

**Comparative Analysis of Child Labour Law**

**in**

**India and United Kingdom**

**By: Saransh Agarwal**

**INTRODUCTION**

*Child labour as per **International Labour Organisation (ILO)** means, “work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children, or work whose schedule interferes with their ability to attend regular school, or work that affects in any manner their ability to focus during school or experience a healthy childhood.”*

Child labour is a form of child exploitation and it is worldwide phenomenon. Various initiatives have been taken by the Global community to stop child labour one of them being to determine an age for the child labour so that it becomes an accepted standard all across the globe. ILO in its ‘Minimum Age (Industrial) Conference (1919)’ has determined 12 to 13 years for light works and 18 years for hard and dangerous works. Although the minimum working age determined by ILO is 15 years (as a child is expected to complete his or her primary education) engaging the children anywhere below this age will also be considered as child laboures.

**CHILD LABOUR IN INDIA**

India being a predominantly rural society was inevitably characterised by small and marginal economic units. Gradually children became an integral part of the household economy. They were trained at a very young age and gradually start contributing individually to the family’s income. As a result, the children were in a situation where they had to earn for themselves as well as for the families. Experts say “even in family run units, where the child is generally better looked after by his parents and may not suffer from any physical hardship, he goes thorough mental strain because of problems and anxieties regarding the undertaking which he shares with his parents”.

Every single day, a large chunk of Indian children are subjected to bonded labour and forced employment, depriving them of their childhood, education and overall mental and physical development. According to the 2011 census released by the Government of India, the number of children working in the 5-14-year age group stood at 43.53 lakhs. This is no less an achievement when compared to the 2001 census figure of 1.26 crores, the structural problems that act as an impetus to child labour such as poverty and poor enforcement and regulation, remain.

Our Constitution makers very well knew this black spot. So, in order to protect the rights of the citizens of India they drafted various articles to protect the rights of the children and lay down a basic structure to form rules and regulations according to them. The Constitution of India has several articles that protect the rights of children, which include **Article 24** that prohibits the employment of children under the age of 14 in factories and other hazardous employments, **Article 21A** that says the state shall provide free and compulsory education to all children of the age of six to fourteen, and **Article 39 clauses (e) and (f)** that say the State shall safeguard health of children and offer opportunities and education to them.

## LEGISLATIVE

Child labour led to a vicious cycle of poverty and illiteracy with the families left with no other choice than continuing the process further. Some of the legislations which were there after independence to curb child labour are as follows:

***The Factories Act, 1948:*** The Act prohibits the employment of children below the age of 14 years in any factory. The law also governs the employment of non-adults aged between 15–18 in factories.

***The Mines Act, 1952:*** The Act prohibits the employment of children (below 14 years of age) in a mine and restricts the employment of adolescents (between 14-18 years of age). Mining being one of the most dangerous occupations government is extra cautious and even prohibits the presence of children on any mine.

Although we had laws to prevent child labour still the child labour continued to boom in the country. This led to the conclusion that they were simply not enough and strong to curb the

menace of child labour. With the increasing role of media, the news of factory hazards and mis happenings taking toll on innocent children's life continued to flash all around in the newspapers. Then was the time, a need for strict legislations and statutes were felt to prohibit the mal practice of child labour.

***The Juvenile Justice (Care and Protection) of Children Act of 2000:*** under this law child labour was made a crime, punishable with a prison term. This act prohibits anyone from procuring or employing a child in any hazardous employment or in bondage. This act provides punishment for those who act in contravention to the previous acts by employing children to work.

***The Right of Children to Free and Compulsory Education Act of 2009:*** This is a forward-looking legislation. The law mandates free and compulsory education to all children aged 6 to 14 years. This legislation also mandated that 25 percent of seats in every private school must be allocated for children from disadvantaged groups and physically challenged children. This act provided an opportunity for the poor and illiterate families to send their children to school and ensure a quality education for their children.

**The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986:**

This act prohibits the employment of children in any occupation or process, except where a child helps his family or family enterprise, which is other than any hazardous occupations or processes which includes mines, Inflammable substances or explosives and Hazardous process, after his school hours or during vacations; works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed. Provided that no such work under this clause shall effect the school education of the child.

The act further also says that adolescent shall not be employed or permitted to work in any of the hazardous occupations or processes which includes mines, Inflammable substances or explosives and Hazardous process.

**Hours and period of work:** Hours and period of work have been clearly specified in the section 7 of the act.

No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.

The period of work on each day shall be so fixed that no period shall exceed three hours and that no adolescent shall work for more than three hours before he has had an interval for rest for at least one hour and total working time shall be so arranged that inclusive of his interval for rest it shall not be spread over more than six hours including the time spent in waiting for work on any day.

No adolescent shall be permitted or required to work between 7 p.m. and 8 a.m and they shall not be required or permitted to work overtime and if he has already been working in another establishment he shall not be required or permitted to work on that day.

**Weekly holidays –**

As per section 8 of the act every adolescent employed in an establishment shall be allowed in each week, a holiday of one whole day.

**Penalties. –**

As per section 14 of the act whoever employs any child or permits any child to work shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both.

Whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of section 3A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both.

**Other steps:**

The act has made employment of child or adolescent a cognizable offence. The government is also required to set up a **Child and Adolescent Labour Rehabilitation Fund** in every or two or more district for rehabilitation of the rescued children.

## JUDICIARY

In spite of the various lacunas and poor implementation of various legislations judiciary has always played a pivotal role in safeguarding the constitution, and it has played a similarly integral role in enforcing child rights. There have been several important cases where the judiciary has played a proactive role in preventing the employment of children and forced labour.

### ***People's Union for Democratic Rights v. Union of India (1982 AIR 1473)***

The Supreme Court had observed that it was a clear breach of Article 24 of the Constitution to employ children below the age of 14 in construction work. The court proceeded to prohibit any kind of violation of Articles 23 and 24 and further laid emphasis on strict observance of fundamental rights by private individuals and spoke strongly against any form of forced labour.

### ***Bandhua Mukti Morcha v. Union of India & Others (1984 AIR 802)***

The Supreme court took into cognizance the employment of children in the carpet manufacturing industry in Mirzapur, Uttar Pradesh. It instructed the District magistrate to conduct raids, and subsequently got 144 children, who were under the forced custody of the owners, released.

### ***Sheela Barse & Others v. Union of India (1986 AIR 1773)***

In this case under the direction of the Supreme Court, children who were being exposed to chemical fumes and coal dust from working near furnaces in the glass industry were released from their employment.

### ***M.C. Mehta v. State of Tamil Nadu (1991 AIR 417 1990 SCR )***

It is a landmark case in which the Supreme Court gave directions to the government to eliminate child labour, which included the conducting of surveys for the identification of working children, ensuring the withdrawal of children working in hazardous industries and ensuring their education in appropriate institutions. In cases where a child was withdrawn from work, the Supreme Court directed the Government to ensure that at least one adult member of the child's family receives employment.

It has been observed that judiciary has been proactively ensuring rights and justice to the children but it has been stuck by the governments apathy.

Unfortunately, it has been observed that the directions and suggestions of the Judiciary have not been implemented in the most effective manner by the Government machinery. Poverty and structural issues still remain. International conventions such as the ILO Convention 138 and ILO Convention 182 have not yet been ratified. No national minimum age for employment exists.

In light of this, the proactively shown by the Judiciary in ensuring the rights of children has been commendable, and judgements passed by the courts have reinforced and protected the basic rights of the children.

### **CHILD LABOUR IN UNITED KINGDOM**

The industrial revolution in the late 1700s shifted the centre of production from homes to factories. Because children often helped produce the goods out of their homes, working in a factory to make those same goods was a simple change for many of these. Children who worked at an early age were often not forced; but did so because they needed to help their family survive financially. Due to poor employment opportunities for many parents, sending their children to work on farms and in factories was a way to help feed and support their family.

Yet, even though there was an increase of child labour in factories such as textiles, there was consistently a large number of children working in the field of agriculture and domestic production.

With such a high percentage of children working, the rising illiteracy, and the lack of a formal education became a widespread. Due to this problematic trend, many parents developed a change of opinion when deciding whether or not to send their children to work. Other factors that lead to the decline of child labour included fiscal changes, development of technology, improved wages, and continuous regulations on factory legislation.

There are extensive laws and regulations regarding child labour and exploitation in united kingdoms.

**1. The Children and Young Persons Act, 1933**

It is the main legislation restricting the use of children in employment. The term “child” in this context is defined as anyone of compulsory school age (up to age sixteen). The general rules are that no child may be employed under the age of fifteen years, or fourteen years for light work; be required to work during school hours; before 7 a.m. or after 7 p.m. on any day; or be required to work for more than two hours on any day they are required to attend school, for more than twelve hours in any week they are required to attend school; or for more than two hours on Sundays. For non-school days, children under the age of fifteen may work up to five hours a day on days that they are not required to attend school, not including Sundays, up to a maximum of twenty-five hours per week. Those aged fifteen years or older may work up to eight hours per day on any day school attendance is not required, up to a maximum of thirty-five hours per week, with the limit to working a maximum of two hours on a Sunday still applying. Anyone employing children over the age of fourteen must provide them with at least a one-hour break after they have worked four or more hours. It is an offense to employ a child in contravention of these laws, punishable by a fine. Additional provisions are applicable to children in the entertainment industry, which provides an exemption: that children can perform certain duties under a license.

**2. Employment of Women, Children and Young Persons Act, 1920**

This act prohibits the employment of children in any “industrial undertaking,” including mines and quarries, manufacturing industry, construction, and the transport of passengers or goods by road, rail, or inland waterway

**3. The Offices, Shops and Railway Premises Act 1963**

This act provides that no young person may clean machinery if to do so would expose him to risk of injury

**4. The Betting, Gaming and Lotteries Act 1963**

The act prohibits the employment of persons under eighteen in effecting any betting transaction or in a licensed betting office.

#### **5. The Merchant Shipping Act 1970**

The act states that no person under minimum school leaving age may be employed on a ship registered in the UK, except as permitted by Regulations made under the Act.

#### **6. The Manual Handling Operations Regulations 1992**

This act deals with the industries which require Manual Handling Operations and prohibit children from handling any heavy load which is likely to cause injury to them.

#### **7. The Prevention of Accidents to Children in Agriculture Regulations 1998.**

The act prohibits the riding by a child on certain classes of vehicle or machine used in agricultural operations.

### **CONCLUSION**

In the end it can be said that both judiciary and legislature are doing their level best to adopt to latest changes in the society. Legislature is passing laws to deal with the loophole and lacuna in previous acts.

Comparing the situation of United Kingdoms with that of India it has been observed that the laws of U.K are industry specific and provide the maximum hours of work that a person can do in a week whereas there is no such provision in India. Laws in India are rather general and do not have specific limit for maximum hours of working. Making sector and industry specific laws help in better implementation of rules and it is also convenient to follow.

It has also been observed that there are no specific rules and regulations in India regarding working of children on their own agricultural lands where as in England The Prevention of Accidents to Children in Agriculture Regulations 1998 deals with the employment of children on farms with respect to riding by a child on certain classes of vehicle or machine used in agricultural operations. Laws are there in place to see that children are even protected from the atrocities of their own parents and not become a victim in their own house.

It has been observed that inspite of the best efforts of the legislative assembly some lacuna remains in the laws which are being filled by the judiciary through its progressive looking judgements.