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LEGISLATIVE ANALYSIS ON CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 2016- Nandini Verma¹*“A child is destined to learn, not to earn.”***Abstract**

The United Nations Convention on the Rights of the Child is an international agreement that aims to foster the growth of every child. As per Article 1 of the said convention, a child can be defined as a person who is under the age of eighteen years of age. This definition is subject to change if there is any piece of legislation that is obligatory to apply for determining the majority of the child².

In our country, children are considered to be another version of the divine because they instill happiness around everyone. The special laws aiming to protect the children also play a pivotal role in the development of any nation mainly because the children hold the future of the country in terms of enhancing human resources. A child's healthy upbringing shouldn't be hindered by imposing any sort of labor responsibility on him/her. Child labor in itself is immoral as it takes away the child's basic human right to lead a life with dignity.

As per Article 21 of the Indian Constitution, it is a right fundamental of every person to lead a life of dignity, this right also lies with the child. Every child needs safeguarding against moral and physical injury and also against the possibility of exploitation by others in the initial years of life. In India, special legislations have been enacted for the overall betterment of children, these include the “Right to Free and Compulsory Education Act of the year 2005, “The Prohibition of Child Marriage Act of 2006”, and “The Child Labor Protection Act of 1986”.

International Labor Organization (hereinafter referred to as ILO) has explained the concept of child labor as any commercial activity which is injuries for a child and degrades the dignity of

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²UNITED NATIONS OFFICE OF THE HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited June 5, 2021).

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the child as a human being and proves to be a hindrance in the education and overall development of the child³. In India, we have an exclusive act for the prohibition and regulation of child labor in the territory. This act is the Child Labor Protection and Regulation Act of 1986. This legislation wholeheartedly adheres to the prohibition of child labor in India.

This policy analysis is an attempt to critically analyze the Child Labor Prohibition and Regulation Act, 1986 (hereinafter referred to CLPRA, 1986) and also to comprehend the efficacy of the same with respect to the demands of the 21st century for restricting the scope of child labor.

HISTORICAL EVOLUTION

International Conventions:

At an international level, there have been several agreements for outlawing child labor. India has been the founding member of the International Labor Organization which specially deals with labor issues grappling the humanity. Apart from this, India has also ratified various other international agreements to forbid child labor. These are as follows: -

Minimum Age Convention of 1973: It is the first convention to set a minimum age requirement for banning child labor at an international level. As per this convention, the minimum age which enables a child to work is 15 years.⁴ This convention is also known as C138.

The United Nation Conventions with respect to the rights of the Child, 1989: It addresses the issue of child protection at an international level and promotes the best interest of the child.⁵

Worst Forms of Child Labour Convention of 1999: This convention applies to every child who hasn't yet attained majority. It specifically prohibits the worst kinds of methods that indulge a child into forced and bonded labour, slavery, and child trafficking, etc.⁶ This convention is widely known as C182.

Apart from the above-mentioned international treaties, United Nation Sustainable Goal number

³INTERNATIONAL LABOUR ORGANIZATION, <https://www.ilo.org/ipec/facts/lang--en/index.htm> (last visited June 5, 2021).

⁴ HUMANIUM, <https://www.humanium.org/en/minimum-age-convention/> (last visited June 6, 2021).

⁵ INTERNATIONAL JUSTICE RESOURCE CENTER, <https://ijrcenter.org/thematic-research-guides/childrens-rights/> (last visited June 6, 2021).

⁶ INTERNATIONAL LABOUR ORGANIZATION, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182 (last visited June 6, 2021).

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8.7 also addresses the concern of child labour and hope to put an end to it by the year 2025.

Constitutional Provisions for Fostering the Development of a Child:

The provisions enshrine in the Indian Constitution for the upliftment of children are as follows:-

Article 15 (3) - This article enables the government to make laws for improving the conditions of women and children.

Article 21 A- This has been added in the Constitution by the 86th Constitutional Amendment of 2002 and promotes free education compulsory for children between the age of 6-14 years.

Article 24 - This article talks about the restriction on practicing child labour in dangerous factories.

Article 39 (e) - This article fosters the view that no men, women, and children should be coerced into undertaking work that is not suitable according to their capacity and age.

Article 39 (f)- This article addresses the concern for providing opportunities for healthy and dignified growth of the children.

Article 45 -This article again highlights the concept which aims to promulgate education for children.

Article 51 A (k) – This article highlights the fundamental duty of a parent or a guardian to educate his/her child.

Law Commission and Other Committee's Report:

The 165th law commission report of the year 1998 promotes the idea of education for children and recommends the state to draft more effective laws for restricting child labour in India⁷.

In the year 2015, the 259th law commission report gave some recommendations pertaining to the overall protection of the children. This report fostered the view of providing proper nutrition and education to the children and also highlighted the need to ban child labour in the 21st century⁸.

The committee of Gurupadaswamy laid out certain recommendations for restricting the employment of children in inhumane work conditions, this committee's report also turned to be a benchmark for enacting the CLPRA, 1986⁹. This was also the first national committee established by the Central Government to abolish child labour.

⁷165th Law Commission of India Report, *Free and Compulsory Education for Children*, 60 (1998) available at <https://lawcommissionofindia.nic.in/101-169/Report165.pdf>

⁸ 259th Law Commission of India Report, *Early Childhood Developments and Legal Entitlements*, (2015) available at <https://lawcommissionofindia.nic.in/reports/Report259.pdf>

⁹ MINISTRY OF LABOUR AND EMPLOYMENT, <https://labour.gov.in/childlabour/about-child-labour> (last visited June 6, 2021).

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Previous Indian Legislation Pertaining to Child Labor:

In the past there have been several legislations for restricting child labour, these are as follows:

The Children (Pledging of Labour) Act: This act was enacted in the year 1933 and offered penalties to the people who forcefully employed children in the contract of pledge. The main objective of this legislation was to prohibit exploitation of the child by engaging in certain kind of work which wasn't fit for the child.

The Employment of Children Act: This act explicitly prohibited the employment of children below 15 years of age. It was implemented in the year 1938. The present act pertaining to child labour protection in India has its roots instilled in this act.

Factories Act of 1948: This act mentions the conditions of factory work and also expands its scope by absolutely prohibiting the employment of children in the factories.

The Mines Act, 1952: This act was passed in 1952 and declares the presence of any child or adolescent in the underground work of the mine as illegal. It also mentions the work shift of the adolescent to undertake work in mine should not exceed 6 AM to 6 PM.

The CLPRA, 1986: Considering the changes in the society, the previous act prohibiting child labour was not able to fully address the issue of child labour. Eventually, the Central Government passed specific legislation for controlling child labour. This legislation widely came to be known as "The Child Labour Protection and Regulation Act of 1986". This act has also been amended several times for inculcating new provisions to deal effectively with the issue. Let us further analyze this act in detail.

PRIMARY OBJECTIVES OF THE ACT

Children are the future of the nation and shouldn't be employed for any kind of work at the cost of his/her dreams and childhood. The main causes for existing child labour in India are poverty and lack of adequate literacy. In poor families, the child is often employed to make the family's ends meet. To control child labour, the CLPRA act was passed in the year 1986. The main objectives behind enacting the CLPRA, 1986 are as follows:-

- ❖ At the most primary level, the act seeks to regulate and eventually eliminate the practice of child labour in India.
- ❖ It establishes a procedure for prohibiting certain occupations for engaging children in the workspace.

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- ❖ The act regulates the working environment for children in jobs that can be legally undertaken by them.
- ❖ It also institutes stringent penalties for indulging in child labour by violating any section of the said act.
- ❖ The act also aims to obtain a definition of "child" in the territory of India.
- ❖ The act also seeks to punish offenders who forcefully employ child workers.
- ❖ The act also seeks to promote education for children who are currently engaged in child labour.
- ❖ The goal of this act is to secure the childhood from indulging in occupations that are not suitable for their wellbeing and are out of their potential.
- ❖ It also aims to safeguard the future of children against the possible exploitation face by them by providing economic services.
- ❖ The act also seeks to uplift the underprivileged children who are engaged in hazardous workplaces and eventually hope to safeguard the future by providing bright opportunities.

Summary of the act

The CLPRA was enacted on 23rd December in the year 1986. This legislation was the result of attempts and views fostered by numerous committees such as the National Commission on Labour, the Gurupadaswamy Committee on Child Labour, and the Sanat Mehta Committee. The purpose of this Act was to restrict children from indulging in dangerous occupations and to monitor services provided by children in normal occupations. Thus, at a holistic level, it seeks to safeguard the future of children by uplifting them out of the dark. The implementation of such special legislation was important mainly because the existing laws pertaining to the control of child labour did not provide a clear procedure for banning certain kind of occupation which employs children. The primary goal of this act was to control, regulate and eventually prevent the practice of child labour in India.

The CLPRA is divided into 4 main parts, these are-

- 1) Introduction,
- 2) Procedure to prevent child labour,
- 3) Controlling the situation of workplaces, and
- 4) Others.

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The first part contains two sections and primarily highlights various definitions of the words and phrases which have been used throughout the legislation, the Section 2 (ii) of CLPRA, 1986 has described a person who is below the age of 14 years and is eventually eligible for attaining a free education. Apart from this, the words like an adolescent, workshop, week, and day have also been defined in relation to child labour under this part.

The second part of the CLPRA,1986 highlights the procedure to restrict the practice of child labour. This part starts by mentioning the Section 3 which bans child labour in numerous occupations such as *circus, bidi-manufacturing, dhabas, automobile repair stores*, etc. Apart from this, the part also establishes that if the child is helping his/her parents or guardian in any sort of work, then in such a case, it does not constitute illegal child labour. The list of these occupations is further indicated in the schedules of the act. Moving on, the second part of the schedule also empowers the central government to amend the CLPRA, 1986 by following the official procedure. Section 5 of the act highlights the creation of a special committee on the prohibition of child labour. The main function of such a committee is to advise and aid the central government on improving the condition of the child employed in any sort of work, apart from this, the committee is also responsible for monitoring the addition of occupation which poses the possibility of child labour, it is widely known as *Child Labour Technical Advisory Committee* and contains a maximum of ten members. Further, this committee is also empowered to establish a sub-committee for smooth functioning.

The third part of the CLPRA highlights the management of circumstances in which the children are employed in cases where they assist their parent(s) or guardians. First and foremost, the Section 7 of this part specifies the hours of work for a child in such activities, it also directs that a child is not permitted to work between 7:00 PM to 8:00 PM and should have an interval after every three hours, such an interval should be of at least one hour to enable a child to retain his/her energy. The child who is employed to assist his/her family must have a day off in the week, according to the Section 8 of CLPRA, 1986. Section 9 further highlights the duty of the inspector in supervising the service provided by the children. It also highlights the duty of the independent employer to inform the local inspector about the presence of the child in the workspace, this must be informed within thirty days from the date on which it commenced. However, such a duty doesn't lie with the parent(s) or guardian who employs their child to assist them in work. The inspector also has a legal duty as per section 10 of CLPRA, 1986 to maintain a register for storing the information regarding children employed. It has further been highlighted by the section 13 of the act that the central government has the power to make laws

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regarding the health, sanitization, fencing, temperature, etc. for the children employed in occupations that are not prohibited by the CLPRA, 1986.

The last part of the act highlights the penalties and punishment in cases of breach of any section of CLPRA, 1986. The penalty for violating the sections of the act may extend to imprisonment for one year along with a fine. This part also empowers any citizen and police officer to register the complaint against such offenses under any court which is competent to hear the matter. With this special act in place, the Employment of Children Act of 1938 was eventually repealed.

AMENDMENTS TO THE CHILD LABOUR ACT OF 1986

With an aim to make stricter laws pertaining to child labour, the amendments in CLPRA, 1986 was initiated by the parliament in the year 2016. After parliament's approval, this act widely came to be accepted as the "Child Labour (Prohibition and Regulation) Amendment Act of 2016" (hereinafter referred to as amendment act, 2016). This act is a ray of hope in banning child labour mainly because it puts an end to all the occupations which employ children. Apart from this, this amendment act also expands its horizon and criminalizes adolescent labour under hazardous conditions. The nature of offenses violating the act has been made cognizable. The amendment act, 2016 is a detailed framework necessary in the 21st century to curb the problem of child labour. Let us analyze the amendments in the CLPRA, 1986 in detail.

<u>CLPRA, 1986</u>	<u>AMENDMENT ACT OF 2016</u>
<u>DEFINITION OF CHILD</u>	
A child has been defined as a person who hasn't yet completed his/her 14 years of age.	A child has been defined as a person who hasn't yet completed his/her 14 years of age and is entitled to free education as per the RTE Act of 2009.

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PROHIBITIONS OF OCCUPATIONS

It only bans the employment of a child in certain occupations which are mentioned in the schedule of the Act.

It puts a ban on all the occupations under which the child is employed.

PROVISIONS FOR ADOLESCENTS

No such provision.

It has been established that no adolescent should be allowed to be employed in any hazardous workplace.

NATURE OF PENALTIES

For violating any section of this act, the imprisonment may extend between 3 months to 1 year or with a fine up to ₹20,000 or both.

For violating any section of this act, the imprisonment may extend between 6 months to 2 years or with a fine up to ₹50,000 or both.

NATURE OF OFFENCE

No such provision.

Any offense which directly violates the section of this act falls under the ambit of cognizable offense.

NATURE OF REHABILITATION

No such provision.

It has been established that any child or adolescent employed in an illegal workplace that is prohibited by this act should be rescued and sent to a rehabilitation camp. Such a camp will be funded by the central government.

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RESPONSIBILITY OF DISTRICT MAGISTRATE

No such provision.

The District Magistrate is empowered by this act to control child labour within his/her local limits and also needs to ensure that no sections of the act are violated.

NATURE OF GOVERNMENT INSPECTION

No such provision.

It has been directed by the act that the central government needs to undertake regular inspections in workplaces which poses a threat to employ children and adolescents in hazardous conditions.

JUDICIAL RESPONSE

The Indian Judiciary has tried its best to control and regulate the social evil of child labour. Some of the notable judgments pertaining to prohibiting child labour are as follows:-

1. In the case of *People Union of Democratic Rights v. Union of India*¹⁰, a PIL was filed in the Supreme Court challenging the actions of the Delhi Development Authority for employing several workers, including children for the constructions for Asian Games. It was held by the Supreme Court that such an action violates the Article 24 of the Indian Constitution. It was further decided by the court that a child who hasn't completed 14 years of age cannot be employed to assist in construction works. It was further held that the construction works fall under the ambit of hazardous workplaces for children and are therefore illegal.
2. The above view was also promoted by the Supreme Court in the case of *Labourers Working on Salal Hydro-Project v State of Jammu and Kashmir*¹¹, where several workers were denied their labour rights. The court further directed the central government

¹⁰ People Union of Democratic Rights v. Union of India, (1982) 3 SCC 235.

¹¹ Labourers Working on Salal Hydro-Project v State of Jammu and Kashmir, (1984) 3 SCC 538.

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to enact efficient labour laws, encouraged the view of education of the children and also urged parents to complete the child's education.

3. In the case of *Bandhua Mukti Morcha v. Union of India*¹², the issue of children being employed in carpet manufacturing factories came up. It was held by the Supreme Court that the children should be given opportunities to foster as per Article 15 and should not be employed in workplaces that go beyond their potential as per Article 39(e) of the Indian Constitution. The court promoted again the view to educate children.
4. In the case of *M.C.Mehta v State of Tamil Nadu*¹³, the matter of children's employment in the Sivakasi factory reached the Supreme Court. In this case, the court issued several guidelines pertaining to the prohibition of child labour in hazardous workplaces. The court also directed the government to initiate the surveys on disclosure of workplaces that employ child labour. The court also directed that the employers of such workplaces should be punished and should pay compensation to the child. Apart from this, the court also directed regulation of child labour in an efficient manner to eradicate the problem.
5. In the case of *Unnikrishnan, J.P. v. State of Andhra Pradesh*¹⁴, the Supreme Court fostered the view of promoting a free education that is compulsory for children under 14 years of age. The court further highlighted the view that the right to education is a basic right under the right to lead a dignified right under Article 21 and this right shouldn't be taken away by employing the child.

CRITICAL APPRAISAL

In my opinion, the CLPRA, 1986 is an exclusive act for controlling child labour, but it also poses certain limitations in the 21st century mainly because it was enacted 35 years ago and since then, our society has immensely changed. First and foremost, the CLPRA, 1986 doesn't completely seek to prohibit child labour in all spheres of life but simply aims to regulate the practice of child labour. Apart from this, the old act also doesn't highlight the procedure for rescuing the children who are already employed and also doesn't mention anything about the rehabilitation camp which should be undertaken by employed children. I feel that the act is also silent on the lines of defining "hazardous workplace" and also doesn't mention the number of inspectors needed to supervise the employment conditions of the children. The act allows the

¹²*Bandhua Mukti Morcha v. Union of India*, (1997) 10 SCC 549.

¹³*M.C.Mehta v State of Tamil Nadu*, (1996) 6 SCC 756.

¹⁴*Unnikrishnan, J.P. v. State of Andhra Pradesh*, (1993) 1 SCC 645.

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children to assist their families, this presents a major loophole mainly because several children willfully help their parent(s) or guardian in work and, hence, cannot prevail the opportunity of an education.

The Amendment act of 2016 appears to be great legislation mainly because it all occupations which promote child labour, and at the same time, it has also highlighted a clear idea with respect to allowing the adolescent to be employed in certain occupations. Apart from this, the creation of a rehabilitation fund will directly contribute to the betterment of children and also empowers certain institutions with immense power to ensure the eradication of child labour practice. The amendments in CLPRA also imposes stricter penalties for deterrence of the practice of child labour. But, if we analyze the act closely, it can be interpreted that the amendment act of 2016 also poses certain shortcomings.

It can be interpreted from the amendment act of 2016, that the scope of occupations that are considered as harmful have degraded, the scope has been limited from 65 occupations as mentioned in CLPRA to barely 3 main workplaces like mining, hazardous process, and inflammable substances manufacturing units in the amendment act of 2016. The amendment act of 2016 also doesn't prohibit the practice in which a child helps his/her family and further no specific time period has been highlighted to regulate such family labour. Further, it barely highlighted the creation of the rehabilitation fund and did not discuss in detail about the distribution of the same at the grassroots level for better coverage. It has been highlighted by the UNICEF Census of 2011 that there are approximately 33 million children employed in India and most of them belong to the minority community¹⁵, the act also doesn't promote a ban on caste-based professions under which the children are employed due to the aggrieved condition of their family.

In my opinion, there are many children who assist their family in home-based units for manufacturing substance, the amendment act of 2016 does not put an end to these home-based units under which children work at the cost of their education. In India, the primary sector contributes the most to the GDP, and often the children of small farmers are found to be working in the field, these children and eventually deprived of a bright future through education. The amendment act of 2016 also doesn't put an end to such a form of child labour and also restricts the child to nurture his/her hobbies in his vacations by allowing them to assist their families in holidays, this eventually prevents the child to grow as a human.

¹⁵THE HINDU, <https://www.thehindu.com/opinion/columns/A-law-that-allows-child-labour/article14560563.ece> (last visited June 12, 2021).

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I feel that the amendment act prohibits the employment of children in the hazardous workplace but eventually allows the employment of adolescents in all other kinds of occupations. The act also fails to address the demand for education and proper health of such adolescents and leave them at the verge of exploitation and discrimination.

In the end, it can be inferred that even though the amendments in the CLPRA aimed to address the existing issue of child labour, it failed to do so mainly because it did not adhere to the aspirations of the child properly and presents several limitations. In my opinion, the need of the hour is to uplift children and citizens out of poverty mainly because all the problems of child labour are directly or indirectly linked to the existence of poverty. The government should also promote awareness regarding free education for children at the grassroot level so that more children are admitted to the school for improving their future. Every citizen also must consider the practice of child labour as a moral and a social evil and everyone in the society should refrain from employing any child in any of the workplaces.

CONCLUSION

Children are the future of the nation and should be perceived as a valuable human resource. The growth of any nation is drastically affected when the children are employed in the workplace which goes beyond their capacity. The state has to ensure a complete ban on child labour for fostering development and advancement in the society.

Considering the objective of abolishing child labour, many international conventions have been promulgated. India is also a signatory to many such conventions. In India, the CLPRA, 1986 was enacted with an aim to regulate the child labour. After 30 years of enactment of the CLPRA, a new amendment act of 2016 was implemented on the society for better control and prevention of child labour.

It the duty of the government to abolish the practice of child labour in the country and at the same time, it should also address the shortcomings of the amendment act of 2016 for accomplishing the purpose of child employment free India efficiently.

The Indian Judiciary tried its best to disable the practice of child labour in India and also laid down many precedents for the ban of child labour. The central government can establish a new committee on child labour, such a committee can critically analyze the reasoning in the precedents laid by the courts pertaining to the prevention of child labour and then should eventually work to establish guidelines for removing the social evil out of India.

The government of India can also address the root causes of child labour for better

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implementation of the existing policies and should uplift the children by providing immense opportunities for education.



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