

**A STUDY ON THE MISUSE OF LOOPHOLE IN THE CHILD LABOUR
(PROHIBITION AND REGULATION) ACT, 1986**

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VOLUME 1, ISSUE 1 (JANUARY- JUNE 2025)

ABSTRACT

Child Labour is a menace that denies the child his fundamental rights, to dignified life and protection from forced and bondage labour. The role of Trade union is expected to be at the forefront to curb this evil, in turn they only aim to regularize the child labour and the conditions under which they work. The estimates of child labour are still high, but the statistics does not include girl children who work in the household sectors, who are invisible in nature. The Child Labour (Prohibition and Regulation) Act, 1986 is not making a complete ban on child labour rather it is regularizing child labour and the many International Conventions are also in favour of regularization rather than prohibition. The major loophole that the Act poses i.e. Traditional knowledge or family business is highly misused by the employers to increase the child labour and they also give poverty and voluntariness of the children and their family a reason for employing them. This paper aims to deal with the menace faced by the children, the loophole of family business and their misuse by the employer and the role of Trade Union.

Keywords: Child Labour, Family Business, Consumer role, Invisible Labour

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INTRODUCTION

Child labour is a work that deprives a child his /her childhood that is sought to be protected in the Article 39(e) and (f) of the Indian Constitution. There are enormous factors that contribute to child labour, the predominant factor at face is poverty. But poverty is stated to include people who could not afford to meet their basic necessity, and lack ability to meet the meagre standard of living. As per 2011 census there were 259.6 million children working between the age of 5 - 14 years. Among the children age group 5-17 years 9% boys and 7% are girls. The number may not be the same had the count is deeply included the domestic work carried by young girl children. Harbajans Committee report that deals with the exploitation and ill conditions of child labour was not published, according to some officials it throws a bad light on lacking enforcement mechanism in child labour prevention and regulation Act, but publishing the report after it is addressed makes the report meaningless. Kothari took efforts to publish the report.

Role of Trade Union:

The role of Trade union in curbing the menace of child labour is a big question. The trade union is concerned with the wages the adult labour gets but not with children working in non-hazardous industries. Even Article 23 of the Constitution prohibits children working in hazardous industries and not a blanket ban on child labour. When literally interpreted the prohibition is aimed only against hazardous works. Sardar Bhopinder Singh Man in the constituent assembly debate stated that Article 23 is inserted so that no person shall be made to work against their will. But the children born to labours are refused any choice and they are forced to work and continue the work as their parents do. It also aims to ensure labours be paid adequate wages, but the major reason why children are employed is because they are paid half or quarter the wages an adult labour is paid. Usually in tea factories, those women who pluck leaves are allowed to have children tied to them, as they see their mother plucking leaves, they tend to help them mother that adds up the leaves plucked, and only where the child reaches twelve years, they are given separate basket. The major reason children are preferred is that they cannot form trade union and they don't go for strike like adults do. The existing trade union is also concerned with the working conditions of children but not with children being labours. They don't want to ban child labour, which is considered to be a source of income to the family. Shri T.T. Krishnamachari was of the view that certain forms of abuses are existing but that may in future be dealt more effectively by legislature that is particularly dedicated for the same, but matters listed in Article

23 ought to be dealt explicitly by the Constitution. This view is true, had the Constitution prohibited child labour completely it could have been dealt with iron hands and by the 75th year after coming up with Constitution the Country is struggling with the same problem. Section 21 of the Trade union Act, allows members to be fifteen years of age but they cannot hold office bearers post. This section 21 allows child labour directly. In order to be member a person ought to be fifteen years. A child means any person below the age of 18 years, but the Act allows 15 years child to work in the industry. When there was a case filed for recognition of trade union comprising children the court rejected recognition as any person below 15 years cannot start Trade Union.

Issues:

1. Whether the Trade Union Act, that allows children below 18 years and above 15 years to be a member of the Trade Union, is valid
2. Whether the child labour prohibition Act was right in excluding family business

EFFORTS OF ILO IN COMBATING THE EVIL OF CHILD LABOUR

International Labour Organization:

The ILO was part xiii of 1919 Versailles Peace Treaty, within the framework of League of Nations, adopted nine labour clauses for regulating labour conditions, as special and significant for the organization. Though on the outset they seem to aim abolition the clause never had any part that deal with the abolition rather they aim for minimum age for admission to work in industry and commerce, which was set as 14 years. Our government has also made compulsory education till 14 years, after 14 years it is not compulsory to educate a child, but the child will be considered a literate as they know to read and write. World War 1 played a significant role in pushing child labour to a high level as the soldiers were feared to go to labour works and lacing of soldiers to fight and that eventually lead to the regularization of children and women working condition.

There is an old belief that certain traditional craft related industries cannot run further if the children are not thought the tradition and sent to school. The reality being that the children now can learn any craft by paying or through training programme initiated by the Government. In 1986 the UP Government contended that the nimble fingers are capable of producing more effective goods than adults, this exception was accepted for a long period. But this is no longer justified. The employers at times accept there is child labour but they point the poverty of the

child the reason for its employment and it being voluntary, they do not have any role in employing them, but are doing for the welfare of the children. Even the parents of the children are of the similar view that the child would do the same work (bangle making, pottery or carpet making) so there is no point in educating them. If they are not taught the skills at the young age, they may find it very hard to learn it in the later part of life. There are many adults who have no job and many children who work and earn.

The committee was of the opinion that it is unavoidable for the children to work under certain social, economic circumstances, and until the situation changes mere ban on child labour would do more harm than good (ILO, 1945a3).

The Employment of Children Act, 1938 was the first legislation that dealt with child labour. This was later adopted in the 1987 Act, however it also exempted family run workshops. The 1987 Act prohibits the employment of children in certain occupations, it was criticised as the Act that legalised child labour. The new Act has no explicit mention of the employment, but the Act only prohibits children in certain hazardous occupations. There were serious of Act that extended protection to children²

WORST FORMS OF CHILD LABOUR CONVENTION, 1999(NO. 182)

This convention states child means any person below 18 years. It mainly focuses to eliminate the evil of worst form of child labour, which includes all forms of practices of slavery and similar to it, like sale, trafficking, bondage and serfdom and forced or compulsory labour for use in armed conflict³. India had ratified this convention in 2017 and Child Labour (Prohibition and Prevention) Amendment Act, 2016 was enacted.

Minimum Wage Convention:

As per the minimum wage convention the state parties ought to fix minimum age for working and India is also a party to the convention. Indian Minister of Labour Mr. Bandaru Dttatreya stated that the two ILO Convention reaffirmed the nation's commitment towards child labour free society. The objective and notable measure undertaken by the Government towards the establishment of Child Labour (Prohibition and Regulation) Act, 1986, came into effect on 2016. This amendment prohibits children working below 14 years, and below 18 years in hazardous

² *Plantations Labour Act*, No. 69 of 1951, § 24, India Code; *Mines Act*, No. 35 of 1952, § 45, India Code; *Factories Act*, No. 63 of 1948, § 71, India Code; *Beedi and Cigar Workers (Conditions of Employment) Act*, No. 32 of 1966, § 24, India Code.

³ Worst Forms of Child Labour Convention, art. 3(a), June 17, 1999, ILO No. 182, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182.

occupation and processes. India has also ratified the Forced Labour Convention No. 29 (1930)⁴, which prohibits use of forced labour. Above all this convention backs the root for introducing the abolition of child labour, during the inter-war period. Minimum age convention sets 15 as the age for working in the industries, no wonder why section 21 of the Trade Union Act fixes 15 as the minimum age to be a member of the Trade Union. Children between 13-15 years are allowed to do some light work. However, they fix 18 years to work in hazardous industries.

A. Sen (2000) describes child labour as a prison that deprives a child of its rights and freedom, growth and development of the child. 1990 World Summit had a great emphasis on the rights of the children and inspired by which, Germany had contributed for the International Programme on the Elimination of Child Labour (IPEC) of the ILC IN 1992.⁵

The reason for child labour according to the 1979 report⁶ there are two reasons are economic and administrative. The poverty of the family is the economic reason and though there are laws that intend to govern child labour, but there is a lack of effective implementation. Social reforms ought to be practical and they are mere useless had it been only in paper.

Gurupadswamy Committee⁷:

The first committee that was framed to study the problems of child labour in 1979. The committee came up with many recommendations, but they were firm in the stand that child labour can never be abolished unless there is poverty, so they prohibited child labour in certain works and other establishments they aim to regulate the working condition. The committee recommended imprisonment as the only punishment if the offence of employing children continues.

THE INVISIBLE CHILD LABOUR

There are records of children below the age of fifteen working in industries but there is no record of female children who work in fields, household or in any other establishment helping the family. They are the invisible workers. A study published shows that there is a huge share of work contributed by women that is unpaid and is never a part of the employment statistics. The

⁴ *Forced Labour Convention*, June 28, 1930, ILO No. 29,

https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029.

⁵ International Labour Organization, *Launch of the International Programme on the Elimination of Child Labour*, <https://webapps.ilo.org/static/english/lib/century/content/1992.htm> (last visited Oct. 27, 2025).

⁶ Ministry of Labour, *Report of the Committee on Child Labour* (Gov't of India 1979).

⁷ Apurva Pathak, An Insight into Child Labour in the Light of Gurupadaswamy Committee Report, *Int'l J. Res. Humanities & Soc. Sci.*, vol. 2, issue 9 (2014),

https://www.raijmr.com/ijrhs/wp-content/uploads/2017/11/IJRHS_2014_vol02_issue_09_09.pdf.

major two categories of work include family business or work and household both which is unpaid. There are blurring boundaries between women working in household and women domestic responsibility⁸.

There has a structural shift in the past decade that led men finding jobs in urban areas leaving agriculture primarily to women. Women role has been increased by 135% and out of which 42% are sector workforce. Two of three women are in agriculture sector. One out of three workers are unpaid. In Uttar Pradesh and Bihar 80% of the population are in agriculture sector and 40% are unpaid⁹.

There were enormous studies undertaken by many scholars that reveal the dark about child labour. There is no single person imprisoned for the labour offences, though there is imprisonment provision that is added, the court usually resort to charging fine which is again very minimal in nature. The offenders usually pay the trivial amount that is nothing compared to the profit that the employers make by employing the children. Even many Governmental officers were of the view not to ban the child labour as that would severely affect the financial stability of the family. According to the child family the children cannot find job after fifteen years do, they have to be trained from a very young age. It is merely useless for the children to be educated as they tend to work on the same cottage or carpet industry on attaining fifteen years. There are families that are not so poor to send children to work still choose to send them to work as they would earn more than what is actually earned.

CONCLUSION

There are many ways in which child labour can be curbed. It can even start from the consumers; they can go for consumer boycott as that happened in 1995¹⁰. There is no one straight jacket formula for eradication of child labour. There are many prominent parties involved in the local and international NGOs involved in advocating for the eradication of child labour, their outlook differs substantially. The abolitionist wanted immediate and complete eradication but the gradualist wanted a step-to-step approach. The employer's organizations played a crucial role on raising political awareness among people and mobilizing them against child labour. It has been

⁸A *Nine-Year-Old Bonded Labourer*, *The Hindu* (India), May 31, 2025, <https://www.thehindu.com/news/national/andhra-pradesh/a-nine-year-old-bonded-labourer/article69638489.ece>.

⁹ *More Women Join the Labour Force, but Are They Really Employed?* *Civildaily*, Oct. 1, 2025, <https://www.civildaily.com/news/more-women-join-the-labour-force-but-are-they-really-employed/>.

¹⁰ U.S. Consumer Boycott of Bangladesh Garments, 1995, leading to Memorandum of Understanding between Bangladesh Government and U.S. Embassy. See generally UNICEF, *The State of the World's Children 1997*.

used as a strategy to fill the columns of corporate social responsibility. Abolishing child labour is advocated as a primary goal. The children are immature by nature, which lends a reason for treating them differently, and a need for special law. If an adult is going to work on his own accord, then it can't be questioned, but a child is going to work, the one to be questioned is the parents. The children who work as labours are denied their right to choose education even if they intend to study.

Children who never went to school find it hard to join in the later part of life, so Naik in his study had suggested flexible schooling system. If a child is not given such flexible system, they may end up a school dropout. There is a need for special classes organized mainly for such children. School must be flexible to adjust as to harvest and sowing time to enable children working in agriculture find it adoptive to study and work. Poor families are first concerned with surviving, so they least bother sending their children to school. The children and their family easily get lured because of the middleman who lure them better life. Though the prohibits the child from working more than six hours, and compulsory leave for one day, still the children in some industries were made to work for sixteen hours, and in some places, they work till they are allowed to sleep as the place of work is not different from place of residence. The real reason for child labour is for saving the wage cost involved and to make more profit out of the manufacturing. Children never grumble over the working condition; they never form trade unions to raise questions and know nothing about collective bargaining. It all rests with the question, who is guilty? And the employer never takes the blame, but point towards the government for its inefficiency to implement the laws. But the law is however is not prohibiting child labour completely. The concept of universal education is aimed to curb the menace of child labour. It is also a reason for unemployment, as the children are considered to be cheapest labour force, children will take up the place of an adult, and population increases when parents believe in the concept of nimble fingers.

There may be many political activities undertaken but all would be futile had the people are not made vigilant about the evils of child labour. The recent death of young child who was given as a bonded labour¹¹ the mother of the deceased stated that she is not aware that bonded labour is

¹¹ *PressReader, The Hindu – Erode Edition*, Sept. 30, 2025, <https://www.pressreader.com/india/the-hindu-erode-9WW6/20250930/281762750435243>.

prohibited in India. Legislations can also make key change in the abolition¹², though India has legislation there are ample number of loopholes that are utilized in a wrong way by the employers to exploit the children. Just because the parents of the children are poor, will it be right to allow children work below the age of 14 years, gone are those days where child labour was justified to help the family fill the gap that the poor parents could not. According to some study children participation was more before the industrial revolution. Milton Freidman claims that the child labour has reduced after industrialization. Many children who worked in farm were moved to the industrial employment. But they didn't take into account of the household works or the increase in young girls working in household, minors working in urban non-hazardous industries. The concept of traditional knowledge was misused by the employers to a great extent. The Act intends in reality to regulate the working conditions of children than to ban child labour. The Act intends to regulate to working conditions of children below eighteen but above fourteen years. Though there are many acts that deal with child labour, none of the Acts explicitly prohibits children and not lays complete ban on child labour.

Right to life is not confined to mere animal existence it includes right to live with dignity. Every child born to the poor parent is denied any fundamental rights that are guaranteed by the Constitution and are born to this world bonded and unfree. There is a need for awareness among the peasant who works on a daily wage and are illiterate about the prohibition of child labour. Though there are many schemes present that aim to rehabilitate children and provides means of livelihood by many schemes including MGNREGA. These schemes ensure the economic necessity doesn't force a child to take up any work that doesn't suit their age or gender. There are people even in 2025 unaware that child labour or bonded labour is prohibited by statutes. The employer or contractor who engages children in work must be punished stringently and be given imprisonment. The fine amount should be enhanced and be used for the rehabilitation of the child. Child labour is an evil that not only denies the children their right to get education but also increases poverty which forces a child labour to grow as a labour and affects the national economy and the progress as a whole.

¹² *Child Labor Deterrence Act*, S. 706, 103d Cong. (1993) (Harkin's Bill); *Belgian Penal Code*, art. 433quinquies (criminalizing violations of minimum wage and child labour standards).