economic and social background should be ensured, that helps children learn skills that help them earn a livelihood.

- Social securities should be provided by the Govt. and other agencies, that help children and families to survive in crises, such as disease, loss of home and shelter there should be an awareness campaign for small families, so that families are not burdened by children.

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## CONCLUSION

The constitutional framework of India presents a progressive and promising approach towards children's well-being and their future. According to this framework, the state has a responsibility to provide free and compulsory education to all children aged six to fourteen. However, despite these provisions, the prevalence of child labor in India remains a significant issue, particularly in rural areas. The 2011 census reported that 10.1 million children out of a total of 259.6 million were engaged as either main or marginal workers. This indicates that early childhood care and education, especially in rural India, are far from becoming a reality. In Indian law, children are considered incapable of understanding the consequences of their actions, and therefore, the Indian Penal Code of 1860 does not recognize any criminal liability for individuals under the age of seven. Despite this legal protection, child labor is still widely viewed as a societal evil. Factors such as demographic distribution, diversity, and migration from rural to urban areas in search of livelihood contribute to the persistence of child labor and trafficking. Many industries exploit innocent children under the guise of providing employment opportunities, evading law enforcement agencies. The lack of access to education, exacerbated by poverty, is a significant factor contributing to child labor and trafficking. Unfortunately, there is little legislative support or effective administrative measures in place to address these practical challenges. The Child Labour Act sets an example in India's child labor framework by providing a uniform definition of a child and adolescent. The act includes features such as prescribed education and restricted working hours to ensure that work does not interfere with schooling. It establishes Rehabilitation Funds and imposes a complete prohibition on child labor, with violators facing imprisonment for up to two years. These distinctive provisions help the government in its mission to protect children and their childhood. However, the act also has some shortcomings, as highlighted in this research paper. The practical disparity in income and livelihood often compels children to engage in labor to support their families. The act does not adequately address the need for administrative authorities to actively assist poor families, which could indirectly remove children from labor. Furthermore, the act still allows adolescent labor in hazardous work establishments. Although the 2016 Amendment Act reduced the number of hazardous occupations from 83 to three, there is a need to address potential misuse of this exemption by hazardous establishments. Moreover, the act lacks provisions for the welfare and distributive justice of children. While its primary focus is on regulating and curbing unlawful child labor, the legislation could benefit from incorporating welfare provisions for children. Apart from specifying working hours, study hours, and age limits for work, the act does little to ensure the overall well-being of children. Therefore, despite its efficiency and broad scope, the legislation needs to bridge the gap between theoretical provisions and the actual situation of child labor in India. It should also consider the existing poverty and unemployment scenario, which directly contributes to children entering the workforce due to their families' financial struggles.

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