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## Child Labour – A Compoundable Offence?

Jerin Mathew R<sup>a</sup>

<sup>a</sup>SASTRA Deemed University, Thanavur, India

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*Child labour is an evil which has been stagnant in societies from time immemorial. Child Labour is an offence which has left a negative impact on society by inducing disruptions among children. Child labour can be eradicated from any society only if the laws are made stringent. The offence is regulated in India by “The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986”. The act aims to ensure to eradicate of child labour and punish the offenders who act in contradiction with the stipulations of the Act. However, the offence of child labour has been made to be a Compoundable offence in the recent amendment which happened in the year 2016. This article tries to analyse whether it is right for the offence of child labour to be a compoundable offence. The article also attempts at giving a critical comparison between the laws in India and America regarding child labour. The article also reasons why child labour should be declared to be a Non-Compoundable Offence.*

**Keywords:** *child labour, compoundable offence, stringent laws, eradication, society.*

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### INTRODUCTION

Children from the substrata of society. They are considered to be the most valuable asset of any nation, an asset which plays an imminent part in the growth of any nation. Hence, any country which aims at the progress of the nation should make it certain to look after the development of children without any hindrance. There are around 2.2 billion children in the world overall, of

which about 2 million are found in underdeveloped nations. India, being the second most populous nation in the world and one of the emerging nations, houses about 19% of children from the total world population. In addition, data show that children make up 42% of India's population and that 50% of those children require immediate care and protection.<sup>1</sup>

The definition of "Child Labour" is sometimes given as employment that rips-off children of their childhood, their potential, and their dignity and is detrimental to their bodily and emotional well-being. Child labour has been prohibited under international treaties and Agreements. Any work which is done by children who fall under the age of 14 years is considered to be illegal unless it is of such nature that it does not disrupt their education and any work which is done by children in the age gap 14 -18 is considered to be illegal if the work done is of hazardous nature.<sup>2</sup> Children working in dangerous industries and occupations, such as blow moulding, construction, mining, and textiles, or in household work, performing physically demanding work in solitude for absurdly long hours while being subjected to physical and emotional violence, are just a few examples of industries in which one can find a rise in the number of children working in the labour force.<sup>3</sup> Hence, child labour is that work which puts children into situations which are full of risks.

## LAWS RELATING TO CHILD LABOUR

*International Treaties:* International treaties are putting in efforts to establish a legislative structure for handling child labour throughout the world. "The UN Convention on the Rights of the Child (CRC) (1989)", which covers both child labour and the right to education, as well as two ILO Conventions – "The Minimum Age Convention (No. 138, 1973)" and "The Worst Forms of Child Labour Convention (No. 182, 1999)" – are the most important international legal instruments for addressing the issue in hand. The UN's "Universal Declaration on Human Rights" from 1948 and "The International Covenant on Economic, Social, and Cultural Rights"

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<sup>1</sup> Priya Jagadeesh, 'Child Sexual Abuse And The Law In India' (*Legal Service India*)

<<https://www.legalserviceindia.com/legal/article-809-child-sexual-abuse-and-the-law-in-india.html>> accessed 06 December 2022

<sup>2</sup> Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, s 3

<sup>3</sup> Asha Bajpai, *Child Rights in India: Law, Policy and Practice* (Oxford University Press 2003) 148

both guarantee the right to education, but the CRC and ILO serve as the main international tools for addressing children's rights.

*The UN Convention on the Rights of the Child (CRC):* Unless otherwise stated in national law, a child is defined by the CRC as anybody younger than the age of 18. The Convention provides in international treaties that States and Parties are obligated to make sure that all children - free from any form of discrimination - receive special protection and assistance, have access to resources like health care and education and can develop fully their personas, skills, and abilities, grow up in a happy, loving, and understanding environment, and are informed of and actively engage in the furtherance of their rights.<sup>4</sup>

*International Labour Organization:* The ILO is an agency of the United Nations which was founded in 1919, whose motto is to advance social and economic justice by setting international labour standards.

*ILO Minimum Age Convention (No. 138):* The ILO Minimum Age Convention No. 138 establishes 15 as the minimum age for employment, although 14 may be permitted in particular circumstances for a limited time. The minimal age for labour beneath which a young person's health, safety, or morals would probably be compromised is 18, while children between the ages of 13 and 15 are permitted to undertake some simple work that doesn't interfere with their schoolwork or health.

*ILO Worst Forms Of Child Labour Convention (No. 182):* All forms of slavery, commercial sexual exploitation of children, and any work that is by its very nature detrimental to children's health, safety, or morals are considered to be the worst forms of child labour, according to the ILO Worst Forms of Child Labour Convention No. 182, which requires ratifying nations to take immediate action to prohibit and eliminate them.

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<sup>4</sup> Tobin J, *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press 2019)

## LEGISLATION IN INDIA REGARDING CHILD LABOUR

There are many laws which are promulgated in India, with the intention behind the laws being to curb child labour in the country. The Indian govt. set up a committee called the Guruprasad Committee in the year 1979 and based on the recommendations made by the committee, the government enacted the Child Labour Prohibition and Regulation Act in the year 1986<sup>5</sup>. The main motive behind the promulgation of the act has been to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments.

Further, the constitution of India also guarantees certain rights to children. Article 21(A)<sup>6</sup> of the Constitution of India, 1950 mandates free and compulsory education to all children falling in the age category of 6-14 years. Article 24<sup>7</sup> also expressly forbids the employment of minors under the age of 14 in hazardous factories that could bring them long-term bodily and mental harm.<sup>8</sup> Every person, including the parent or guardian of children, has a fundamental duty under Article 39(e)<sup>9</sup> of the Constitution of India, 1950 – a part of the Directive Principles of State Policy – to provide his or her child, who is between the age of 6 and 14 years old, the chance to pursue education.

It is also pertinent to note the immense number of rulings regarding the protection of children from the evil of child labour by the Supreme court of India. In the first of a series of rulings, the Supreme Court of India in *Lakshmi Kant Pandey v Union of India*<sup>10</sup>, called attention to the practice of child slavery and domestic servitude and established mandatory recommendations for taking proactive measures to end it. In the year of 1983, in the *Salal Hydro Project v State of*

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<sup>5</sup> 'About Child Labour' (Ministry of Labour & Employment) <<https://labour.gov.in/childlabour/about-child-labour>> accessed 06 December 2022

<sup>6</sup> Constitution of India 1950, art. 21A

<sup>7</sup> Constitution of India 1950, art. 24

<sup>8</sup> Navpreet Kaur & Roger W Byard, 'Prevalence and potential consequences of child labour in India and the possible impact of Covid-19- a contemporary overview' (2021) 61(3) *Medicine, Science and Law* <<https://doi.org/10.1177/0025802421993364>> accessed 06 December 2022

<sup>9</sup> Constitution of India 1950, art. 39(e)

<sup>10</sup> *Lakshmi Kant Pandey v Union of India* (1984) SC 469

Jammu and Kashmir<sup>11</sup>, the Court remarked that the issue of child labour would not be resolved as long as poverty and deprivation persisted, underlining the significance of education for kids. The court additionally stated that providing schooling to the children of construction workers will help to eventually stop this terrible problem by setting instructions for the government. In *M.C Mehta v State of Tamil Nadu*<sup>12</sup>, the Supreme Court ordered that employers of children under the age of 14 must abide by the Act's requirements requiring compensation, parental employment, and the education of the children.

In *Peoples Union for Democratic Rights v Union of India*<sup>13</sup> also known as the Asiad workers case, the supreme court observed that “though the employment of children act,1938 did not include the construction work because the construction industry was not a process specified in the schedule to the act, yet, such construction was a hazardous occupation and under Article 24 children under the age of 14 years could not be employed in a hazardous occupation. The right of a child against exploitation under Article 24<sup>14</sup> is enforceable even in the absence of implementing legislation”.

In *District Beedi Workers v Union of State of Tamil Nadu and Others*<sup>15</sup>, the court gave state governments several directives regarding the employment of children as beedi workers and held that the employment of children in the manufacturing of tobacco products should be outlawed. The court also ruled that the provisions of the Child Labour (Prohibition & Regulation) Act and the Beedi and Cigar Workers (Conditions of Employment) Rules<sup>16</sup> should be strictly adhered to.

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<sup>11</sup> *Salal Hydro Project v State of Jammu and Kashmir* (1983) 2 SCC 181

<sup>12</sup> *M.C Mehta v State of Tamil Nadu* (1997) SC 699

<sup>13</sup> *Peoples Union for Democratic Rights v Union of India* (1982) SC 1473

<sup>14</sup> Constitution of India 1950, art. 24

<sup>15</sup> *District Beedi Workers v Union of State of Tamil Nadu & Ors* (1992) 1 SCC 22

<sup>16</sup> Beedi and Cigar Workers (Conditions of Employment) Rules 1968

## WHEN IS AN OFFENCE COMPOUNDABLE?

Compoundable offences are those that fall under the scope of section 320 of the CrPC<sup>17</sup>. These are the crimes where the complainant, or the person who felt mistreated, decides to withdraw the charges levelled against the accused. These agreements, however, must be made "in the highest good faith" and cannot include any payment for which the complainant is not qualified. A compoundable crime may be resolved through compromise either with or without the court's sanction. In the same court where the petition was first filed, the plaintiff may ask for permission to compound an offence. Compounding an offence means the person who committed the crime with the accused received recompense from them, not just monetary compensation. To come under the purview of compoundable offences, the nature of the offences must meet the following criteria:

- The crime must not be too severe in nature for it to be a compoundable offence.
- The offences should often be kept confidential. Private crimes are those that have a detrimental effect on a person's identity or competence. Such crimes shouldn't be detrimental to the state's welfare or the general populace in any way. Due to their horrific character, crimes like rape, homicide, and dacoity cannot be compounded.

## CHILD LABOUR IN INDIA IS COMPOUNDABLE

In India, the offence of child labour is made compoundable according to the recent amendment made in the year 2016 to The Child and Adolescent Labour (Prohibition and Regulation) Act ("*The Act*"). Section 14D<sup>18</sup> of the act lays down that the offence of employing a child in any occupation, which is punishable under section 14<sup>19</sup> of the act can be compounded by the district magistrate on an application by the accused in such an offence. The accused is required to pay an amount of compensation as regulated by the Government for the offence to be compounded. If there is a failure on such payment of compensation then the proceedings shall be continued against such person by the various provisions of the act. Further, the section lays down that

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<sup>17</sup> Code of Criminal Procedure 1973, s 320

<sup>18</sup> Child and Adolescent Labour (Prohibition and Regulation) Act 1986, s 14D

<sup>19</sup> Child and Adolescent Labour (Prohibition and Regulation) Act 1986, s 14

whenever an offence is compounded before the institution of any prosecution then no proceedings shall be instituted against such an offender about whom the offence is so compounded.

A critical analysis of this section is necessary since this provision contravenes many of the public policy principles. Firstly, the compounding of an offence is permissible only if the nature of the offence is considered to be not that of a serious one. However, in contradiction to this, the offence of child labour is considered to be a great evil by both the legislature and the Judiciary as it can be seen that there have been many legislations and rulings in favour of the protection of children from the harm inflicted upon them by child labour.

Interestingly, children are considered to be the most valuable asset of any nation, an asset which plays a vital role in the development of the nation. As the definition of “Child Labour” goes, it is that work which strips off the child their childhood, their potential, and their dignity and which is harmful to their physical and mental health. Here, in the offence of child labour “an asset” which is considered to be vital for the development of the nation is being ripped off its dignity, making it go through both mental and physical turmoil, which brings us to the second point of the compoundable offence being private in nature. Child labour as an offence does not just cause harm to the health of the child, the crime is against the state. The state is deprived of the potential for development in the future by making the children work in hazardous conditions. It makes the world frown upon the nation for having put the children through difficult situations for the monetary gains of the nation.

Thirdly, in the offence of child labour, the party against whom the crime is committed here is a child. Compounding of an offence takes place between the affected party and the accused. The majority of age is considered to be a condition for any person to enter into a valid contract in India, this is because it is considered that a child does not have the mental element to give consent. This principle can be observed in many other laws which are prevalent in Indian too. Nonetheless, this principle has left the talk when it came to the compounding of the offence of child labour. In the offence of child labour, it is the child’s fundamental rights which are being infringed, however, the legislature has ignored the fact that the child does not have the mental

capacity to even understand that the right of the child has been infringed upon by making him/her work for long hours. Further, the act in itself does not prescribe any alternate dispute resolution forum which makes the provision of compounding itself of no use in totality. Hence it has been an undeniable flaw on the part of the legislature to have made the offence of child labour a compoundable offence.

## THE INDIAN AND THE US CONTEXT

Both the US and India have been addressing the issue of child labour. Both countries have taken action at different levels to address this issue, which is outlined and examined below:

- Child labour is a problem that affects a lot of people, and because of its growing severity, international institutions had to establish international laws and programmes to combat this pervasive social ill. The UNCRC, MAC, and Worst Form Convention are the most major and explicit pieces of law that address this issue. All three agreements have been signed and ratified by India; however, only the Worst Form Convention has been approved by the US, leaving the other two unratified. This demonstrates unequivocally that the US may not genuinely want to address the issue of child labour.
- India has not only ratified all the treaties but has also implemented stringent measures to address this issue through these global laws. After ratifying the Worst Form of Convention and the MAC, the Indian government drafted the Trafficking of Persons Bill (to increase penalties for an aggravated form of trafficking); the Child and Adolescent Labour Act has strict provisions and penalties; a new task force has been established to implement the laws, and the efficiency of administrative authorities and police officers has been improved for the same. While the US has not made any significant efforts in this area other than a few measures that were previously included in its laws. The engagement of US children in the worst kind of child labour today is extremely upsetting and concerning.



- To stop and prevent children from engaging in dangerous child labour, the Indian government and the US government jointly launched the INDUS Project<sup>20</sup> in 21 districts of India. It is important to note that while the USA has worked with many other developing nations to end the worst forms of child labour, it has not taken any steps to do so within its borders.
- In addition, children are engaged mostly in the agriculture sector in both India and the USA, performing both hazardous and non-hazardous agricultural work. While the legislature and judiciary in India have actively worked to protect children from such activities, the issue is getting worse in the US. Although the US has laws to prevent child labour, those laws have been written so that they let children work an endless number of hours. Ironically, despite US laws that forbid child labour, distinct age groups of children have been designated as being allowed to work within designated limits.
- Additionally, both nations are among the world's top tobacco producers, with significant numbers of kids working in the tobacco manufacturing and plantation industries. India has introduced specific legislation for it, and the Indian Judiciary has also issued specific guidelines and recommendations to end children's involvement in this field because it jeopardises their health from an early age and increases the likelihood that they will develop serious breathing-related diseases. However, the USA has not yet taken any action, and the fact that minors are working on tobacco plantations is alarming<sup>21</sup>.
- India has many child labour regulations in place, both at the federal and state levels, to eliminate this issue nationwide through coordinated efforts from the federal and state governments. While the US has relatively few federal laws, states are granted the freedom to enact their laws. As a result, the USA lacks sufficient federal laws to resolve this issue consistently in each of its states. As a result of the introduction of recreational, rehabilitation, vocational, and educational training, plans, and policies for children who

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<sup>20</sup> 'INDUS (Indo-US Child Labour Project)' (*Ministry of Labour & Employment*)

<<https://labour.gov.in/childlabour/indus>> accessed 06 December 2022

<sup>21</sup> 'US: Tobacco Farms No Place for Teens' (*Human Right Watch*, 09 December 2015)

<<https://www.hrw.org/news/2015/12/09/us-tobacco-farms-no-place-teens>> accessed 06 December 2022

are victims of child labour in India, it is in a better position than the US, where no such policies and programmes are accessible.

- The Indian judiciary responds to the issue of child labour in a very timely and transparent manner. It has provided the government with numerous recommendations and instructions for limiting child labour, but in the US, the judiciary has been silent on these matters. Even while it is already clear that many children in the US engage in the worst kind of child labour, the judiciary has not yet taken any significant action to regulate this.

## CONCLUSION

The pervasive issue of child labour has impacted not only underdeveloped nations but has also sent developed nations into a tailspin. In contrast to the United States, which lacks sufficient regulations to address the issue of child labour, India has implemented a large number of laws and policies but has not been effective in enforcing them. Even though both nations' efforts have resulted in a decrease in child labour, the issue of kids working in dangerous jobs seems to still exist. Therefore, both countries need a well-balanced interaction of laws and their implementation to eliminate child labour from our society. There are a few suggestive measures which should be specifically adopted by India to combat this problem, such measures are as follows:

- The offence of child labour should be made a non-compoundable offence since the compound ability of the offence makes it easy for the offenders to walk away with no punishment and further keep committing the offence.
- The inadequate enforcement of legislation is the main obstacle to eliminating child labour in India. Although India has a variety of laws covering different types of child labour, these laws are not always put into practice. To effectively execute child labour regulations, the national and state governments of India should work closely together.
- Administrative accountability for reducing this issue should be raised, and suitable monitoring mechanisms should be implemented.

- The outdated laws need to be changed because having too many regulations creates confusion and turmoil, which ultimately makes it difficult to address the issue of child labour.
- Since different laws establish diverse definitions for the term 'child', which further adds to the uncertainty, a uniform definition of 'child' should be adopted. The Legislature should immediately put the major judgments of the judiciary into effect.
- Strict penalties should be imposed on those who actively engage children in the worst forms of child labour, such as prostitution, modern-day slavery, etc. The government should also take punitive action against employers who use children in dangerous jobs. The recommendations of the judiciary were often met with silence from the legislature. Therefore, good coordination between them is required to deal with such pressing problems.
- Since poverty is a major barrier to children's development and a major cause of child labour, the government should offer adults and parents of these children decent employment possibilities as well as implement programmes to reduce poverty.
- The consequences of child labour, its impact on society, the level of life, and the overall development of the nation, should be widely publicised in society, especially among parents of young children. India must implement these steps for the best possible goal-achieving if it wishes to stop the scourge of child labour.