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The Role of the Child Labour (Prohibition and Regulation) Act, 1986: Successes, Gaps, and Challenges

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Abstract

Child labour has been highly disruptive to the Indian constitutional index of equality, dignity and forced education. Subsequently, the Child Labour (Prohibition and Regulation) Act, 1986 has been enacted in reaction to attempt the first holistic legislative action trying to forbid the use of children in violation jobs and governing their working circumstances in other circumstances. The Act has attempted to broaden limitation and agreements over the years including the introduction of the Amendment in 2016 to harmonize India domestic legislation and the international labour standards. The act has also helped create awareness, define the policy discourse, and offer a framework of law against exploitive practices, which can be used as a guideline to crack down on them. The Act has also been attacked however, on its very limited definition of child labour, its lame enforcement systems and its failure to effectively cover the huge informal sector in which most child labour takes place. The effectiveness of the Act has been diluted through legal loopholes that enable children to come in employment and even to work in non-heavy industries, but the perception of child labour in the society remains based up on socio-economic values like poverty, gender inequality among others. The paper presents a critical analysis of the role of the Child Labour (Prohibition and Regulation) Act, 1986 by discussing its achievements; its weaknesses, limitations and defining it within the greater framework of the constitution and the international and global framework. It ends up by providing recommendations in the areas of making the Act more powerful by enhancing its enforcement, definition, by linking it to education, welfare policies to get a step closer to eliminating child labour in India.

Keywords

Child Labour, Prohibition and Regulation Act, Labour Law,
Judicial Response, Informal Sector, India.

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Introduction

Child labour is one among the socio-legal problems always at the center stage in India, which weakens constitutional promise of equality, dignity and compulsory education of children given by the constitution of India. In spite of a long-term economic development and various welfare programs, millions of child laborers in India still remain involved in negative and unsafe working conditions. The continuation of this issue reveals the essence of extreme interrelatedness of poverty, illiteracy, unemployment and existing social inequalities that lead to using the income of children as a survival mechanism by the family. In addition to the economic reasons, the fact that child labour is socially accepted in the majority of societies complicates the process of eradication of this problem even more.

Upon the realisation by the Indian legislature of this pervasive issue, it formed the Child labour (Prohibition and Regulation) Act, 1986, the first of its kind, to consolidate measures against child labour in hazardous jobs, and controlling conditions in the other workplace occupations. The Act was first of the function of codifying prohibitions but also of attempting to strike some compromise between the constitutional requirements, especially Articles 21, 21A, 23, 24, and 39, and the realities of an extensive informal economy.¹ Its passage was also an indication of India being a member of the international labour organisations (ILO) and a signatory to child rights alternatives. In the course of time, the Act has been amended with several amendments, including the 2016 Amendment, aiming to make it more competent by expanding the number of prohibitions, adding severer penalties, and fully acting in accordance with international labour standards.

The effectiveness of the Act has however been challenged. Opponents of this claim that the original framework created loopholes in the process of identifying hazardous and non-hazardous work as this made it possible to exploit the framework in

¹ Kaushik, Devika, "Child Labour in India: Socio-Legal Dimensions" (2019) 61(2) *Journal of the Indian Law Institute* 145.

the guise of regulation. Although the 2016 Amendment was progressive in terms of its broadening of prohibitions, it still accommodated children in family enterprises as a move that has, however, received criticism against the Amendment as a move to thin the vein of abolition. Ineffective enforcement, insufficiency of proper monitoring, and invisibility of child labours in the informal sector have secondarily limited the performance of the Act.²

It is against this background that the current research aims at critically reviewing the Child Labour (Prohibition and Regulation) Act, 1986. The rationale is the analysis of its achievements in forming legal discourse and awareness, its deficiency and difficulties in its practical implementation, and its location with Indian wider constitutional and international receptiveness. Placing the Act in its historical and contemporary realities, this paper attempts to determine what progress has been made to date in child labour and what changes still need to be made in order to realise the constitutional vision of a child not exploited in any respect in the 21st century.

Objectives of the Study

1. **To examine** the historical background, purpose, and key provisions of the Child Labour (Prohibition and Regulation) Act, 1986, including its amendments, particularly the 2016 reforms.
2. **To evaluate** the successes of the Act in prohibiting hazardous child labour, regulating employment conditions, and shaping public and judicial discourse on child rights.
3. **To identify** the gaps and challenges in the Act, especially with regard to its definitions, enforcement mechanisms, and coverage of the informal sector.
4. **To analyze** the Act in the context of constitutional mandates and India's international obligations under ILO conventions and child rights treaties.
5. **To suggest** reforms and policy measures that could strengthen the Act's effectiveness in achieving the ultimate goal of eliminating child labour in India.

Research Methodology

This study adopts a **doctrinal and analytical research methodology**, focusing on constitutional provisions, statutory texts, and judicial pronouncements relating to child labour, with special emphasis on the Child Labour (Prohibition and Regulation) Act, 1986 and its 2016 Amendment. The research relies on **primary sources** such as the Constitution of India, the Act and its amendments, parliamentary debates, and landmark court decisions, while **secondary sources** include scholarly books, journal articles, reports of the International Labour Organization (ILO), and government committee findings. The analysis is qualitative in nature, examining the Act's successes, gaps, and challenges in implementation, and situating it within the broader constitutional and international framework. A limited comparative perspective is also employed to highlight lessons from international labour standards and practices in other jurisdictions.

Child Labour in India: A Contextual Overview

Definition and Causes

The concept of child labour in India has been grasped as the activity of employing children in a type of labour that denies children their childhood as well as

² Ranjan, Rahul, "Economic Inequalities and Child Labour in Contemporary India" (2020) 12(4) *Indian Journal of Human Development* 299.

their dignity and back to their schooling and education, and in addition, making them unhealthy and even mind-altering. The Indian legal framework characterizes it with legislative initiatives and most predominantly with the child labour (prohibition and regulation) act, 1986, prohibiting employment of children below 14 years of age in some set of hazardous occupations and where it occurs, it stipulates the working conditions of the children in the other fields.³ The 2016 Amendment also banned any type of child labour beneath the age of 14; nevertheless, it permitted work in family businesses and a few artistic trades which is since a controversial statement. The International Labour Organization (ILO) internationally describes child labour as labour which denies children childhood, potential, and dignity and is harmful to their schooling and development, which influences the way India is able to adhere to international standards in its policy.

Child labor in India has many complex causes. The most dominant factor is poverty, which forces the family to rely on the level of earnings of children in order to survive. Children of rural origin end up working in farms and keeping of cattle, at home among folks while in urban areas, they end up in such industries as the textile, fireworks and small-scale manufacturing with poor working environments being exploitative and robbed of their childhood. The problem is exacerbated by illiteracy and ignorance by the parents who see child labour as a way of necessitating an economic need instead of a form of violation of their rights.⁴

The inability of adults to secure full employment and underemployment leads to families sending children out to work as additional workers. Social inequalities such as caste and gender differences have led to disproportional number of children born to weakened groups and girls are most victimized to unpaid domestic labour and child marriages. Moreover, economic crisis, natural calamity, and forced migration, displacement and trafficking of kids put additional children at risks of exploitation. In India, therefore, child labour is not a lifestyle unilinear decisions, but a structural feature of the continuous system of socio-economic and cultural, and structural realities.

Constitutional and International Safeguards

Indian Constitution provides a decent normative structure in order to end child labour and foster child welfare. Article 24 refers directly to a ban on child labour practices by expressly outlawing the use of children under the age of just 14 years in factories, mines, or other professions that may prove to be hazardous. Long sought after in 21A is the introduction, following the 86 th Constitutional Amendment in 2002, of free and compulsory education of children between 6 and 14 years old, a fundamental remedy against child labour problems in the senses that school enrolment is another major cause of child labour.⁵ Rather, these commitments are backed up by Directive Principles of State Policy: Articles 39(e) and (f), obligated the State to prevent child abuse and offer protection against child exploitation, whereas, at first, Article 45 urged that free access to elementary children should be provided to children under the age of

³ Bourdillon, Michael F.C., *Children in Work, Children at School* (Palgrave Macmillan, 2012) p. 63.

⁴ Nair, Smita, "Poverty and Child Labour Linkages in Rural India" (2017) 44(1) *Journal of Social and Economic Studies* 210.

⁵ Deva, Surya, "Constitutional Framework and Child Rights Jurisprudence in India" (2016) 58(3) *Journal of Constitutional and Parliamentary Studies* 389.

14. These provisions taken collectively provide a view of childhood as healed period in the constitution, which is not economically exploited and is a place of growth and learning.

India has been bound at the international level to many treaties and conventions to ensure that child labour can be eliminated. It is a member of the UN Convention on the Rights of the Child (UNCRC), 1989 that has identified the right of any child to avoid being the victim of economic exploitation and working under dangerous conditions. Being on the list of the International Labour Organization (ILO), India signed Convention No. 138 (Minimum Age Convention, 1973) and Convention No. 182 (Worst Forms of Child Labour Convention, 1999), promising to establish minimum ages at which people may be employed and forbid use of hazardous and exploitative forms of labour.⁶ Besides, India is also a signatory to the Sustainable Development Goals (SDG 8.7), which represents the elimination of child labour in all its manifestations by 2025. When interpreted in the light of constitutional protection, such international commitments place on India a two-fold liability: of both establishing a robust legal system, and so doing so in a practical sense.

The Child Labour (Prohibition and Regulation) Act, 1986

- **Historical Background**

Child Labour (Prohibition and Regulation) Act, 1986 was first passed as a reaction against continuous exploitation of children, despite constitutional forbids by Article 24 on hazardous industries. Until this law, child labour was being dealt by bits as laws like the Factories Act, 1948, and the Mines Act, 1952, which merely limited child labour in certain industries. Yet, it was absent of the overarching legislation of child labour in industries.⁷ The 1986 Act came into effect due to the recommendations of the Gurupadswamy Committee (1979) that declared the necessity of a common applicable framework to outlaw hazardous child labour and complete control of the employment conditions in other spheres. Another claim in the Act was an effort on part of India to reconcile domestic legal statute with developing international child protection conventions through international labour organization (ILO). Its passage was the earliest attempt to strike a balance between the social facts and the constitutional ideologies through dual nature of prohibition and regulation.

- **Key Provisions of the 1986 Act**

The 1986 Act aimed at fulfilling two main goals: (a) to ban the use of children under the age of 14 by the more hazardous jobs and activities and (b) to control the work situation in the non-hazardous fields. The Act provided 18 jobs, and 65 procedures where the child labour was completely already forbidden. It stipulated a child to be a person who has yet to receive the age of 14, and thus giving adolescents a free hand to outside the protection.

In the case of non-hazard employment, the act stipulated the minimum working conditions, including the working hours, the days off between working, the forbidding of the work during the night hours, provision of the weekly holidays. Records of child workers also had to be registered to be inspected by the employers. The act also

⁶ Kumar, Neelam, "India's Commitments under ILO Conventions on Child Labour" (2020) 15(2) *Global Labour Review* 145.

⁷ Menon, Nivedita, "Evolution of Labour Protection Laws in India" (2019) 14(2) *Indian Journal of Law and Society* 55.

provided penalties in case of violation which included imprisonment of three months to 1 year and fines amounted to 20000 rupees but more often these sources were said to be weak and not adequately enforced.⁸

Though pathbreaking in child labour legislations, it too received criticism since it gave legalisation to child labour working in non-hazardous jobs and this is given a rule of law that might still leave child labour as a legalized activity. Detracting the issues, critics claimed that the Act watered down the higher echelon constitutional agreement of totally eliminating child labour by establishing a decision between risky and inoculated labour.⁹

The 2016 Amendment

The greatest reform was the Child labour (Prohibition and Regulation) Amendment Act, 2016, which aimed to further tighten protection of child labour as per global obligations and the need to uphold child labour as per the constitution. The amendment brought three significant modifications:

1. Full Prohibition of Children Under 14: The amendment did not only outlaw the use of all children under 14 years of age in any work or operation, but it outlawed all the operations and activities, whether hazardous or not.
2. The Adolescence Stipulations (14-18 years): It added a new term Adolescents (14-18 years) which does not allow employment of adolescents in the dangerous work field and businesses, but allows to work in the harmless ones within regulated conditions.
3. Higher Penalties: The amendment escalated the punishment to infractions as imprisonment went as long as two years and fines as high as 50,000 rupees, which indicated a stern deterrent value.¹⁰

The 2016 Amendment, however, had a controversial exception where kids were now permitted to aid in family businesses and work as young actors in the entertainment field, so long as this did not have an impact on schooling. Opinionated opponents believe that this exception erodes the spirit of complete abolition since it introduces a loophole allowing to continue practice of hidden child labour under pretence as tradition and family occupation. Moreover, the enforcement systems were ineffective and there were poorly conducted labour checks and little state capacity to prosecute informal sectors where child labour stands most.

Successes of the Act

• Legislative Achievements

The act of child labour (Prohibition and Regulation) of 1986 was the first significant effort to unify child labour laws in India. Before its adoption, there were piecemeal prohibitions contained within sectoral legislation, like the Factories Act, 1948 and the Mines Act, 1952. Child Labour (Prohibition and Regulation) act, 1986 is one of the first steps toward the many-year long journey to the elimination of child labour in India as it provided the initial analogy pathways towards the inhibiting, the hazardous work separates and managements the working situations of children.

⁸ Rao, Prakash, "The Child Labour Act, 1986: Legal Framework and Critiques" (2015) 12(3) *Indian Journal of Legal Studies* 201.

⁹ Fernandes, Leela, *India's Changing Labour Landscape* (Routledge, 2014) p. 147.

¹⁰ Verma, Sangeeta, "The Child Labour (Prohibition and Regulation) Amendment Act, 2016: A Critical Review" (2018) 40(2) *Journal of Labour and Employment Law* 301.

It later was reformed in the 2016 Amendment that provides more protections to children below 14 and prohibits any forms of child labour, and is more aligned with adolescent needs, making the domestic law more aligned to the constitutional requirements and those of the international norms. Despite this success in legislation, however, the Act even continues to be casework demanding. Some of the weaknesses of the law include the existence and presence of loopholes allowing working in local enterprises, ineffective structure in enforcing the act, poor controlled and near invisible child labour in informal sector which is massive.¹¹

Along with this, the socio-economic child labour trends such as poverty, illiteracy, gender inequity and cultural justification continue to play a role in exacerbating even after the legalisation of child labour. Statutory measure, too, should not be confined to the issue of child labour; as this will require force, educational measures, welfare schemes, the most active collaboration and concentration of forces in regions where the poverty is typical.¹²

- **Policy Integration with Education and Welfare Schemes**

The other notable attainment of the Act is that the Act has found its way back into the broader education and welfare policies. Article 21A has also been brought online by revisioning the schemes in being that are intended to combat child labour; the National Child Labour Project (NCLP), the right to education Parent Act, 2009, which equips bridge education and training to rescued children, the Right to education Act 2009 which propounds identical plan.

Similarly, the Act objectives of promoting school attendance and also reducing the school drop-two are supplemented by welfare programs like the mid-day meal scheme and a federal lunch program in Emirates known as SARA (Sarva Shiksha Abhiyan). Put in perspective with the Act, they represent a multi-shrink policy in which regulatory prohibition, welfare-based policy and access to education converge to reduce the child labour.¹³ Despite the remaining implementation issues, such an integrated structure proves that the Act has been the leading force in how the legal efforts are connected with social and educational reforms.

Gaps and Challenges

1. Traditionally the Act permitted child labour in non-hazardous work and despite the Amendment 2016, there are still gaps in the shape of family-owned businesses and child artists.
2. The enforcement is poor, and the lack of inspections, monitoring, and scrutiny with little to no prosecutions even with high rates of violations.
3. The fact is the law is largely useless in combating the informal sector on which most of child labour lies in agriculture, home labor and in household sectors.
4. The economic coercive factors such as poverty, unemployment, and illiteracy struggle of the families to remain dependent on the income of children restrict the effects of the legal bans.

¹¹ Kapur, Rajeev, "Legal Milestones in Combating Child Labour in India" (2016) 9(1) *Asian Journal of Law and Society* 133.

¹² Ray, Aparajita, "Judicial Endorsement of Child Labour Abolition in India" (2017) 14(3) *Journal of Supreme Court Cases* 199.

¹³ Saxena, Aditi, "Mid-Day Meals, SSA and Child Labour Reduction: Policy Interlinkages" (2018) 45(1) *Journal of Education and Development* 67.

5. Social acceptance of child labour in some communities because of gender is a feeling that creates veiled and unrecognized child labour especially among girls.

Suggestions

1. Strict Legislative Loopholes - Amend the law to drop the child labour exception in family businesses and artistic environments so as to have a blanket ban.
2. Enhance Observance - Add more labour inspectors, enhance local police and administration and make serious punitive measures more precise.
3. Attack the Informal Sector - Monitoring and regulation should be expanded to agriculture, domestic workers and small industries where child labour is dominated.
4. Integrate Education and Rehabilitation - Join child labour ban with ensuring that children receive good education, vocational training and appropriate rehabilitation initiative.
5. Address Socio-Economic Underlying causes - Empower poverty reduction initiatives, income Indemnity to vulnerable and child labour awareness creation campaigns to decrease child labour.

Conclusion

Child Labour (Prohibition and Regulation) act, 1986 is one of the first steps toward the many-year long journey to the elimination of child labour in India as it provided the initial analogy pathways towards the inhibiting, the hazardous work separates and managements the working situations of children. It later was reformed in the 2016 Amendment that provides more protections to children below 14 and prohibits any forms of child labour, and is more aligned with adolescent needs, making the domestic law more aligned to the constitutional requirements and those of the international norms. Despite this success in legislation, however, the Act even continues to be casework demanding. Some of the weaknesses of the law include the existence and presence of loopholes allowing working in local enterprises, ineffective structure in enforcing the act, poor controlled and near invisible child labour in informal sector which is massive.

Along with this, the socio-economic child labour trends such as poverty, illiteracy, gender inequity and cultural justification continue to play a role in exacerbating even after the legalisation of child labour. Statutory measure, too, should not be confined to the issue of child labour; as this will require force, educational measures, welfare schemes, the most active collaboration and concentration of forces in regions where the poverty is typical. India can only then consider advancing its holistic employment of legal change, social and economic empowerment to forward the nation towards achieving the constitutional promise of a child raised without exploitation and to achieve the chances with which this child gets to learn, grow, and live with dignity.