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Examining the Tapestry of Child Labour: A Critical Analysis of Legal Frameworks, Judicial Interventions, and the Path Forward

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ABSTRACT

This comprehensive article critically examines the persistent issue of child labour in India, with a specific focus on the effectiveness of existing legal frameworks. Addressing the multifaceted dimensions of child labour, the study explores its hindrance to economic progress, the perpetuation of poverty, and the deprivation of educational opportunities for underprivileged children. Through a thorough analysis of international perspectives, historical backgrounds, and constitutional provisions, the article evaluates the evolution of child labour laws in India. It scrutinizes key legislative acts, such as the Child Labour (Prohibition and Regulation) Act, 1986, and its subsequent amendment in 2016, highlighting their strengths and shortcomings. Additionally, the role of the judiciary in interpreting and enforcing laws related to child labour is emphasized, recognizing landmark cases that underscore the Fundamental Right against exploitation and the crucial link between education and child labour eradication. The article concludes by identifying root causes and advocating for a holistic approach to effectively address and eliminate the longstanding challenge of child labour in the country.

I. INTRODUCTION

Child labour remains a pressing societal concern in our nation, demanding significant attention from policymakers, executive bodies, scholars, and researchers across various disciplines, with a particular focus on the legal framework. It is imperative to assess whether the current laws are genuinely adequate in addressing this issue or if they merely represent superficial efforts, shaping a perception that legislative actions are underway to eliminate child labour. This challenge impedes economic progress and sustains poverty by depriving underprivileged children of educational opportunities, thereby limiting their potential for upward social mobility. The problem persists not only in its existing form but also takes on new dimensions. The existing legal framework aims to restrict and oversee rampant child labour practices. The advent of industrialization and the allure of wage labour have led to an increasing number of

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children being engaged in various industries, as well as domestic and commercial enterprises. From a critical perspective, it is crucial to analyze whether child labour is solely a consequence of poverty linked directly to economic factors or if it persists due to prevailing social attitudes and sensibilities. Despite numerous legislative measures and social policy objectives, the question arises as to why, even after six decades of independence, child labour has not been completely eradicated.

Objective

Recently, the central government has contemplated strengthening the deterrent impact of penalties through amendments to child labour legislation. Consequently, this matter has prompted the author's academic contemplation, leading them to reconsider, from a socio-legal perspective, whether imparting a deterrent effect to the current legislation is satisfactory in addressing the issue. Hence, the following objectives have been emphasized.

- (1) To identify the inherent shortcomings in various legislations, which have become insufficient in effectively regulating or prohibiting the issue at hand.
- (2) To assess the role and significance of education in eradicating child labour and evaluate the adequacy of the Right to Education Act in addressing the root causes of this problem.
- (3) To examine whether the existing legal safeguards for children encompass the substantial number of child labourers in the small-scale sector.
- (4) To examine the roles and responsibilities of inspectors appointed by the relevant authorities to enforce the laws enacted by the legislature in this context.
- (5) To examine whether the issue of child labour can be resolved solely by concentrating on a single factor, such as the enforcement of laws or policies related to elementary education.

Defining Child Labour

Child labour lacks a comprehensive definition within legislation; Instead, international instruments delineate what constitutes child labour. Children are not morally obligated to engage in economic activities that jeopardize their well-being and hinder their sound and healthy growth. Child labour involves regular work, spanning 14 to 43 hours per week, leading to physical or psychological harm, a hindrance to education, and impeding mental and/or physical development. Children engaged in hazardous work ² are categorized as child labour. The International Labour Organization has established general guidelines regarding the age of

² Defined in ILO Convention No. 182

a child specifying a minimum age below which a child should not be employed³. The international community has classified certain categories as child work, child labour, and the worst forms of child labour. Child work typically involves light tasks lasting less than 14 hours per week for individuals aged 12 to 17, ensuring it is not harmful to their health or development and does not compromise schooling, vocational training, or pose hazards. The worst forms of child labour encompass slavery, child trafficking, forced recruitment for armed conflict, and involvement in illicit activities likely to harm the health, safety, or morals of children.

Given the socioeconomic realities of our country, constitutional framers were unable to outrightly prohibit children's employment. Instead, they aimed to implement a ban on employing children below the age of 14 years, especially in factories, mines, or any other hazardous employment⁴, to safeguard their interests, aligning with the Directive Principles of State Policy in the Constitution of India⁵. In summary, the deliberate omission of a comprehensive definition of child labour in legislation may stem from unique socio-economic conditions or societal indifference. This prompts a pertinent question: whether existing legislations inadvertently facilitate the supply of child labour under the guise of regulation, a topic that may be further explored in the legal analysis section.

II. INTERNATIONAL BACKGROUND OF CHILD LABOUR LEGISLATIONS

There is a noticeable disparity in attitudes toward child labour between industrialized and developing countries. In the former, child labour often refers to adolescents who are full-time students with part-time jobs. In contrast, in developing countries, the conditions are not child-centric, as economic reasons typically drive child labour. Historical origins trace back to European settlers passing laws that compelled poor children to work as apprentices, contributing to the institution of slavery that exploited the labour of impoverished children. The advent of the industrial revolution introduced the modern factory system, with factory towns surrounding markets that supplied a labour force comprising women and children as a cheap and manageable source. In the United States, child labour was prevalent in the 19th century as part of economic realities. Social consciousness at the time focused not only on child labour itself but also on exploitative features of the factory system.

In 1813, Connecticut enacted a law encouraging manufacturers to provide young employees with lessons, but it proved ineffective. In 1836, Massachusetts passed the first U.S. child labour law, requiring children under 15 employed in manufacturing to spend at least three months each

³ ILO Convention No. 138

⁴ The Indian Constitution, Article 24

⁵ The Indian Constitution, Article 39(e) and Article 39(f)

year in school. After the Civil War, oppressive child labour practices became widespread in the flourishing Southern textile industry, demanding long hours, minimum wages, and inhumane working conditions. Some Southern states later passed laws limiting working hours for children. The early 1900s saw increased concern for the general protection of children. In 1909, the Bureau of Labour Statistics issued a landmark report on working women and children. By 1913, all but nine states had established 14 years as the minimum age for factory work. Despite several unsuccessful attempts by Congress to restrict oppressive child labour, meaningful legislation was finally achieved with the passage of the Fair Labor Standards Act (FLSA) in 1938. The Supreme Court upheld this Act in 1941, primarily addressing minimum wages, overtime, child labour, and recordkeeping. The FLSA set 16 years as the minimum age for non-agricultural employment, allowing 14 and 15-year-olds to work in other occupations, subject to certification by the Secretary of Labour that working conditions do not compromise schooling, health, and well-being. Children under 18 years were prohibited from engaging in hazardous occupations.

International Labour Organization (ILO) and Combating Child Labour

Upon its establishment in 1919, one of the primary objectives set for the International Labour Organization (ILO) was the eradication of child labour. As a short-term policy, the ILO aimed to immediately address and eliminate child labour in hazardous employment, with a comprehensive abolition planned in systematic phases. Recognizing the complexity of completely abolishing child labour as a long-term process, the ILO has developed a series of Conventions and Recommendations through International Labour Conferences since 1919. These now form legally binding international instruments that regulate labour administration, social security, welfare, and human rights, establishing global labour standards for member States to adhere to.

The ILO's principle dictates that the minimum age for admission to employment should not be lower than the age of completing compulsory schooling⁶. The Convention prescribes at least two minimum ages for admission to employment, setting the general minimum age after compulsory schooling and, in any case, not less than 15 years, with an initial allowance of 14 years for countries facing insufficient economic and educational development. For light work, the Convention specifies a lower minimum age of 12 or 13 years, depending on whether the general minimum age is fixed at 14 or 15⁷.

⁶ ILO Convention No. 138 - Minimum Age Convention, 1973

⁷ Article 2, *ibid*

Article 7 of Convention No. 138 defines "Light work,"⁸ while ILO Recommendation No. 146 supplements the Convention by calling for a progressive increase in the minimum age to 16 and 18 for hazardous employment. The Recommendation emphasizes prioritizing the needs of children in national development policies, ensuring optimal conditions for their physical and mental growth, and implementing measures for employment-oriented social security, family welfare, education, vocational training, and the protection and welfare of children⁹.

In 1999, the ILO's adoption of Convention No. 182 consolidated the global consensus on eliminating child labour. This Convention, along with Recommendation No. 190, advocates translating its provisions into national law and practice, considering the perspectives of children, their families, and NGOs committed to eradicating child labour. It recommends declaring certain worst forms of child labour as punishable criminal offences and outlines comprehensive measures, including training, policy development, and monitoring, to help abolish these egregious practices.

The Forced Labour Convention¹⁰, accompanied by a protocol adopted in 2014, mandates State parties to provide protection, remedies, and sanctions related to forced labour. This protocol, addressing modern practices like human trafficking, requires State parties to develop a national policy and plan of action for the effective and sustained suppression of forced or compulsory labour. Notably, ILO Conventions No. 138 and 182 explicitly prohibit the employment of children under 14 years of age. However, India, grappling with socio-economic challenges, has not ratified these core Conventions addressing the worst forms of child labour.

Other International Instruments on Child Labour

The recognition of the necessity to safeguard and protect children's rights was initially articulated in the Geneva Declaration of the Rights of the Child in 1924. This commitment was subsequently acknowledged in the Universal Declaration of Human Rights in 1948 and the statutes of specialized agencies within the United Nations (UN). A significant advancement in this direction occurred with the Declaration of the Rights of the Child in 1959. The International Covenant on Economic, Social and Cultural Rights¹¹ places an obligation on State parties to shield young individuals from economic exploitation and prevent their engagement in work that may jeopardize their morals, health, or normal development. Similarly, the International Covenant on Civil and Political Rights asserts the prohibition of slavery, servitude, or forced or

⁸ Article 7, *ibid*

⁹ Mahajan, Pramila & Chand, S. *Status of Child Labour* (1st Edition), New Delhi: Adhyayan Publishers & Distributors, 2006, pp164, 166

¹⁰ ILO Convention No. 29 - Convention Concerning Forced or Compulsory Labour, 1930

¹¹ The International Covenant on Civil and Political Rights, 1966, Article 10

compulsory labour for any individual.

The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery addresses the issue of debt bondage of children, and it became effective in April 1957. Furthermore, the International Convention on the Rights of the Child¹², established in 1989 by the General Assembly in November, is a legally binding international instrument. This convention mandates protection for children against economic exploitation, hazardous work, drug use, trafficking, sexual exploitation, sexual abuse, and any other forms of exploitation detrimental to the child's welfare. Notably, the convention defines a 'child' as any human being below the age of 18 years.

III. CHILD LABOUR AND THE CONSTITUTION OF INDIA

The framers of our Constitution demonstrated wisdom by ensuring that children receive distributive justice in independent India. Dr. B.R. Ambedkar, K.M. Munshi, and K.T. Shah included rights against exploitation in the constitutional draft. Dr Ambedkar's draft proposed that subjecting an individual to forced labour or involuntary servitude be deemed an offence. In contrast, K.M. Munshi's draft suggested the abolition of slavery, child labour, human trafficking, and compulsory labour.

The Constitution of India manifests concern for children, particularly addressing child labour through various articles¹³. Article 23 prohibits trafficking in human beings, forced labour, and beggary, while Article 24 stipulates that no child under 14 years old shall be employed in factories, mines, or hazardous occupations. Article 24 imposes a partial restriction on child labour, acknowledging the socio-economic conditions of the time. The framers recognized that a complete ban on child labour might not be socially feasible as impoverished parents sought to supplement their meagre income through their children's employment.

Part IV of the Constitution mandates that the State adhere to principles of policy to ensure justice for children, preventing abuse at their tender age and facilitating a healthy childhood for sound growth in health and personality. The State is directed to formulate policies to protect the health and strength of workers, prevent economic necessities from compelling citizens, including children, to engage in unsuitable occupations, and provide opportunities for children's healthy development in conditions of freedom and dignity¹⁴.

These constitutional provisions underscore the State's commitment to protecting childhood and

¹² The International Covenant of Civil and Political Rights, 1966, Article 8

¹³ The Constitution of India, Article 23 & Article 24

¹⁴ The Constitution of India, Art 39(e)

youth from exploitation, and moral and material abandonment¹⁵. They guide the government in formulating national policies for the welfare of children, aligning with the constitutional directives. Overall, the Constitution includes various provisions dedicated to promoting the welfare and protection of children in India¹⁶.

Indian Statutory Provisions Regulating Child Labour

In compliance with the international obligations outlined in the Covenants¹⁷ aimed at eliminating child labour, India has enacted legislation¹⁸ both to prohibit and regulate such practices. Preceding the 1986 Act, multiple provisions within different existing labour laws¹⁹ addressed the matter of child labour. However, these laws lacked comprehensiveness, primarily functioning in a regulatory capacity, and were plagued by a lack of uniformity in defining what constitutes a child.

The Children (Pledging of Labour) Act , 1933

The Royal Commission on Labour, established in 1929, formulated a report that reached its finalization in 1931. Expressing deep concern about the practice of parents pledging their children to employers in exchange for meagre sums, the Commission recommended treating any such bond involving a child as null and void. Subsequently, the recommendations underwent discussion in the Legislative Assembly, leading to the passage of the Children (Pledging of Labour) Act in 1933. This Act can be considered the initial statutory enactment specifically addressing the issue of child labour. The primary objective of this legislation was to eliminate the negative consequences arising from parents pledging the labour of their young children to employers in exchange for loans or advances. The Act explicitly declares any agreement, whether oral or written, express or implied, that involves pledging the labour of a child below the age of 15 by their parents or guardians void. It also establishes penalties for the contracting parties involved. According to this Act, a "child" is defined as an individual who has not completed the age of 15 years. Although enacted to safeguard children from exploitation

¹⁵ The Constitution of India, Art 39(f)

¹⁶ Article 15(3) of the Constitution of India enables the state to make special provisions for children, Article 24 prohibits employment of children below the age of 14 in any hazardous employment, and Article 45 provides compulsory and free education for children of the age group 6 to 14 years.

¹⁷ Geneva Declaration of Rights of the Child, 1924, Universal Declaration of Human Rights, 1948, The Declaration of the Rights of Child, 1959, International Covenants on the Rights of the child, 1989.

¹⁸ The Child Labour (Prohibition and Regulation) Act, 1986

¹⁹ The Shops and Commercial Establishment Act, 1969 ; The Mines Act, 1952 ; The Motor Transport Workers Act, 1961 ; The Contract Labour (Regulation and Abolition) Act, 1970 ; The Children (Pledging of Labour) Act, 1951 ; The Radiation Protection rules, 1971 ; The Factories Act , 1948 ; The Apprentices Act , 1961 ; the Beedi and Cigar Workers (Condition of Employment) Act , 1966 ; The Plantation of Labour Act , 1951 ; The Employment of Children Act , 1938.

in hazardous occupations, the Children (Pledging of Labour) Act, 1933, failed to see significant implementation. Unfortunately, there were no judicial efforts to enforce the provisions and protect children from exploitation under this Act.

The Contract Labour (Regulation and Abolition) Act, 1970

While the Act does not include any specific provisions addressing the employment of child labour, it inadvertently leaves room for potential exploitation due to the inherent vulnerabilities within the contract labour system. The Act defines a "worker," excluding individuals categorized as out-workers. An out-worker refers to a person to whom articles or materials are given by or on behalf of the principal employer for processing or making, typically in their home or another location not under the control of the principal employer, for sale in the trade or business of the principal employer²⁰. Because the definition of a worker does not encompass out-workers under the Act, there exists a potential scenario where numerous child labourers might be engaged as home-based out-workers in small enterprises, falling outside the scope of legal protection.

The Child Labour (Prohibition and Regulation) Act, 1986

The Act emerges as a response to recommendations provided by various commissions²¹. It repeals two earlier legislations²², marking the culmination of the initial statutory enactments addressing child labour. Notably, the Act was enacted with dual and somewhat contradictory objectives – the prohibition and regulation of child labour simultaneously. This approach deviates from the constitutional goal²³, which emphasizes conformity. Despite the consistent efforts of the International Labour Organization since its establishment in 1919 to abolish child labour, practical experience has shown that achieving complete abolition is a complex and long-term undertaking. Therefore, the Act prioritises immediate action to prohibit child labour in hazardous employment and to regulate non-hazardous employment by overseeing factors such as working hours, weekly holidays, working conditions, and wages. The enactment of this Act aligns with India's international obligation to implement the Convention on the Rights of the Child, 1989.

Unlike the Bonded Labour Abolition Act, the legislative intent behind the 1986 Act is not an outright prohibition of child labour but rather its permissive regulation. The Act's nomenclature,

²⁰ The Contract Labour (Regulation and Abolition) Act, 1970, § 2(i)

²¹ The National Commission on Labour 1969; Gurupadswamy Committee on Labour 1976 and Sanat Mahta Committee 1948

²¹ The Employment of Children Act and The Children (Pledging of Labour) Act, 1933.

²³ The Constitution of India, Article 24

encompassing both prohibition and regulation, reflects this approach. Accordingly, the Act categorises establishments into hazardous and non-hazardous employment, with an absolute prohibition of child labour in the former and regulatory measures governing labour conditions in the latter.

Critical Analysis of The Child Labour (Prohibition and Regulation) Act, 1986

The Act exhibits certain drawbacks. In developed nations, child labourers often work part-time while receiving education, either formal or informal. In contrast, in India, child labourers are predominantly either school dropouts or not attending school at all. Notably, the Act does not address any obligation on the employer's part to facilitate formal or non-formal education for children engaged in employment. This could have provided basic education for those involved in non-hazardous employment. Additionally, the Act does not outline rehabilitation measures for children rescued from prohibited employment. Furthermore, the Act fails to define hazardous employment or industries. Consequently, certain hazardous industries remain uncovered unless the Central Government notifies and incorporates them into the schedule. In cases of executive inaction, judicial decisions may instruct the scheduling of a specific industry as hazardous, as seen in the instance of construction activities²⁴.

Overall, the Act primarily safeguards the interests of child workers by regulating working hours, leaves, and weekly holidays. However, this depends solely on observations and inspections carried out by appointed authorities, namely inspectors, prompted by complaints. Despite the increasing number of child labourers reported nationwide, the notably low rate of complaints and convictions underscores the ineffective implementation of the legislation. A key reason for the Act's non-implementation is its reliance on labour inspectors, who are insufficient in number compared to the vast number of dispersed small-scale industrial units. The difficulty in monitoring such units contributes to the Act's limited efficacy. Lack of proper documentation and particularly inadequate age proof, especially in the case of poor and illiterate villagers, are pivotal factors contributing to the failure of the prosecution. While the Act prohibits the engagement of children in certain hazardous employment, it regulates the conditions of work for children in other employments, implicitly allowing the exploitation of children in occupations and processes beyond the prohibited ones. Notably, the agricultural sector, constituting 80 per cent of the child labour force, seems to fall outside the Act's regulatory scope. Additionally, a large number of small-scale units operating as household or family units remain beyond the Act's purview.

²⁴ People's Union for democratic rights V. Union of India, AIR 1991 SC 417

Critical Analysis of The Child Labour (Prohibition and Regulation) Amendment Act, 2016

The recently enacted Act by the Parliament seeks to amend the principal Act ²⁵ to align the existing law with the Right to Free and Compulsory Education Act, 2009, ensuring that the education of children aged 6 to 14 years is safeguarded. The Act, approved by the President of India on July 29, 2016, originated in the Rajya Sabha on December 4, 2012, introduced by the Ministry of Labour and Employment. Its purpose is to amend the existing law on child labour, imposing stricter penalties on employers violating the law and extending the punishment to parents and guardians sending their children for hazardous work.

While India is progressing towards a complete ban on engaging children below 14 years in all occupations, a thorough analysis of the Act reveals potential shortcomings. The Act introduces the term 'adolescent,' absent in the principal Act, and alters the definitions of 'child' and 'adolescent,' differing slightly from the Factories Act of 1948²⁶. Despite a complete ban on employing children below 14 years in any occupation or process, certain exemptions are provided without adequately addressing the potential exploitation of children in industries where activities may be outsourced to home-based units.

The Act, like its predecessor, excludes family enterprises, leaving many small-scale units operating as household units outside the legal purview. According to UNICEF, there are 33 million child labourers in India, with 80% being Dalits and 20% from backward classes, engaged in traditional caste-based occupations for generations. The Act fails to address their plight and permits children to work in exempted occupations after school hours without specifying the working hours, raising concerns about the legislators' consideration of the children's health.

The Act reduces the list of hazardous occupations from 83 to only include mining, inflammable substances or explosives, and hazardous processes, eliminating various sectors like chemical mixing units, cotton farms, battery recycling units, and brick kilns. While the Act increases penalties significantly for employers, it relaxes penalties for parents or guardians of child labour for the first-time offence but imposes a maximum fine of Rs. 10,000 for second and subsequent offences. This provision raises questions about the appropriateness of penalizing poor parents and may lead to further exploitation due to their illiteracy and lack of legal knowledge.

²⁵ The Child Labour (Prohibition and Regulation) Act, 1986

²⁶ The Factories Act, 1948, § 2(b) & § 2(c)

The Act defines 'family enterprises' and expands the definition of 'family'²⁷ to include 'father's sister and brother' and 'mother's sister and brother,' which was not present in other existing labour laws²⁸. While intended to prevent exploitation, the expanded definition leaves room for the exploitation of orphaned children by near relatives. Despite appearing progressive, the Act has inherent lacunae, especially in addressing the vast child labour market in small-scale and home-based work. The law lacks effective measures to tackle the root of the problem, leaving the implementation of the right to education at the mercy of market forces driven by demand and supply dynamics. In essence, the Act, despite its seemingly stringent punishments, lacks the necessary teeth to remedy the situation and falls short of addressing the complexity of the child labour issue.

IV. INDIAN JUDICIARY AS THE SAVOUR OF THIS MENACE

It is acknowledged that the architects of the Indian Constitution were well aware of the prevalent issue of child labour in society. Due to the unique socio-economic conditions of the country, they found themselves compelled to partially accept child labour engagement. Simultaneously, the framers aimed to prohibit it, as reflected in the language of Article 24 of the Constitution of India. Article 24 imposes a partial restriction on the employment of child labour, prohibiting those below the age of fourteen years from working in any factory, mine, or hazardous employment. However, the term "hazardous employment" was left undefined by legislators, tasking executives with scheduling employments or processes under the Act.

In the *Asiad Work Case*²⁹, the Supreme Court emphasized that Article 24 embodies the Fundamental Right against exploitation, making it enforceable against everyone. The Court asserted that no one could employ a child below 14 years in hazardous employment like construction work. This interpretation nullified the contention that the Act of 1986 did not apply to construction works, as it was not specified in the schedule. The Supreme Court highlighted the need for State Governments to promptly rectify this omission by amending the schedule to include the construction industry.

The Apex Court, through this judgment, explored the doctrine of 'Locus Standi' to facilitate access to justice for the poor. Public-spirited individuals could invoke grievances on their behalf through PIL matters under Article 32 or 226 of the Constitution of India. This principle was

²⁷ The Child Labour (Prohibition and Regulation) Amendment Act, 2016, § 5

²⁸ The Employees' State Insurance Act, 1948; The Payment of Gratuity Act, 1972 and The Child Labour (Prohibition and Regulation) Act, 1986

²⁹ *People's Union for Democratic Rights v Union of India*, AIR 1982 SC 1473

reiterated in subsequent Supreme Court rulings³⁰. The Supreme Court has consistently addressed the issue of child labour through public interest litigation. The Constitutional perspectives of abolishing child labour have been considered in various cases, such as Sivakasi Match Industries and M.C. Mehta v. State of Tamil Nadu³¹. In these cases, the Court issued guidelines and emphasized the Fundamental Right of every child to receive free and compulsory elementary education up to the age of 14 years.

In M.C. Mehta v. State of Tamil Nadu, the Supreme Court linked the right to compulsory education with child labour welfare. The Court suggested the establishment of a National Commission for Children's Welfare, responsible for preparing a phased scheme for child labour abolition. The offending employer would be required to pay a sum deposited in a Child Labor Rehabilitation cum Welfare Fund. The employer might also be obliged to employ the adult member of the child labourer's family. If unable to do so, the appropriate Government would deposit a grant for each child employed in a hazardous occupation into the Fund. This fund would be operated district or area-wise, with a dedicated cell in the labour department overseeing the scheme under the overall supervision of the Ministry of Labour and Employment, Government of India.

V. CONCLUSION

The progress of a nation is impeded when children are engaged in labour, as children represent the most crucial and valuable human resource assets for any country. It is the positive and obligatory duty imposed upon the State to provide free and compulsory education as per the constitutional mandate. The State is yet to fulfill this constitutional aspiration, which is a fundamental reason for illiteracy, dropouts, and child labour participation rates in various industrial, domestic, and commercial establishments. Child labour is rampant in small-scale sectors, largely unaddressed due to the limitations of existing laws. Children in this sector are not organized, and the prevalent piece-rate system of remuneration makes employing child labour advantageous for the employer.

The existing conditions of child labour prompt a serious moral and ethical question: why, after six decades of India's independence and numerous legislative measures and social policy goals, does the situation persist? Article 21A of the Constitution of India recognizes the right to education for children in the 6 to 14 age group as a Fundamental Right, mandating the state to provide free and compulsory education. In pursuance of this provision, legislation has been

³⁰ Labourers working on Salal Hydro-Project v. State of Jammu and Kashmir, AIR 1984 SC 177

³¹ M.C. Mehta v. State of Tamil Nadu, (1996) 6 SCC 756

enacted by the Legislature. The eradication of child labour is a long-pending issue, and attributing it solely to poverty and poor economic conditions is not entirely valid. While child labour is often viewed as a poverty-driven phenomenon, it largely reflects social attitudes and sensibilities. Some developing countries, such as Sri Lanka, Vietnam, Tanzania, Uganda, Zaire, Burma, Kenya, and China, demonstrate that compulsory education programs, whether sponsored by the State or other entities, can successfully reduce child labour.

The root causes perpetuating the problem include:

1. Many industries in India operate with low-grade technologies and an illiterate, low-skilled labour force.
2. Child labor is prevalent in small-scale industries, where there is no statutory protection, as The Factories Act, 1948, applies only to units employing 10 or more persons with power or 20 or more persons without power.
3. The Child Labour (Prohibition and Regulation) Act, 1986 excludes family-based labour, removing numerous small-scale units operating as household or family units from its scope.
4. In export-oriented small-scale industries, child labour is widespread due to variable demand and intense competition, allowing employers to easily lay off children without compensation.
5. Children's inability to form unions makes it easier for employers to exploit them, paying lower wages for longer working hours. The piece-rate system is prevalent in child labour, benefiting employers.
6. The Child Labour (Prohibition and Regulation) Act, 1986 fails to define 'hazardous industry or process,' leaving many units or processes beyond its scope. The Act lacks provisions for the rehabilitation of children rescued from prohibited places and does not address formal or informal education for children working in non-hazardous occupations.
7. Recent legislative measures, such as The Right to Compulsory Elementary Education for Children, have not covered the rights of children under six and above fourteen, excluding child labourers permitted to work under the present Act.
8. Child labour does not contribute to the financial well-being of the child and the family; instead, it perpetuates poverty. Despite improvements in poverty levels in India, there has been no corresponding reduction in the prevalence of child labour.
