

PROTECTION OF CHILD RIGHTS WITH SPECIAL REFERENCE TO CHILD LABOUR IN INDIA AND UNITED STATES OF AMERICA: A COMPARATIVE ANALYSIS OF PREVAILING LAWS

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ABSTRACT

Children are the foundation of human society and are the reason for development of a nation. Due to the growing offences against children, everything has been put at huge stake in the society. Child Labour is considered as one of those offences which has been responsible for causing disruptions amongst the children. This paper deal with the increasing problem of Child Labour in whole across the world including India and US. It further discusses the international framework adopted for curbing this issue at global level. This paper makes a comparative analysis of laws of US & India and steps taken by Legislature & Judiciary of both the nations in tackling the problem of Child Labour. Lastly, it mentions a roadmap of curbing this rampant problem affecting children at large, in order to safeguard the interest of children as well as the society.

INTRODUCTION

Children are considered to be one of the most valued treasures for a nation, the treasure which is always being cherished for playing a vital role in its progress. Every country which seeks to flourish itself, should ensure development of its children in the best possible manner. Every country should make such policies which eventually help in advancement of its children. Each nation of the world along with the International Institutions are aiming to work seamlessly to safeguard the interest of children around the globe. For purpose of this, United Nations has defined children as a person who are under 18 years of age.ⁱ

Worldwide, there are 2.2 billion children in totality and about 2 million children live in the developing countries. In the race of all the developing countries, India is the home to 19% of children of the world. Moreover, according to the demographic scale, there are 42% children who are the part of India's total population and out of which 50% of children are in direct need of care and protection.ⁱⁱ

Today, when children are expected to dream, grow and nurture, they are forced to get involved into dangerous offences exposing them to face hardship at such a tender age. They are exploited, tortured, forced, maltreated, trafficked depriving them from the basic necessities and comfort of life. Everywhere, the children get exposed to such problems in their day to day life but the most severe problem being faced by them is child labour. Child labour has been considered as the major hurdle in the development of the country and its children. International labour organisation (ILO) has defined child labour as, the involvement of child in that nature of work which interferes with the mental, social, physical and moral behaviour of child and put the child into unhealthy, harmful and dangerous situation which ultimately affects the potential and dignity of child that prevent him to enjoy his childhood and attend regular school.ⁱⁱⁱ

Unfortunately, there are around 218 million children all around the world who are involved in child labour and more than half of them are suffering with its worst form.^{iv} As per the report of Census of India^v, there are approximately 10.13 million children between the age group of 5-14 years in India and 22.87 million children between the age group of 15-18 years who are directly engaged in child labour.

The studies reveal that, earlier the concentration of child labour in India was mostly found in the rural areas but with passage of time visible number of child workers have increased in urban areas too, indicating the growing demand for child workers in menial job.^{vi} Thus, the situation of child labour is very much alarming in India, as it leads to underdevelopment, incomplete

mental and physical development of children that ultimately causes negative or no growth of the children.

Historical development

Problem of child labour is not new to the world; it has been existing since historical times in all the societies of different corners of the world in some or the other form. Presently, the child labour is most prevalent in Sub-Saharan Africa region, in which Asia stands at second position in the world. However, many historical evidences suggest that child labour was widespread in Europe and North America in the 19th century and eventually it reduced at the turn of the 20th century.^{vii} This happened because industrialisation in western countries initially increased the demand for child labour and in due course it contributed towards its elimination.^{viii}

Further, considering the situation in developed country like U.S., the first half of the 1800s in US, child labour was most evidently found in the agriculture and handicraft related occupations.^{ix} When the Industrial Revolution happened in US, the factories were in need of workers. The factory owners considered children more suitable as employees because they could be paid less and were less likely to strike against their employers.^x As industry grew in the period following the Civil War, children, often as young as 10 years old but sometimes much younger, were hired to work as labourers. After the war, when manufacturing techniques took a spike in USA various number of jobs had increased, thus number of the child labourers had also increased. They worked not only in industrial setups but also in retail stores, on the streets, on farms, and in home-based industries.^{xi}

By the end of nineteenth century, various social reformers and the labour unions had urged the State governments for the introduction of state and local legislations to eliminate issue of child labour from US by 1900s and in 20th century their efforts had resulted in the incorporation of child labour laws in the states of America. Although, the parameters, standards and implementation of child labour laws varied as per the states.^{xii}

The scenario in Asia specially India was quite similar in regards to involvement of children in cases of child labour but, unfortunately, historical facts illustrates that the problem of child labour in India existed even before, since it existed in the other countries. According to Kautilya's Arthashastra, the employment of children in India had existed since the ancient period somewhere around 3rd century B.C. in the form of slavery.^{xiii}

In that period, children were placed as learners under the artisans and craftsman, most of the crafts were fully dependent on the employment of children. They were treated as the commodity and the cruel practice of the purchasing of children of less than 8 years was being performed.^{xiv} Children were sold, used or abused, according to the whims of their master. In the agriculture sector also, many children were involved and they used to work in the fields to accompany their parents and all these things were acknowledged as the part and process of socialization under quasi-feudal relation of production.^{xv}

More importantly, during that time education was not considered essential for children and in most of the villages schooling was not even available. In the 16th century, when Britishers arrived in India, children were exploited in the large scale. This was considered to be the worst time period where children were exploited and were forced to work in inhumane conditions. The situation became even more detrimental in the advent of 18th century, particularly after the industrial revolution in India which had changed the whole socio – economic order of the country. Large number of children were hired by the owners of the factories. Moreover, due to the migration of adult men to industrial towns demand of children in ‘agricultural’ sector also increased.^{xvi} At that time, because of their cheap availability they were employed in industrial as well as agricultural set up but their involvement in such activities had proved fatal to them as it resulted in severe injuries to children working in such activities. All these incidences led to frequent demands for introducing laws against child labour. Few attempts were taken by the Britishers to pass laws against the child labour in India but the legislations failed to address the major cause of child labour in India i.e. poverty. Thus, till the beginning of 20th Century there were no specific laws governing child labour in India and the problem of child labour remained constant.^{xvii}

Finally, in the end of 20th Century, after the recommendations of various committees, enactments against child labour came into force.^{xviii} After that, India took several steps by introducing various schemes and legislations to combat various forms of child labour but in spite of all the efforts of India, child labour still remains as the most frequent, highly prevalent and common problem in the country.

Prevalence of child labour

Child labour is a major hindrance between the child and his childhood. It is one of the complex global issues that prevents a child from fulfilling his potential and interferes with his dignity

and education. It is nothing less than committing a heinous crime because innumerable children are working as hidden workers in unhealthy and harmful conditions.

Universally, there are nearly 10 million children who are trapped in modern-day slavery^{xix}. Moreover, most of children work as forced labour in the streets, homes and businesses of others and have often segregated from their homes without any hope of returning home. Amidst these, the most severe forms of exploitation are sexual exploitation, getting indulged in child pornography and working in hazardous factories where they are compelled to do dangerous jobs in mines and illegal work in drug trade and prostitution. In extreme cases, these children are forced to work under the threat of violence or death.

The main causes behind such circumstances are previous debts of family, family work pressure, need of children in factories^{xx}, lack of decent work opportunities for adults, emergencies, illiteracy, migration, social norms, inequalities, discrimination in the society and the ineffective enforcement of legal provisions. Amongst all, poverty and large families are considered to be one of the major causes of child labour, when earnings of parents are lesser and insufficient to support a large family, then it gives rise to such issues. The families of poor children often depend upon the earning of their children in order to improve their chances of getting basic necessities for survival. In certain cases, the dire situation of family leads to the selling of their children to child traffickers or in other cases parents themselves abandon their children considering them as burden. Such activities ultimately result in premature ageing, malnutrition, depression, drug dependency etc. in children. Besides this, children lose the chance to have a normal education and doomed to become an illiterate adult, having no possibility to grow in his or her professional and social life. Likewise, the worst forms of child labour put children at risk of death, injuries or diseases in children. Therefore, the lack of access to education and child labour keeps the vicious cycle of exploitation, illiteracy, higher unemployment and poverty going which limits future options and forces the children to accept low wage work as adults and raise their own children in poverty.^{xxi}

INTERNATIONAL REGIME FOR COMBATING CHILD LABOUR

Child labour is not specific to India but it's been a serious problem for rest of the world from a long period. The international agencies are trying hard to avert this problem and have introduced certain legal frameworks to globally fight with this problem which are as follows:

- **United Nations Convention on Rights of Child (UNCRC)^{xxii}**: The convention manifests that all the state parties and organisations should work towards the best interest of the children by providing proper care, protection and take necessary legislative & administrative measures. Moreover, the convention says child must be prevented from any sort of illegal transfer and trafficking^{xxiii} and should not be involved in any work related to child labour which is hazardous to their health.^{xxiv} It further provides that children must be free from production and manufacturing of drugs & illicit activities, sexual exploitation and should be protected from all those abuses which act as a hurdle in welfare of children.
- **Universal Declaration of Human Rights^{xxv}**: It elucidates that children must be fed with special care & assistance and elementary education should be provided in free and compulsory manner to all the children.
- **International Covenant on Economic, Social and Cultural Rights^{xxvi} (ICESCR)**: ICESCR emphasises that children and young person should be protected from any type of discrimination and socio-economic exploitation. They should not be engaged in work which is harmful to their health, life or impeding their normal development. It further focuses on prohibiting child labour, making it a punishable offence and importance of imparting of education to all the children.
- **The International Covenant on Civil and Political Rights^{xxvii}**: It stipulates that child must get sufficient protection and rights of having the status of being minor from his family, society and state without having any kind of discrimination as to race, colour, sex, language, religion, national or social origin, property or birth.^{xxviii}
- **Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child Prostitution, and Child Pornography^{xxix}**: The Protocol aim to prevent sex trafficking, forced sexual labour and sexual exploitation of children. It also mentions that relevant measures should be taken to provide legal support to the victims of such exploitation.^{xxx}
- **Minimum Age Convention (MAC)^{xxxi}**: It expounds that the countries should make policies for the abolition of child labour and put the minimum age limitation for the admission to employment based on the physical and mental development of children. Additionally, the minimum age of the child should not be less than the age of completion of compulsory schooling and in no way less than 15 years.^{xxxii} If the work

pursued by child is light in nature or any way related to artistic performance then in that case, exception to the age limit may be allowed.^{xxxiii} If the child is involved in any hazardous work which can affect health and safety of young person, then the minimum age should not be below 18 years.^{xxxiv} It even highlights the need of imparting of free and compulsory education, extension of social security of children and protection of children.^{xxxv}

- **Worst form of Child Labour Convention^{xxxvi}**: This convention aims to remove the worst forms of child labour including all forms of slavery or practices similar to slavery such as the sale and trafficking of children, debt bondage, serfdom, forced labour, child prostitution & pornography, using children for illicit activities & trafficking of drugs and work which is likely to harm the health and safety of children.^{xxxvii} The convention urges to identify the children who are at risk and provide the required assistance for the elimination of children from the worst forms of child labour. It highlights the need of rehabilitation, social integration, free education and vocational trainings.^{xxxviii}
- **International Program on the Elimination of Child Labour^{xxxix}**: It is one of the biggest programmes of ILO which works for the elimination of children from hazardous work. It seeks to provide education to the children, training and decent work opportunities to the families of children so that children could be prevented from indulging in such activities.

CHILD LABOUR IN INDIA

Legislations in India

India has been struggling with problem of child labour from years and have made several attempts to combat the same. Since, the India got independence, it has brought plethora of legislations to redress this widespread issue but before the independence of India, there were no better laws. The Indian penal code^{xi} was the first law which dealt with the offences against children but that too only to some extent as it is a general legislation. There were some specific legislations enacted to curb the issue of child labour but with all of them had failed to combat the problem.^{xli} As after independence, India passed diverse legislations dealing with different forms of child labour. Child Labour (Prohibition and Regulation) Act^{xlii} of 1986 was the first

legislation amongst all which was completely dedicated to address the problems pertaining to child labour in India.

In addition, there are several constitutional provisions, specific legislation, government policies and programmes which emphasize towards alleviating child labour and promoting the growth and development of children in India.

Constitutional Provisions^{xliii}

The Indian constitution perfectly depicts the Indian ideology of welfare state and protects the right of all age of people. It has notably determined the set of provisions for the protection and betterment of child. It also directs the states to make special provision for the advancement of children.^{xliv}

- It also provides that every child is entitled to get education together with early childhood care up to the time they complete age of six years^{xlv} and the government should ensure to impart free and compulsory education for all the children of 6 to 14 years of age.^{xlvi} In addition, the constitution mentions that it is not only the responsibility of state but also of parents to provide educational opportunity to their children between the age of 6 and 14 years.^{xlvii}
- The framers of the Constitution already had it in their mind that the major sections of children are exposed to and wrapped in hazardous works without having any kind of safety and security, as a result, children get succumbed to various health issues. Thus, the constitution lays down that children below the age of fourteen years should not be employed for any work in factory or in mine or should not be engaged in any other hazardous employment.^{xlviii} Moreover, it has explicitly observed the issue of human trafficking and other forms of forced labour; beggar as the outrageous offence against the humanity and adverts to prohibit the same,^{xlix} which ultimately help in curbing child labour.
- It also provides that state should make sure to secure the health and strength of workers and ensure that tender age of children are not abused.¹ Additionally, Children are given opportunities and facilities to develop in a healthy manner by raising the level of nutrition, standard of living and improvement of public health.ⁱⁱ

Provision under Indian Penal Code^{lii}

IPC is the general law which penalises for the offences committed against the human beings. In which child being more susceptible, he is much likely to be harmed. There are various offences which happens every day with children, many children are kidnapped, sold, hired and forced to prostitution. Therefore, IPC provides list of punishments for all such offences against children. But it does not have any specific provision for punishment of child labour. Few of the crimes are:

- If a minor is kidnapped for the purpose of begging or employment, then person involved in committing such offence would be liable to punishment.^{liii} If a person is kidnapped subjected to grievous hurt or used for slavery then again, the person indulging in such activities would be punished.^{liv} IPC also provides the punishment for slavery and trafficking of human beings^{lv} and prohibits the practice of forced labour^{lvi}.

Other Legislations prohibiting Child Labour:

With regard to above general laws, the government of India has introduced profusion of enactments to safeguard the interest of children in possible number of areas. These enactments specifically deal with different forms of child labour. Some of laws are as follows:

- **The Factories Act^{lvii}:** This act prohibits the employment of children below the age of 14 years in the factories but allows employment of an adolescent (a young person who is between the age of 15 to 18 years), mentions the rules related to working hours and conditions for the adolescents. The Act defines the working conditions for adolescents on dangerous machinery and list out the precautionary steps to be taken by the factory owner/manager for safeguarding the workers of or below 18 years of age.
- **Minimum Wages Act^{lviii}:** This act prescribes the minimum wage for the employment of all the employees working in industries. For the purpose of act employee also includes child (person who has not completed 14 years of age) and adolescent (person who has completed his 14 years of age but has not completed his 18 years). The Act prescribes certain guidelines such as fixation of working hours for children, fitness and health requisites; which are to be followed for protecting the interest of children.
- **The Plantation Labour Act^{lix}:** The Act was introduced to address issues such as child labour in agricultural activities and provide welfare to plantation labour. It clearly categorised the term child (who has not completed 15 years of age) and adolescent (who

is between 15-18 years of age). The Act prohibits the employment of children less than 12 years of age in the plantation but does not prohibit employment of adolescent and stipulates that adolescents are being allowed to work only if they qualify as per the fitness specifications.

- **The Mines Act^{lx}**: The Act had come into existence when it was found that there were number of children who got injured and many lost their life by working in mines. Hence, it completely forbids the employment of children below the age of 18 years.
- **The Bidi and Cigar Workers^{lxi}**: This Act prevents the children to be employed under any industrial premises where the manufacturing of bidis and cigars take place. For this purpose, it prohibits a child (person under 14 years of age) and only allows the young person (person between 14 to 18 years of age) to work in industrial premises with time limitations.
- **The Child & Adolescent Labour^{lxii}**: This act amended the previous Child Labour (Prohibition and Regulation) Act of 1986^{lxiii}. This new Act completely bans the engagement of children below 14 years of age in any occupation or process but with certain exceptions it permits the child to work as an artist in an entertainment industry or in the occupations which are solely run by family, provided that the school education of children does not shackles. Furthermore, it defines person between 14 to 18 years of age as adolescent person and emphatically prohibit the employment of children as well as adolescents in hazardous works such as mining, inflammable substances and hazardous processes under the Factories Act which are detrimental to the children's lives and health. Additionally, it allows the appropriate govt. to make rules related to health and safety of children employed in any establishment or class of establishments.

The Act enumerate the working conditions and limited working hours for children. It further lists out certain mandatory requirements which are to be fulfilled by government in order to ensure safety of adolescents working in the establishments.

- **Child Labour (Prohibition and Regulation) Amendment Rules^{lxiv}**:

The Government of India in order to supplement to the Child Labour Act, mentioned above has incorporated the Child Labour Rules. These rules outline the specific provisions for prevention and prohibition of child labour, rescue and rehabilitation of children and adolescent workers, terms of hours of work and working conditions. It also lays down the provisions linked

to the role and responsibilities of enforcement agencies for the effective implementation of the act.

- **The Juvenile Justice (Care and Protection) of Children Act^{lxv}:**

This is one of the most significant legislations in respect of child which defines juvenile or child as a person who is below 18 years of age. The main object of the act is to provide proper care, protection and rehabilitation to children from all kinds of exploitation, begging, slavery etc.

National Policies and Programmes

The government of India is persistently intercalating various policies, programmes and schemes for the health, safety and security of children. The major programmes are discussed below:

- **National Child Labour Policy^{lxvi}:** This is the most comprehensive national policy which focuses on the rehabilitation of children working in hazardous occupations and consists of general development plans and programmes for the welfare of families of children.^{lxvii}
- **National Policy on Education^{lxviii}:** Ait ensures that all students belonging to any caste, creed, location or gender should have access to quality education
- **National Commission for the Protection of Child Rights^{lxix}:** The commission reviews all policies, laws and programmes related to welfare of children and their execution.
- **National child labour project Scheme^{lxx}:** This scheme aims for the rehabilitation of child victim (under age of 9-14 years) withdrawn from hazardous work through the special training centre. In the special centres, these children are provided non-formal education along with vocational training, nutritional meals, stipends and health care facilities and prepare them to join regular mainstream schools to get the formal education.
- **National Resource Centre on Child Labour^{lxxi}:** The NRCCL functions assists the central as well as state Labour ministries in implementation and development of the child labour programmes. It mainly focuses in the areas of research, documentation and conducts programmes like sensitisation programmes, awareness generation programmes etc.

- **National Authority for Elimination of Child Labour**^{lxxii}: It aims to withdraw victims of child labour engaged in hazardous occupation and rehabilitate them through special schools.
- **Sarva Shiksha Abhiyan or Education for All Programme**^{lxxiii} and **Anganwadi**^{lxxiv}: Both the programmes have been launched to provide elementary education to children & those who are victims of child labour^{lxxv} and involves implementation of health & nutrition related facilities, pre-school activities for all the children below age of 6 years^{lxxvi}

Role of Indian Judiciary

In the attempts to stop the issue of child labour, Indian Judiciary has always worked as gap filler whenever the attempts by Indian Legislature were not adequate or have proved to be futile. It has played a prominent role for promoting child welfare through its various revolutionary judgments and interpretations.

For the first time, Supreme Court of India in *Lakshmi Kant Pandey v. Union of India*^{lxxvii}, drew attention towards the practice of domestic bonded service and slavery of children and issued mandatory guidelines for adopting the active steps to abolish the same. In year 1983, in *Salal Hydro Project v State of Jammu and Kashmir*^{lxxviii}, the Court remarked that as long as poverty and destitution exist, problem of child labour would not be curbed, thereby emphasizing on importance of education for children. The court further said by issuing guidelines for the government that schooling should be provided to children of construction workers which would eventually help in curbing this evil problem.

In another significant judgment, the Supreme Court gave contradictory verdict by saying it is totally impractical and counter-productive to put immediate ban on the employment of children causing child labour, the ban can be levied only on the hazardous and worst form of employment such as trafficking, slavery, bonded labour, pornography, prostitution etc. Thus, the court approved continuance of child labour to some limited extent by undertaking some measures.^{lxxix} This contradictory verdict of court, letting to continue the practise of child labour in limited manner was highly debated. The Supreme Court gave decision on similar lines in another important judgement where the court reiterated that engagement of child in construction activities is undoubtedly a hazardous employment which clearly violates fundamental rights of children. Therefore, children below 14 years of age should not be allowed

to work in construction activities and this is the duty of central and state government to ensure this. This case was popularly known as the Asiad case.^{lxxx}

In *M.C. Mehta v. State of Tamil Nadu*^{lxxxi}, the Supreme Court banned the work of children in manufacturing processes of matches and fireworks with an exception that children can only be involved in packing process and should be kept away from manufacturing area. The court further highlighted the importance of education for children until they complete 14 years of age and there should be balance achieved between their school hours and their working hours thereby not affecting their education and employment respectively. In year 1997, another historic judgement on child labour was delivered where the court held that government has miserably failed to suppress the problem of child labour despite so many legislative provisions which have been made in conformity with I.L.O Conventions and our very own constitution. The court had further issued compulsory guidelines to be followed by the government to tackle this issue.^{lxxxii} A year later, the Supreme Court in *Bandhua Mukti Morcha v Union of India*^{lxxxiii} recapitulated the directions given in the M.C. Mehta case and discussed about the need for its swift implementation. It also asserted that the policies of governments should provide for health check-up, nutritious meals, healthy environment and compulsory education for all children.

In *District Beedi Workers v. Union of State of Tamil Nadu and Others*^{lxxxiv}, the court issued several directions to state governments in respect of child working as beedi workers, held that the employment of children in tobacco manufacturing should be prohibited and provisions of Child Labour (Prohibition & Regulation) Act^{lxxxv} and Beedi and Cigar Workers (Conditions of Employment) Rules^{lxxxvi} should be strictly implemented.

In *Unnikrishnan*^{lxxxvii}, it was held that free and compulsory education should be considered a fundamental right for children and be covered under the ambit of Article 21 of the Constitution.

In *Bachpan Bachao Andolan*^{lxxxviii}, the Supreme Court held that children should be prohibited from working in circuses, rather be provided compulsory education and children rescued from such circuses should be rehabilitated in Care and Protection Homes till they complete age of 18 years. In *Gaurav Jain Vs. Union of India*^{lxxxix}, the Supreme Court highlighted the plight of children born to prostitutes and held that such children should be treated equally with care and protection and issued directions for the rescue & rehabilitation of child prostitutes and established Juvenile Homes for them.

The Judiciary has always ensured to tackle the issue of child labour by its significant judgements and has been successful to a certain extent in curbing it.

CHILD LABOUR IN US

Legislations in US

The legislative history of US in respect of child labour has gone through ebbs and flows. Initially, all the attempts of government to enact child labour laws went in vain. The laws passed by congress were declared unconstitutional by the Supreme Court of USA on the grounds that federal government is exercising unwarranted commerce power on the states and infringing state rights.^{xc} In 1924, a Constitutional Amendment prohibiting child labour was passed by Senate but due to lack of state majority it was never ratified.^{xcii} Finally, in 1938 the Fair Labour standard Act^{xciii} was passed which is the one of the major federal laws of USA that prevents child labour.

The USA follows the federal structure, which authorizes the states to make their own laws. Thereby the work by children and adolescents is regulated at both the federal and states level separately and there are only few federal laws that govern the issue of child labour. All the child labour laws in USA are monitored by the U.S. Department of Labour.^{xciii} The legislations dealing with child labour are as follows:

- **The Walsh-Healey Public Contracts Act^{xciv}**: It was the first act that recognized the issue of child labour. It was passed with sole aim to determine labour rights and improvise the labour standards. It strictly states that any male under 16 years of age and any female under 18 years of age should be precluded from employment.^{xcv}
- **Beet Sugar Act^{xcvi}**: The Act completely prohibits employment of children below the age of 14 years in cultivating and harvesting sugar beets and sugar cane. It further states that children between the age of 14 to 16 years should not work for more than 8 hours a day and if any grower contravenes these provisions than his benefits payments might get deducted.
- **Fair Labour Standards Act^{xcvii}**: This is the first act that govern the offence of child labour and imposes civil and criminal penalties for non-observance of its provisions. It was designed to protect the educational opportunities of youth and prohibit the employment of children in the jobs that are detrimental to their life and health. The Act

applies to the employees who are employed in the private sector and in Federal, State, and local governments.

It categorizes the work into agriculture and non-agriculture. For non-agriculture work, it places the minimum working age to be: 14 years with limited occupations and restricted working hours, 16 years for getting employed in non-hazardous works and 18 years for getting employed in hazardous works, as prescribed by the government. It states that children between the age of 14-15 can only work between 7 a.m. and 7 p.m. during the whole year when school is in session (3 hours a day & 18 hours a week); between 7 a.m. and 9 p.m. in the summer break (8 hours a day & 40 hours a week) and can only work in limited jobs. Additionally, the child under the age of 16 years can work in non-agricultural work in interstate commerce during school hours and can work unlimited hours in occupations that aren't hazardous to their well-being. It further enumerates that the youth of 18 years or older can be employed in hazardous work for unlimited hours.^{xcviii}

For agricultural work, children under 12 can work in non-hazardous farms with parent consent or in farm of parents outside the school hours. Same conditions apply to children under 12-15 years of age but the youth of 16 years or above can work in both hazardous or non-hazardous farms for unlimited hours. It also states that the Children of any age are allowed to work on a farm owned or operated by a parent.^{xcix}

FLSA exclusively prohibits the work of exploitive nature and the oppressive child labor in any non- agriculture occupation.^c The Act prescribes to conduct regular workplace inspections and investigations to determine oppressive child labour activities and ensures enforcement of the child labour provisions. It affirms that no state law may weaken the protection given to the workers provided by this Act. However, state laws which impose greater safeguards to the workers will supersede those provided by the FLSA.^{ci}

- **The Child Labour Protection Act^{cii}:** This Act came as a supplement to the Fair Labour Standards Act, 1938. It increased civil penalties prescribed in FLSA, for violations of child labour requirements, prohibitions imposed related to minimum wage and maximum working hours. The Act further added a civil penalty of \$50,000 for causing serious injury or death of the young employees below the age of 18 years and prescribes doubling up the penalty if the provisions of child labour are violated or repeated in any case by the employer.

- **The Children’s Act for Responsible Employment (CARE Act)^{ciii}:** The CARE Act was introduced to amend the Fair Labour Standards Act, 1938 by elaborating the definition of oppressive child labour and revised the exemptions given under the 1938 Act. It further states that the U.S. Secretary of Labour should determine particular type of farm work which can be safe enough for children between 14 and 15 years of age. Additionally, it requires that the children below 18 years should be restricted from engaging in hazardous farm work and their employment should be prohibited in pesticides handling jobs.

Like CARE 2013, other CARE Acts were introduced in year 2005, 2007, 2009 and 2011 respectively which had amended FLSA for inserting the better provisions for protecting and safeguarding the interest of children,^{civ}

- **Trafficking Victims Protection Act^{cv}:** This is the first comprehensive law to protect the victims of trafficking. It basically includes three approaches i.e., prevention of trafficking activities, protection of victims from such trafficking and prosecution of those perpetrators who indulge in such criminal activities. It even functions to exclusively prohibit trafficking of children below 18 years of age.
- **Occupational Safety and Health Act^{cvi}:** This is a general legislation which was passed with a motive to supervise health of the workers and provide safety and protection to them at their workplaces. This Act applies to all the workers including children ensuring safety to all, although it has no specific provisions related to safety of children.
- **Task Force on Environmental Health Risks and Safety Risks to Children^{cvii}:** It is a Program which was created under Executive Order of President of US, it ensures that children must be protected from the risks which hampers their health and interferes with their safety. It also states that its definition of children includes older children and adolescents and include exposures to children and adolescents at work.
- **Youth Rules:** It is an initiative which seeks to increase public awareness of Federal and State rules concerning young workers. It was started with an aim to promote positive and safe work experiences for young workers by distributing information about young workers to youth, parents, employers and educators. It aims to create awareness through various means such as printed materials, website, events, trainings, seminars and some partnering activities.^{cviii}

- **Legislations of States:** Each and every state in U.S., has laws specifically dealing with child labour issues. When federal and state legislations differ or contradict with each other, then the rules that provide the most protection to youth workers prevail.^{cxix} In general scenario, employers must comply with both federal law and applicable state laws. Every state has its own child labour laws which regulates the conditions under which children may be employed by employer such as minimum age of employment, working hours, prohibition of work at night etc. In some states, young workers under the age of 18 are required to obtain employment or age certificates from their school or from Department of Labour of respective State.^{cx}

Moreover, all states have compulsory schooling requirements and even have laws that govern employment of children and related activities. Some laws apply to all gainful occupations, while other laws applicability exclude agriculture or domestic service and few others apply only to specified establishments such as factories or retail stores etc.^{cxii} Thus, certain legislations may be similar or some may vary state to state.

Role of US Judiciary

In US, Judiciary has played an active role in monitoring the laws passed by the Legislature. With its interpretations and extensive elucidations, the Judiciary has always ensured better implementation of child labour laws and enlargement of scope of FLSA in curbing the issue of child labour.

In the highly famous and important *Darby*^{cxiii} case, the constitutionality of FLSA was challenged. The question arose that was congress having the legitimate power for regulating the interstate commerce activities of state under FLSA. The court held that according to US constitution its power cannot be enlarged or diminished by the exercise or non-exercise of state power and stated that one of the essential features of FLSA was to prevent the states from violating the provisions related to child labour and refrain from using such provisions of the Act for their own economic benefits and emphasized that congress had acted in proper manner by being within its authority.

In another landmark case of *McLaughlin v. Stineco*^{cxiiii}, the court held that employment of children between the ages of 14 and 16 years is prohibited for performing roofing work which is declared hazardous by the Secretary of Labour. Similarly, in another important case, the employer has violated the provisions of FLSA and employed young workers of 14-15 years of

age beyond the limit prescribed by the act. The Court ruled that if employer violates the provisions of the act then he would come under the purview of strict liability and the employer cannot plead that his personnel were not aware about the violations and cannot excuse himself by simply adopting the policies against child labour violations of the act.^{cxiv}

In *Perez v. Cathedral Buffet*^{cxv}, allegations were raised against an employer for violating the provisions of FLSA in regards to minimum wage and overtime of children in a restaurant. The Court had inflicted heavy penalty involving liquidated damages for violating the provisions of FLSA. In *Acosta v. Maranto*^{cxvi}, claims were initiated questioning the defendant for violating the provisions of FLSA by failing to pay minimum wages to children who were employed, inability to pay overtime compensation, non-compliance with other child labour provisions etc. The Court held that there should be injunction over the activities of the employer, he should pay the dues to those affected and if there would be subsequent violation of FLSA, then the employer would be subjected to huge penalties, thereby ordering to refrain from violating the norms in order to curb the practice of child labour.

COMPARATIVE ANALYSIS OF US & INDIA

India and US, both the nations have been dealing with the issue of child labour. In combating this problem, both have taken steps at various levels which are summarized and analysed as follows:

- Child labour is a widespread issue and due to its growing enormity, the international institutions had to introduce international legislations and programmes to eliminate this rampant social evil. For the same, the most significant and specific legislations dealing with it are: UNCRC, MAC and Worst Form Convention. India has signed and ratified all the three conventions^{cxvii} but USA has ratified only the Worst Form Convention^{cxviii}, rest two are still not ratified by US^{cxix}. This clearly indicates that maybe US is not really wanting to deal with this issue of child labour.
- India has not just ratified all the conventions but has taken strict measures to combat this problem in conformity with these international legislations. Majorly, after ratifying the Worst Form of convention and MAC government of India has drafted the Trafficking of Persons Bill^{cxx} (for enhancing penalties for aggravated form of trafficking); stringent provisions & penalties in Child and Adolescent Labour Act^{cxxi};

established new task force to implement the laws and has improved working of administrative authorities and police officers for the same. Whereas, US has not taken any effective measure in this respect except the few provisions which were already incorporated in its law. Today, the involvement of US children in worst forms of child labour is highly disturbing and worrisome. Some steps were taken at state levels but no such uniform steps have been taken at federal level in the country.

- Indian government along with the collaboration of US government had initiated a project titled as INDUS Project^{cxixii} in 21 districts of India to eliminate and prevent children from hazardous child labour. It is pertinent to note that USA has collaborated with various other developing countries to eliminate worst form of child labour but it has itself not taken any initiative to eliminate this issue in its own country.
- Furthermore, in both India and USA, children are primarily employed in agriculture sector including hazardous and non-hazardous agriculture work. In India, Legislature and Judiciary have taken active steps to keep children away from such practices but in US the situation is worsening. US has legislations to curb child labour but those legislations have been made in such a way that they themselves allow the children to work for unlimited number of hours. Ironically, the laws of US prohibiting child labour, permit it in some or the other form as different age group of children have been prescribed allowing them to work within prescribed limit.
- In addition, both the countries are major producers of Tobacco in the world in which large number of children are engaged in Tobacco plantation and tobacco making industries. India has introduced specific legislation for it and the Indian Judiciary has also issued certain guidelines and recommendation to eliminate involvement of children in this area as it hampers health of children since young age with probabilities of breathing related major diseases. However, USA has not done anything so far and the fact of involvement of children in tobacco plantation is really disturbing.^{cxixiii}
- India has incorporated plenty of child labour laws at national as well as state level with an aim to eradicate this problem in the country by combined efforts of centre and state in a uniform way. While on the other hand, US has hardly few federal laws, the autonomy has been given to states to make their own laws. Thus, USA do not have adequate federal laws to resort this issue in all of its states in a uniform manner.

- India is in better position as it has introduced recreational, rehabilitation, vocational and educational trainings, plans and policies for the children who are victims of child labour but no such policies and programmes are available for the victims of child labour in US.
- The Judiciary of India is very prompt and transparent to redress the problem of child labour. It has issued many guidelines and recommendation to government for controlling child labour but in US, Judiciary has remained silent on such issues. As it is already evident that in US many children are involved in worst form of child labour, still no such active role has been played by Judiciary to control the same.

CONCLUSION & SUGGESTIONS

The problem of child labour is pernicious which has not only affected the developing countries but has whipsawed the developed countries as well. India has introduced ample of legislations and policies but it has been lacking in its enforcements whereas America does not have enough laws to address the issues of child labour. Despite the fact, both the countries with their endeavour have seen reduction in cases of child labour but even then, the problem seems to persist involving children in hazardous work. Therefore, in order to obviate child labour both countries need a balanced combination of legislations and their implementation to remove this evil from our society. There are few suggestive measures which should be specifically adopted by India in order to combat this problem, such measures are as follows:

- The major difficulty in eradication of child labour from India is the poor execution of laws. India has varied legislations governing specific form of child labour but it lacks implementation of them. Thus, the central and state governments in India should be closely engaged in the effective implementation of child labour laws.
- The administrative accountability for curbing this problem should be increased and proper mechanism for monitoring their working should be developed.
- The outdated laws should be amended because due to multiplicities of laws, it leads to chaos and confusion, ultimately acting as hurdle in solving the problem of child labour.
- Uniform definition of child should be adopted because different legislations provide different definition of child again causing state of confusion.

- Stringent punishments should be imposed on the persons who fiercely indulge children in the worst form of child labour such as prostitution, modern day slavery etc. and government should take punitive action towards the employer who employs children in hazardous work.
- The Legislature should give immediate effect to the major findings of the Judiciary. There were many instances where Legislature had remained hushed on the recommendations of Judiciary. Hence, there must be proper coordination between them to tackle such serious issues.
- Government should provide decent work opportunities to adults and the parents of children and should also introduce poverty alleviation programmes because poverty is the major roadblock in the development of children, leading to child labour.
- There should be general awareness spread in the society specially to parents of children about the repercussions of child labour, its impact on society, standard of living and on overall development of the country. If India wants to curb this menace of child labour, it has to adopt these measures for optimum achieving of goals.

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