World Journal of Social Sciences and Humanities, 2019, Vol. 5, No. 2, 111-119
Available online at http://pubs.sciepub.com/wjssh/5/2/7
Published by Science and Education Publishing
DOI:10.12691/wjssh-5-2-7

Child Labour Regulations in International Law and Indian Legislations: A Survey

Leeladhara Mangalpady Bhandary*

CILS, School of International Studies, Jawaharlal Nehru University, New Delhi, India
*Corresponding author: leelubm@gmail.com

Received May 20, 2019; Revised July 10, 2019; Accepted August 02, 2019

Abstract Child labour has been considered as a socio-economic problem since many years. Even though it has been considered as a socio-economic problem, the legislation takes important role in regulating the child labour. It is one of the worst violations of human rights which exploit children physically, morally, economically, and denying them access to education. Universal Declaration of Human Rights (UDHR), which stands for inherent dignity and of the inalienable rights of all members of the human family. Unfortunately, continuing practice of child labour is shameful to humankind. Throughout the world, the exploitation of child labour is a practice with a deep history and a devastating impact on children. The focus on child labour over the years has greatly increased public awareness on the conditions of children at work places. This article focuses on gaps in international and domestic instruments pertaining to child labour and its implementation in India. Further, it deeply dwells upon the reasons, which can be assumed as impediments in implementing international law and domestic legal norms in their absolute spirit in India. This article also submits a few suggestions to fill the gaps in the national efforts to save children from the exploitation and enable them to enjoy their human rights in their totality.

Keywords: *gaps in child labour laws, international instruments, implementation of child labour laws*

Cite This Article: Leeladhara Mangalpady Bhandary, "Child Labour Regulations in International Law and Indian Legislations: A Survey." *World Journal of Social Sciences and Humanities*, vol. 5, no. 2 (2019): 111-119. doi: 10.12691/wjssh-5-2-7.

1. Introduction

Although the child labour is widespread in developing nations, it is also prevalent in developed nations [1]. Children do work in some capacity in most countries, the determining factor is that whether the work is harmful to children or not. Peter Dorman, a scholar in international labour issues, mentioned that "child labour problems faced in developing and developed nations are qualitatively similar and require comparable policy responses" [2]. Although all areas of government policy affect children in our society, the nations traditionally have been failing in sufficiently taking children's issues into account [1]. In fact, governments' inaction and short-sighted approaches to policy making have a negative impact on the future of children in society [1].

Despite having been consistently at the forefront in responding to child labour, India lags well behind in terms of addressing the issue [3]. India, in fact, was among the first few countries to devise a policy on child labour [3] and conducted investigations into child labour in the late 1920s [3] and enacted landmark legislations in 1933 and 1938 to control engaging children in work. After the independence, India enacted a number of legislations and initiated many other administrative programmes aimed at the protection of children and elimination of child labour. However, it is in terms of ratifying and implementing relevant ILO Conventions that India has been less willing and prompt [3]. After prolonged waiting, in March 2017, the Government of India ratified both ILO Minimum Age Convention (C138) and Worst Forms of Child Labour Convention (C182), which are two important ILO Conventions against the child labour.

2. Gaps in International Instruments on Child Labour

This is familiar that there are strong legal norms developed nationally and internationally against the exploitation of child labour [4]. But the Member States are skeptical about ratifying and enforcing International Conventions, because it has the general idea that the ratification may weaken the "state sovereignty" [5]. The Member States normally says that they were not consulted at the time of drafting process. This is not an exception even in the case of International Conventions on child labour. While analysing the international instruments and domestic legislations one can find some of the major gaps between the International Conventions and their domestic implementation. The analysis below briefly examines the gaps on child labour instruments.

2.1. The Universal Declaration of Human Rights (UDHR)

It is true that each and every International Conventions and Declarations which are focused on "children" has the "right to education" as it indirectly promotes the welfare of the children. The UDHR is one of the prominent Declarations that speak itself for the human rights [6]. This Declaration states that "everyone has the right to education" and that the elementary education should be free and compulsory [Article 26 (1)]. In this Declaration, the word "everyone" includes "children", specifically emphasising that children should be treated equally to adults. Although this concept was introduced way back in 1948, the world at large till this date has neither provided with free education to children nor are they being equal to adults. The idea of including the "right to education" in the Declaration is meant to protect the welfare of children so that children would be engaged in schooling and develop in an environment which is congenial for their overall growth.

Simultaneously to the adoption of the UDHR, the Constitution of India also included a provision on "right against exploitation" (Part III of the Constitution). Although the "Right to Freedom" was included in Part III of the Indian Constitution from the beginning, the "Right to Education" was inserted later on in 2002 [7]. In line with the UDHR and the Constitution of India, the Government of India enacted the Right of Children for Free and Compulsory Education Act in 2009.

Although India ratified the UDHR and further enacted the "right to education" Act, the implementation part is very weak. In a sense, Indian society is still making way for the exploitation of children through child labour. For instance, if a child is spending nine hours a day in harvesting sugarcane, how can he/she make the best use of the concept of "right to education"? Even though the Member States are trying their best to enlighten the parents and community, were children are employed, the factors like poverty and attitude of employers render it hard for the strict implementation of these principles. Therefore, obviously, the UDHR lack enforcement mechanisms and didn't succeed in its noble campaign to provide education to children.

2.2. The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The UN General Assembly adopted ICESCR was on 16 December, 1966 and entered into force on 03 January, 1976 [8,9]. It recognises the compulsory right to education at the primary level [6]. Article 10 (3) of the ICESCR states that:

"*Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health, or dangerous to life, or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law*".

The employment of children has been emphasised under Article 10(3) and it is evident that children who are "employed" and not in other contexts. It has also given the "discretion to Member States to set age limits for paid employment", which is even narrower than the rights recognized in the Covenant [9]. From the above, it is evident that ICESCR neither methodically prohibit child labour nor it has the mechanism to compel the States to implement the Covenant domestically.

The ICESCR has given much importance to the education of children. Most of the nations, by and large, accept that children need to be provided with free and compulsory education. In a General Comment by the ICESCR, it is discussed that "the Covenant in its nature as being capable of immediate application by judicial and other organs in many national legal systems" [8,9]. The above comments emphasize that the Member States, who have strong legislative and judicial framework, should implement Article 10(3) and 13(2) (a) immediately. Notwithstanding the suggestions put forward by the Committee, in effect, this provision of the Covenant still not fully implemented. Therefore, it is evident that the mechanism at the ICESCR is weak to implement its provisions at the national level.

Additionally, the Covenant speaks about the rights but the Article 10(3) failed to mention anywhere about the "rights of the children". Instead, it states that "children should be protected from economic and social exploitation and that certain employment should be punishable by law". It is therefore pertinent to ascertain whether obligations of Member States are diminished, in the absence of any reference to specific rights. It is true that the ICESCR has legal terms. But it is doubtful whether there would be legal implications for the Member States if they failed to implement Article 10 (3). The lack of legal action for not implementing the Covenant, coupled with failure to cover all forms of child labour, carries the implication that it may not be geared towards eliminating child labour altogether.

Moreover, the ICESCR is known for the "softness" of its implementation mechanisms. Softness weakens legal obligations of Member States. Article 2(1) reads as follows:

"*Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures*".

When we closely read the above provision, it could be interpreted that States need not rush to implement the Convention; rather it can be implemented only when the member States are ready to implement the same. This soft nature of the Covenant gives the Member States a chance to delay in fulfilling their obligation leading to economic exploitation of children which is not different from ICCPR [10].

2.3. The Convention on the Rights of the Child (CRC)

The UN General Assembly adopted CRC on 20 November, 1989 and it entered into force on 2nd September 1990 [11]. The CRC recognises that the right

of the child including the right of education for children is one of the rights enshrined under the Convention. It also emphasises on the need for compulsory education for children [Article 28(1) (a)].The CRC also recognises the child's right to be protected from economic exploitation (Article 32), hazardous work which would likely to interfere with children's education or harmful to their personal development (Article 32). It also recommends for legislative, administrative, social, and educational measures to protect children from the exploitation and for implementing the rights of the child at the national level including setting of the minimum age for admission to employment (Article 32).

Generally, economic exploitation means the "labour" which employer gets forcefully or without the consent of the employee at the cost of the latter's health or personal development [12]. It is hard to figure out what type of work constitutes economic exploitation [13] as per the Article 32 of the Convention.This Article does not shed light on what category of work could damage the child's health or personal development. It is true that theConvention gives an option to children to give away their job if they think the job is harmful to their health as the CRC has mentioned the word 'or' in the Article 32 [13]. But the Convention is blank on the nature of the harm before children could give up their work [13]. Thus, it could be said that the CRC is ambiguous on the said point as it has not clarified "damage". Instead, it simply expands children's right through Article 32 of the Convention. Therefore, due to the above drawbacks, the UNCRC is unable to systematically prohibit child labour.

In general, the UNCRC is considered to be a 'soft' law as it does not have a strong mechanism to implement its provisions at the national level. The Article 4 of the CRC read as follows:

> "*States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation*".

It is evident from the above that, the Convention gives Member States the leeway to implement child labour laws in a manner that only suits their respective economic conditions. The Member States misuse this article, causing a delay in implementing the Convention domestically.

UNCRC claim that it protects children's rights from the economic exploitation. Child labour is one form of economic exploitation. The UNCRC did not fix a minimum age for the employment at the international level [14]. It has given the option to Member States to fix a minimum age at the national level. It did not even provide any guidelines or advises. Only the basic working text of the Working Group mentions the minimum age of fifteen years but gives a reference of the ILO Minimum Age Convention [15]. But the succeeding Working Groups have failed to fix an age. Being a highly ratified Convention, it would have fixed a minimum age for the employment at the international level.

The Convention also lacks an enforcement mechanism to ensure state parties' implementation [16]. The UNCRC has a monitoring Committee called Committee on the Rights of the Child. This Committee evaluates the Member States implementation of the Convention and provides guidance for improvements [17]. The evaluation of the implementation is based on Member States periodic reports (Article 44). The UNCRC also gave powers to the Monitoring Committee to follow other methods under Article 45. Nevertheless, Article 45 is not precisely an implementation mechanism, as the Member States have the right to select how the provisions of the Conventions could be implemented at the national level [18]. This power undermines the UNCRC, rendering it devoid of a strong enforcement mechanism.

There is a procedure under UNCRC that the Member States must submit a compulsory report to the Committee. This procedure is an obligation under Article 44. The report should include the steps which the Member States have taken to implement the provisions of the Convention [4]. Ideally, the reporting system inspires teamwork within the Member States and NGOs. It is also helpful to generate awareness especially relating to the issues of child labour and economic exploitation, national cooperation, sharing information with the UN and other Member States and giving consent to UN for further enhancements [19]. But the UN reporting mechanism seldom fulfils the purposes mentioned above. The UN reporting mechanism is so weak that it does not provide for any punishment or penalty for not submitting the report to the Committee. It is evident that most of the reports submitted before the Committee was incomplete or have inadequate information [5]. Thus, the UNCRC has gaps in its implementation mechanism and it needs to overcome it.

2.4. ILO Convention on Worst Forms of Child Labour (C 182)

The Convention 182 is one of the important ILO Convention that prohibits worst forms of child labour. Article 3 of the Convention includes "all forms of slavery or practices similar to slavery, procuring or offering a child for prostitution, procuring or offering the child for illicit activities, and work which by its nature or the circumstances carried out is likely to harm the health, safety or morals of children" [20]. Article 4 of the Convention 182 provide that Member States shall determine what kinds of work shall constitute 'hazardous work' for children in national laws and regulations (Article 4). The ILO also adopted recommendation 190 as a non-binding document which provides guidance to Member States in determining what constitutes 'hazardous' work for children. Here, enforcement deficiency at the domestic level is obvious. In Convention 182, the ILO delegated the enforcement of hazardous child labour prohibition to Member States. Most member States have attached sanctions to their prohibitions against child labour, though these sanctions have not been consistently enforced. For instance, India recently amended the Child Labour (Prohibition and Regulation) Act 1986, and mentioned 14 years as the minimum age for joining employment. It is also mentioned that children can do hazardous work only at the age of 18. Moreover, this amended Act identifies with "hazardous occupation and

processes and a list of the same is included in the Part A and B of the Act". Unfortunately, the list does not have all types of "hazardous occupations and processes", yet it is inconclusive, leading to the exploitation of child labour.

From the above it is clear that the ILO did not define the term 'hazardous' as applied to child labour instead it delegated to countries the task of drawing up lists of occupations or conditions that are considered hazardous. In Recommendation 190, the ILO provided guidance as to what might constitute a 'hazard'. Although the ILO has helped to create very strong norms, it has left an enforcement vacuum because Convention 182 did not create an institution to measure compliance. Most human rights treaties rely on treaty monitoring bodies [10] but Convention 182 lacks even self-reporting or international examination requirements [4]. Instead, it leaves enforcement entirely within the domain of the Member States (Article 5).

3. Gaps in Implementation of Child Labour Acts and Policies in India

Child labour is by no means a new problem in India. Although, the Government of British India ratified the ILO Convention in 1919, the issue of child labour in India was put back into public discussion once again in 1985 [21]. This discussion and continuous efforts of NGOs with a media partnership have subsequently kept the issue alive in India.

3.1. Gaps in Child Labour (Prohibition and Regulation) Act, 1986

The 1985 debate around the Child Labour (Prohibition and Regulation) Bill highlighted two important views. One hand, the government argued for simple regulation on child labour. On the other hand, the NGOs argued for a complete prohibition on child labour. On 23 December, 1986, the Indian Parliament enacted Child Labour (Prohibition and Regulation) Act. This is the first ever Act in India that aims to combat child labour exclusively. During its enactment, it stirred a national debate around child labour, but its substance contains several legal and procedural loopholes.

The "prohibition and regulation" phrase in the title of the Act might suggest a successful compromise between the above two thoughts, however, such assumptions would be misleading. The Act does not speak of 'abolition of child labour,' instead, it refers to "prohibition and regulation of child labour". The government defended and justified for "prohibition and regulation" instead of "complete ban of child labour" because of "economic necessity of the family". This inconclusive decision of the government is against the objective of the international Conventions and Declarations as it deviate from its agenda of welfare of the children which include "right to education" and "freedom from the exploitation". The Act also failed to address the problem in the unorganised sector. This gives a chance to the employer to easily exploit children for labour. Although, the Act mentioned that it regulates "hazardous occupations and processes" but many of the worst forms of child labour are not included in the list. For example, working at "glass industry" is a hazardous job but it did not find a place in the list. Also, "workshops" either as a family occupation or as a facility in a government-aided or recognised school are left out from the list even though it is a hazardous work in nature potentially causing harm to children's health. It is not true that if any hazardous work is carried out at the school that would not make any harm to the children [22].

The 1986 Act, erroneously relied upon a worldview of child labour that did not reflect the reality at the time of its enactment. It has repeated Section 3 of the Employment of Children Act, 1938 which provides exceptions in the case of "family labour". Family members can take work from the children [21]. Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986 states that "the prohibition of employment of children will not apply to places where work is carried on by the occupier with the aid of his family". In spirit, the 1986 Act amount to giving a new name to an earlier ineffective legislation. Giving new names to old problems, however, does not provide solutions.

Moreover, the 1986 Act provides an exception to family-based enterprises, especially in agriculture [23], cotton seed plantation etc., which employ child labourers. Section 3 of the Act says,

> "*No child shall be employed …: provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from the Government*".

Obviously, if any child is working in a workshop which is considered as a family business is allowed under Section 3. The Section 3 of the Act says "no child below the age of 14 years shall be employed or permitted to work in any of the occupation mentioned in Part 'A' of the schedule or in any 'workshops' mentioned in the Part 'B' of the schedule". This distinction clearly makes that children should not be permitted to take any kind of job mentioned in Part 'A' of the schedule but only 'workshops' in Part 'B' of the schedule. The Act does not allow the work carried in a 'workshop'. It is not prohibited in the same work in a place where this kind of work is not carried out in a 'workshop'. This erroneously accepts that "as long as a child is not forced to work in an exploitative environment, no legal action needs to be taken". Such relaxed standards in the same kind of work will not protect the children from the exploitation.

In *Hemendra Bhai vs. the State of Chhattisgarh case*, the High Court in India held that "even if the occupier of the house, which if treated as a workshop, is found to have engaged any child in Bidi making, the same cannot be considered as violative of Section 3 of the Act" [24]. Section 3 of the Act indirectly protects children who are working in Bidi manufacturing units, carpet weaving, glass and match industry by using the exemption clause as 'aid of family'. In the above case, there is a legal loophole. It should be considered that the occupier is an employer, however, should be liable to prosecution. If not, the occupier has to prove that the child belongs to his own family [25]. Therefore, both "Part A and B of the schedule of the Act" is equally dangerous to the health of the

children, however, law needs more preventative approach and should be banned in both circumstances [26].

In *New India Assurance Co., Ltd vs. Rachalah Basaiah Ganachari case* the Court held that although the boy was 13 years old and was prohibited to be employed under Section 3 of the Act, because of the exemption the Act allowed him to work as the occupation is not covered under Parts 'A' and 'B' of the Schedule [27].

Providing proof for the 'age' of the child is another issue under this Act. Section 10 of the Act says,

> "*If any question arises between an Inspector and Occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority*".

The Act makes it obvious that the prosecution has to arrange the medial certificate as proof of the 'age' of the child to produce before the Court if any dispute arises between the Inspector and the occupier. By affirming this in one of the cases in 2002, the Allahabad High Court decided that it is the duty of the Inspector to obtain a certificate of the prescribed medical authority regarding the age of the child. Therefore, if the inspector has failed to obtain the medical certificate as an evidence for the age of the child, the accused should not be convicted [25].

The penalty for violation of this Act is explained under section 14 of the Act. This Act says "whoever employs any child or permits any child to work … shall be punishable with imprisonment for a term, and shall not be less than three months extend to one year and fine not less than ten thousand extend up to twenty thousand rupees". The Act also applies to the case where somebody is sought to be prosecuted before the competent court. Only the Court can impose the penalty against such a violation of the Act. It has neither authorized the Labour Commissioner or Inspectors to hold a person guilty of the offences nor impose penalty or punishment to the alleged wrongdoer [28], thus lacks the immediate punishment to the offender.

The Act is also subject to criticism for implementation and enforcement of the law, especially with regard to the rehabilitation of children who were rescued from the workplace. The Act is much focused on 'cleansing the establishments' of child labour, howsoever noble, leaving the rescued children with no real options or restitution [29]. Also, the Act leaves the actual implementation and enforcement of laws to state bureaucracies and it is so corrupt in the system [29]. The Act also has loopholes under the punishment section. If an employer engaging a child against Section 3 of the Act, the employer can be defended under Section 14 for the minimum punishment. As per the Act, the Court is the superior authority to impose the penalty and punishment to the offender based on the certificates provided by the prescribed medical authority and it is the conclusive proof of the age of the child. However, the provisions have not given any powers to Inspectors or Labour Officers to impose the punishment.

An ill-conceived assumption of the 1986 Act is that the abolition of child labour is impossible as long as poverty exists [29]. By implication, efforts to eliminate child labour become secondary to the elimination of poverty. Despite giving importance to removing poverty and acceptable affirmations that child labour is caused by poverty glances "attention from the quiescence and inactivity of the state", which benefits from the *status quo*, and covers the "systematic exploitation of children" [21]. The weak labour laws allow the cheap child labour market to exist in the first place and create poverty in the labourer's families. Additionally, if the poverty is considered as one of the reasons for child labour, such consideration ignores that "child labour is not an economic compulsion of all poor families" [29]. Consequently, the collective result is that both poverty and child labour are avoided systematically in the society. Thus, the Act failed to focus on the strict implementation of its provisions and reasoned that the poverty of the family overruled the enforcement of legislation to curb the child labour. Therefore, it is suggested that national policy should address both poverty and child labour simultaneously.

Despite the above gaps in the 1986 Act, the Supreme Court of India passed an encouraging decision in *M.C. Mehta v. State of Tamil Nadu case*, stating:

> "*In order to fulfill the legislative intent behind the Child Labour (Prohibition and Regulation) Act 1986, the offending employer would be required to pay compensation for every child employed in contravention of the provisions of the Act in the amount of Rupees 20,000 which would be deposited in a child labour rehabilitation-cum-welfare fund, and compliance with the court's direction would be monitored by inspectors appointed under the Act*" [30].

By using its directive powers, the Supreme Court of India recognized the need to penalize the violators through fines and directed to use the collected amount for the rehabilitation of rescued children. The Court also called for a joint effort of the Central and State governments to implement the above for the success of the noble cause [29]. Certainly, this directive revived and made aware of the right of the child and helps the children to join the mainstream education which may lead to India's child labour jurisprudence in the right direction.

3.2. Gaps in Child Labour (Prohibition & Regulation) Amendment Act, 2016

The government of India has made good efforts to regulate child labour by enacting Child Labour (Prohibition and Regulation) Amendment Act, 2016. But the Act remains with some of the loopholes. The Act has taken away the basic protections for some of the most vulnerable workers by giving exemptions in its provisions. The loopholes may complicate the ongoing efforts to eradicate child labour as the principle of 'total ban' on child labour has been completely neglected. It has failed to incorporate the severe hazardous occupations into the list of "Part A and Part B of the schedule of the Act".

Although the 2016 Act mentioned hazardous occupations in the "Part A and B of the schedule", but Section 4 of the Act says "even the listed occupation as hazardous work can be removed not by parliament but by government authorities at their own discretion" (Section 3(A) of the Act). Thus, Section 4 of the amended Act has given full authority to the government to make changes to

the list of the hazardous work by-passing the parliament. This discretion power of the government could favour any industry by making changes to the list and make way to exploit child labour. It may adversely affect the Act and makes the Act less effective.

Similarly, Section 3(2) (a) and (b) of the Act "allows child labour in family or family enterprises and allows the child to be an artist in an audio-visual entertainment industry". It is evident that in India the caste system was widely prevalent and most of the families which were involved in child labour are from the poor background trapped in inter-generational debt bondage. They completely relied on their family occupation for their earnings which is mainly based on their caste. Thus, the Section 3(2) (a) and (b) encourages child labour by allowing children to work in their family enterprises. However, this exception is a clear blow to the 2016 Act because the main objective of the Act is "complete ban on child labour". It is very difficult to differentiate whether the child is 'helping' the family or child is under 'bondage' with other family members. However, it is hard to rescue children who are working for their family or family enterprises. The regulation may encounter a big challenge to determine whether the business is a "family enterprise", or unknown employers running the industry by employing a single family to mislead the Inspectors who are appointed under this Act. Moreover, the 2016 Act failed to define the "after school hours or during vacations". Section 3(2) (a) simply states that children may help his "family or family enterprise, and work after school hours or during vacations". There is no clarity on the hours of work the child can do after school hours or during vacations.

Moreover, the 2016 Act also disregards the Convention on the Rights of the Child and ILO Minimum Age Convention. Interestingly, India is a signatory to both the Conventions therefore it is obliged to implement the provisions of the Conventions at the national level. According to UNICEF:

> "*A child is involved in child labour activities if between 5 and 11 years of age, he or she did at least one hour of economic activity or at least 28 hours of domestic work in a week, and in the case of children aged between 12 and 14 years of age, he or she did at least 14 hours of economic activity or at least 42 hours of economic activity or domestic work per week is considered as child labour*".

The Amendment Act is silent on a number of hours a child can work.

Similarly, the ILO Minimum Age Convention allows an exception to children between 12-14 years of age in developing countries "to do light work as long as it does not threaten their safety, health or education". The 2016 Act, by not prohibiting employment of children in chemical mixing units, has overlooked the ill-effects of exposure of these chemicals on the health of the children. This dilution of the law leads to violation of the ILO Convention.

It is proven from the previous statistics of the Labour Ministry that the child labour is more often identified as working for family business. It is hard to rescue the children who are working in their family businesses. However, the 2016 Act would be a big challenge. There are no measuring points explained for identifying the family run business which allows children to work under the 2016 Act. The Act also failed to explain about the single family who is employed by the occupier out of the way to avoid the law. The result would be a higher drop-out rate. Children's schooling may be badly affected. The family prefers that their children work for the family business, thus children end up with full-time adolescent workers and unable to complete even primary education.

According to UNCRC, "every child has a right to be heard". The Convention emphasized the importance of "child welfare". But the 2016 Act neglects the welfare of the children and allows them to work in the hazardous occupations through an exception to the Act. Further, the 2016 Act contradicts its own codified law, the Juvenile Justice (Care and Protection) of Children Act of 2000 which says "if any child is employed or engaged in hazardous occupation is punishable".

3.3. Gaps in the Government's Policy Decisions

Universalisation of "primary education" and "community involvement" are two important factors which could influence the "child welfare" in the society. The 73rd and 74th of the amendments of the Constitution of India have provided significant opportunities for local community involvement in the elimination of child labour and the universalisation of primary education [29]. But the national policies failed to use this concept in its policy decision to curb child labour. Furthermore, Child Labour (Prohibition & Regulation) Act, 1986 failed to provide free education as an alternative for children who are unable to afford to school and consider work as the only other option.

Article 24 of the Indian Constitution states that "no children below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment" [21]. Article 45 guarantees free and compulsory education for all children until they complete the age of fourteen years". "Free and compulsory primary education" is necessary so that children can join the education in large numbers and help to prohibit child labour [21]. Additionally, Article 39(e) and (f), endow protection to child labourers who suffer abuse at work which is unsuitable for their age and strength [21,31]. These provisions of the Indian Constitution offer a framework for child labour law cases.

Apparently, the UNCRC was ratified by India on 11th December 1992 and thus implicitly more than a decade ago India accepted the legal obligations of bringing its existing laws, policies and programmes in line with the international standards laid down by the CRC, and recognised the indivisible and inalienable rights of children [29]. India's ratification comes with a reservation through a legal Declaration, which some argue leaves its commitment almost worthless [1]. The Declaration states in full:

> "*While fully subscribing to the objectives and purposes of the Convention, realizing that certain rights of the child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the*

extent of available resources and within the framework of international cooperation; recognizing that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India -- the Government of India undertakes to take measures to progressively implement the provisions of Article 32, particularly paragraph 2(a), [1,32] *in accordance with its national legislation and relevant international instruments to which it is a State Party*" [1].

The Declaration avoids immediate implementation of children's economic, social and cultural rights, failing in effect to protect children from economic exploitation which includes child labour. In the above Declaration Government of India emphasised the reality of the developing countries where children of different ages inevitably do work. The rationale behind this argument is clear that India supports the progressive nature rather than the immediate implementation of the CRC. In the form of flexibility, by choosing the progressive method in its declaration, which would actually hinder India from completely realises the substance of the CRC. Thus, India indirectly accepted that unless and until it progresses, the complete ban on exploitation of children is not possible which influences the increase of child labour.

In its Declaration, India hesitant to fully adopt Article 32 (2) (a) of the ILO Minimum Age Convention, and declare its intention to progressively implement a plan. This Convention calls for "setting up a minimum age for admission to employment". Interestingly, Article 1 of Convention 138, states that Members should commit to "pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment". Recently, India ratified this Convention, which contains provisions that mirror India's progressive implementation rationale [33]. On par with the ILO Convention,India mentioned the minimum age in its 2016 Act but failed to put "complete ban on child labour". It indirectly shows India's stand as hypocritical and unfaithful to its commitment toelimination of child labour [34].

The national and international communities have been pressing for a complete ban on child labour but India's approach towards child labour is mainly regulatory. The Government of India's view is that the problem of child labour cannot be abolished immediately given the present socio-economic realities which force children to work. Thus, the Government's policy focuses only on immediate prohibition of hazardous occupation. The policy opted for the gradual elimination of child labour from non-hazardous occupation [35]. This is emphasised in "Child Labour (Prohibition and Regulation) Act, 1986" and amended Act of 2016; and also in the National Policy on Child Labour, which was adopted in 1987. But the concern is about "gradual method" of abolishing child labour which presently exists in the 'regulated' sphere [35]. The Act or policies do not clearly define the content of the "gradual" method, so it could be delayed however increase the child labour.

India's child labour policy initiatives comprise of three stages i.e., "legislative action plan; focus on building development programmes that benefit children; and project-based action plan" in places of high concentration of child labourers [36]. To strengthen the national commitment and amplify the voice of the international community, India can facilitate compliance of its national initiatives with the international instruments for the sake of improving children's rights and to eradicate child labour. Though it is clearly mentioned in the Constitutional amendments, the government has largely failed to formulate suitable policies to fill the gaps in the domestic legislations and policies; and failed to fulfill international legal obligations at the domestic level.

4. Problems in Domestic Implementation of International Instruments in India

Despite having extensive international and national legal instruments, the complete prohibition of child labour has not been achieved in India. The weak mechanism at the national level is not the main obstacle to removing child labour from the grassroots level. As discussed above, international instruments, whether formulated through the ILO or the UN Conventions, have clearly enunciated principles on child labour. The safeguarding of "state sovereignty" is the main concern for the Member States when it comes to the ratification. Therefore, the drafting committee cannot move forward without the consent of the Member States which put their objections if the subject is adversely affecting their sovereignty [4]. Although the Conventions put all its effort into draw the attention to child labour, the question of "state sovereignty" normally undermines the obligations, therefore, weakening the international instruments.

The Member States and employers have been taking advantage of this weak enforcement mechanism and continuing with economic exploitation of children. Insufficiency of funding for investigating Committees obstructs their independent investigations even while restricting action to drafting responses on submitted reports. Additionally, if Member States failed to oblige to any instrument, the Committee cannot send strong messages to Member States as they can only use the symbolic terms such as "deeply concerned" and "the Committee urges".

Even though the internal institutions condemn the economic exploitation of child labour and initiated several awareness programmes throughout the globe, but it has failed to take uniform approach to raise the issue under international law as the issue of the child labour is different from nation to nation in its socio-cultural and political situation [19]. Apparently, UNCRC and ILO provided with strong instruments with standard settings and technical assistance to control child labour, but the key provisions of implementation is left with the Member States on an individual basis. The "state sovereignty" issue is the problem for the implementation of the strong instruments.

Although the UNCRC speaks itself for the legal empowerment of the children as it claims rights of the child through the Convention. When it comes to the practicality, such as the children who are in trouble and victim of economic exploitation of child labour, there is no provision under the UNCRC that can take action against the Member State for the exploitation of the children [37]. Therefore, the UNCRC lacks with practicality in providing justice to the victim on economic exploitation and taking action against the state.

5. Conclusions

On balance, the relevant international instruments with regard to prohibiting child labour have been ratified by the government of India and made attempt to regulate child labour. The Indian delegation at several ILO sessions has called for 'cautious, realistic and reasonable approach' to deal with child labour. Ratification of Convention 182 has given India an opportunity to embark on a targeted mission to combat child labour by eliminating its worst forms. By ratifying ILO Conventions 182 and 138 and adopting Recommendation 190, India dismissed some of the skepticism surrounding its commitment to progressively eliminate child labour issues. This has reaffirmed India's seriousness and commitment to eradicate all child labour eventually.

Although India recently ratified the important international Conventions on child labour, the government approaches towards eradicating child labour through domestic legislation, however, have not been fully successful. Labour Inspectors are often under-staffed, under-paid, or corrupt. When the labour inspectors try to enforce child labour prohibition laws, these efforts are often halted by hostility from powerful economic interest groups or hindered by the fact that employers often receive advance warning of inspections. Thus, despite the wide adoption of international Conventions and domestic legislation prohibiting child labour, these harmful practices continue to flourish all over India.

Therefore, the need of the hour is a campaign to create full, freely chosen, productive employment 'without child labour' should be India's ethical, social, political and economic objective. Also India should fix the loopholes in the domestic legislations and policies to complete ban on child labour. Constant monitoring and assessment will prove vital in the application of the domestic child labour laws.

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