

HANDBOOK FOR PARLIAMENTARIANS FOR PREVENTION OF CHILD LABOUR



GLOBAL MARCH

Against Child Labour
Contra el Trabajo Infantil
Contre le Travail des Enfants

HANDBOOK FOR PARLIAMENTARIANS FOR PREVENTION OF CHILD LABOUR



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Contents

Chapter 1: Introduction	1-7
I. Background: Child Labour's story	1
II. International Legal Framework on the Prevention of Child Labour	3
Chapter 2: Definitions and Concepts	9-14
I. Definitions	9
II. Myths and misconceptions of child labour	12
III. Myths and misconceptions perpetuate the trafficking of children for child labour	13
Chapter 3: Child Labour Legislations	15-20
I. Definition of child labour	16
II. Prohibition of All Forms of Child Labour	17
III. Establishing Minimum Age for Employment	19
IV. Penalties	19
V. Procedural Law	19
Chapter 4 : Causes of Child Labour	21-27
I. Globalisation	21
II. Informal Economic Sectors	22
III. Demand and Supply Chain	22
IV Children are easily exploited	23
V. Poverty	23
VI. Child Poverty	24
VII. Lack of Education as a Cause and Consequence of child labour	24
VIII. Gender Issues	25
IX. Political and Law Enforcement Factors	26
X. Interstate Migration and Trafficking	26
Chapter 5 : Trafficking and Child Labour	29-33
I. Background	29
II. International Law	30
III. Domestic Law	30
IV. Trafficking: A Continuing and Cyclical Offense	31
Chapter 6 : Prevention of Child Labour	35-43
I. Strengthening of legislations	35
II. Improving the system of education	36
III. Provisioning of Livelihood	38
IV. Safety Net Schemes	39

V. Robust Labour Inspectorate	40
VI. Engaging the Private Sector	40
VII Child Participation	41
VIII. Inter-Agency Cooperation	41
IX. Fighting corruption and targeting public persons	43
Chapter 7: Interventionist Strategies for the Eradication of Child Labour	45-49
I. Withdrawal	46
II. Rescue	47
III. Prosecution	48
IV. Hitting the Economics	48
V. Care and Protection of Victims	48
References	50
Bibliography	51-52

Chapter 1

Introduction

“We are moving in the right direction but progress is still too slow. If we are serious about ending the scourge of child labour in the foreseeable future, we need a substantial stepping-up of efforts at all levels. There are 168 million good reasons to do so,”

Guy Ryder, ILO Director-General ¹

I. Background: Child Labour's story

Child labour is a grave form of abuse that subjects children to hazardous conditions that are deleterious to their physical, mental, spiritual, moral and social well-being². Approximately 168 million children worldwide are in child labour, accounting for almost 11 percent of the world population. More than half of these children, 85 million in absolute terms, are involved in hazardous work that directly endangers their well-being. In India, non-governmental estimates suggest that a staggering 50 million Indian children are engulfed in the labour market, becoming subjects to gross exploitation, and their physical, social and moral development threatened every day.³ Children are easily exploited due to the naiveté implicit in their age, making them ideal for cheap labour that is instrumental to colossal profit maximisation endeavours undertaken by various economic sectors and agriculture and subsistence farming in India. Child labour is hence, a form of modern day slavery, and a gross violation not only of human rights of individuals but also a crime against the Indian State that has committed itself to upholding the rights of children.

The practice of slavery has proven itself a pervasive force, acclimating to ensuing epochs and taking new shapes and forms. In contemporary conditions, the essence of slavery is deeply entrenched in the practice of child labour, forced and bonded labour and trafficking. Trafficking is a grim face of slavery. In fact, it is the means by which slavery is imposed on vulnerable individuals. It is therefore imperative to understand the link between child labour and trafficking and to tackle the issue of child labour by simultaneously responding to the phenomenon of trafficking in persons.

Child labour is first and foremost a form of abuse against its most immediate and frequent victims, namely children. The repercussions of child labour are damaging to the physical, mental, social, spiritual and moral well-being of children. Child labourers are forced to work for long hours in repetitive jobs, all which numbs their

creativity, while destroying the level of dignity they should enjoy by the virtue of being human, and more importantly being children. Children are made to work in small and large shops, factories and in the agriculture sector where toxic methods of production or heavy machinery are used, unsanitary work areas are characteristic and children are overburdened with strenuous labour and permitted little or no time to rest, let alone allowed to enjoy their childhoods. As a result, children are left with acute or lifelong health afflictions and social repercussions. Children also fall victim to physical and sexual abuse in these hazardous environments. The ensuing abuse to a child's humanity and dignity proves highly traumatic to their psychological and social development.

Child labour is consequence of poverty and meagre access to economic welfare amongst disenfranchised and marginalised communities. Succumbing to economic pressure, children are elicited to undertake labour activities to fulfil their sustenance needs and that of their families. Frequently, parents and family members are the first to encourage or force children to uphold challenging jobs that push education priorities to the back burner. Without education children are left illiterate and disempowered, consequently unable to seek future lucrative opportunities or bargain for better wages to ameliorate their standard of living. The cyclical nature of child labour and poverty is becoming increasingly prevalent; child labour, which is a direct consequence of economic marginalisation, leaves victims of such abuse afflicted with the same patterns of poverty for the rest of their lives.

The responsibility to make sure that today's children are physically, emotionally and educationally prepared for the future rests on all levels of governance and society at large. However, the role of the state is integral to guaranteeing the rights of children, particularly through the eradication of child labour and free compulsory & quality education for all children.

The Indian state has formulated framework that incorporates prevention, interventionist and institutional strategies to put an end to child labour must strengthen the framework into a robust & holistic system, with greater accountability & transparency through effective enforcement. To effectively address Child Labour it must act to combat the contributing factors of child labour by accommodating the needs of all citizens for economic support, health care, protection and education. It is not an easy task to implement laws, which require resources, continuous oversight, monitoring and evaluation. The state must overcome all hindrances and allocate sufficient resources for vigilant law enforcement and monitoring to minimise the profits accrued through child labour practices. Framework on rehabilitation process must also be reassessed and strengthened for rigorous prevention of revictimisation.

Recognising the link between trafficking and child labour is imperative. Frequently, child labour and trafficking in persons go hand in hand, in that the availability of children for labour is made easy through the practice of trafficking. Children are displaced from their communities and separated from their families only to become subjects of serious exploitation. An effective response to child labour should also seek to chip away at the instrumental role played by traffickers.

A morally, mentally and physically healthy child is an asset to a nation. Parliamentarians have an essential role in ensuring the full development of children, in all respects. The first step is by removing them from the labour pool to let them enjoy the innocence of their childhood. The Handbook for Parliamentarians for the Prevention of Child Labour elucidates on some practical ways for the prevention and eradication of child labour, in all its forms.

II. International Legal Framework on the Prevention of Child Labour

A. International Human Rights Instruments

Human rights are the most fundamental rights of human beings. They include those unalienable rights that are enjoyed by all individuals by the simple virtue of being human. Human rights comprise civil and political rights, social, economic and cultural rights, and the collective rights of peoples to self-determination, equality, development, peace and a clean environment. The acceptance of these rights as the most basic privileges enjoyed by all human beings plays a critical role in delimiting the power of the state in that no person shall be divested of these rights, except under specific legal conditions, while requiring the state to fulfil their obligations to respect, protect and fulfil the human rights of all their citizens.⁴

Obligations of State Legislators

- **What does the “obligation to respect” mean?**

The State “obligation to respect” means that the State is obliged to refrain from interfering. It entails the prohibition of certain acts by Governments that may undermine the enjoyment of rights.

- **What does the “obligation to protect” mean?**

The “obligation to protect” requires States to protect individuals against abuses by non-State actors. State may be held accountable; Governments have a responsibility to take positive measures — in the form of pertinent criminal, civil, family or administrative laws, police and judiciary training or general awareness rising — to reduce the incidence of human rights violations.

- **What does the “obligation to fulfil” mean?**

Under the “obligation to fulfil”, States are required to take positive action to ensure that human rights can be exercised. This can be done by formulating policies and programs that create an environment that allows individuals to enjoy their human rights.⁵

The international community sought to guarantee all human beings their fundamental rights by adopting the Universal Declaration on Human Rights (UDHR) in Geneva in 1948. Apart from articulating the various unalienable rights of all human beings, it established a set of obligations for state parties in implementing tenets of human rights. Implicit in the Declaration is the initiation of a globalised response to human rights issues. Reinstating universal human rights requires a coordinated response that utilises myriad of national and international resources, alike, to establish optimal human rights policies.

Technical assistance to States and parliaments

- The Office of High Commission of Human Rights sustains technical assistance programmes that provide guidance to States in formulating or enhancing national structures and institutions to enforce human rights. In particular, the United Nations Technical Cooperation Programmers in the Field of Human Rights incorporates international human rights standards, laws and policies to initiate assistance projects that may include expert advisory services, training courses, workshops and seminars, fellowships, grants, the provision of information and documentation, and the assessment of domestic human rights needs. Parliamentarians should utilise such international resources to ameliorate the scope of national endeavours to fulfil their threefold obligation.
- Inter Parliamentary Union (IPU) provides advisory services to national Parliamentarians in regards to a range of pertinent issues and the role of Parliamentarian in response and recourse. IPU technical assistance programs provides guidance to national Parliamentarians on their role, structure and working methods through provisioning of training, material resources and equipment, and organising seminars.
- Parliamentarians should utilise such international resources to ameliorate the scope of national endeavours to fulfil their threefold obligation⁶

Child labour is an issue of human rights and social justice, hence the guarantee of human rights should be held as the paramount goal within any framework for the prevention and eradication of child labour. The practice of child labour violates the human rights of children by divesting them of their rights to life, liberty and security. Child labourers are, in most cases, subjected to slavery like conditions and frequently inflicted with inhumane treatment. Most importantly, they are denied a decent standard of living, while being deprived of opportunities to attain quality education.

Articles in the UDHR, relevant to the prevention and eradication of child labour

"Everyone has the right to life, liberty and security of person" (Art. 1);

"No one shall be held in slavery or servitude" (Art. 4);

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Art. 5);

"All are equal before the law and are entitled without any discrimination to equal protection of the law" (Art. 7)

"Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment" (Art. 23 (1));

"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control" (Art. 25 (1));

"Everyone has the right to education" (Art. 26 (1)).

The Universal Declaration of Human Rights has since played a significant role in influencing national constitutions and laws, while guiding other soft law declarations and conventions on specific rights. In particular, it paved the way for the adoption of the United Nations Convention on the Rights of the Child that established special principles to deal with the rights of children.

B. International Instruments on Child Rights

Given the special status of children by virtue of their age and evolving capacities, the international community recognises certain additional rights that belong particularly to children. These rights take into account the fact that children are different from adults in terms of their level of experience and exposure and in turn, their vulnerability to external influences. To ensure these special rights to children, the international community adopted the United Nations Convention on the Rights of the Child (UNCRC), 1989.

The UNCRC is the primary instrument of reference in the formulation of national policy and laws to ensure the special rights of children. The UNCRC was initiated in pursuit to establish a separate binding treaty for children and to codify the numerous instruments that uphold children's rights in its multitudinous forms. The Convention holds three parties, the state, parents and children primarily responsible for the fulfilment of child rights. Integral to the convention is the "best interest of the child" which obligates parents and caretakers to provide guidance to their children to allow them to adequately exercise their rights. Simultaneously, the role of the State is to ensure that children's rights are also realised through formulation of national policy and substantive law.

Articles in the UNCRC relevant to the prevention and eradication of child labour

- **(Protection from all forms of violence):** Children have the rights to be protected "from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child" (Art. 19);
- **(Protection from Child labour):** Children have the right "to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development" (Art. 32);
- **(Protection from trafficking):** "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form" (Art. 35);
- **(Protection from all forms of exploitation):** "States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare" (Art. 36).

Child Rights Convention recognises the rights of children to be protected from economic exploitation and from performing any work that is likely to be hazardous, to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. However, children continue to suffer serious physical, mental and social afflictions due to the persisting phenomenon of child labour. To reinstate the rights of children, the principles entrenched in the UNCRC and UDHR should be incorporated into all national frameworks applicable not only to child related issues but also to local, national and international economic concerns.

C. International instruments on Child Labour and Related Issues

The 1973 Minimum Age Convention (ILO convention 138) requires states to design and apply national policies to ensure the effective abolition of all forms of child labour and to set a minimum age for employment. The basic

principle of the convention is that the minimum age for the admission of into employment or work should not be less than the upper age limit of compulsory education. The convention also prescribed the minimum age for hazardous work to be no less than 18 and should be progressively raised to accommodate the full physical, mental and spiritual development of young persons.

The 1999 Convention to Eliminate the Worst Forms of Child Labour (ILO Convention 182) prohibits 1) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed-conflict; 2) The use, procurement or offering of a child for prostitution, production of pornography or pornographic performances; 3) The use, procurement or offering of a child for illicit activities, in particular for the production and trafficking of drugs; 4) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children" (Article 3) for all children below the age of eighteen.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 states that no migrant worker or member of his family shall be held in slavery or servitude" and that "no migrant worker or member of his or her family shall be required to perform forced or compulsory labour (Article 11)".

The Convention Concerning Safety and Health in Agriculture, 2001 (ILO 184) establishes a coherent framework to guide policy regarding labour in the agriculture sector. The convention is established to limit occupational hazard in agricultural practices. The convention holds employers directly liable for the safety and health of the labourers, meanwhile the national government responsible for the formulation and implementation of national policies and mechanism to ensure that safe practices are being carried out. In regards to young labourers in the agriculture sector, the Convention stipulates, "the minimum age for assignment to work in agriculture which by its nature or the circumstances in which it is carried out is likely to harm the safety and health of young person shall not be less than 18 years (Article 16 (1)).

The Domestic Workers Convention, 2011 (ILO 189) offers specific protection to domestic workers. It lays down basic rights and principles, and requires States to ensure decent work a reality for domestic workers. The convention defines domestic work as "work performed in or for a household or households" (Article 1 (A)). The Convention requires state parties to establish a minimum age of employment consistent with the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182). It further states, "Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training" (Article 4 (2)).

Role of National Governments in Respect to International Instruments

International instruments provide national governments with frameworks to formulate national policies and law. These instruments also obligate State parties to implement these policies to full efficacy. It is the responsibility of national government to internalise the principles of children's rights into domestic institutions so that each instrument can be substantiated in relevance to domestic character and conditions. National government must assume leadership in tackling all forms of child labour, in particular the worst forms of child labour, because the commitment participation by each state party is imperative in reaching international goals towards the eradication of this serious scourge.

- **Ratification:** National government should ratify all international instruments, without reservations, for the eradication of child labour. Ratification means that governments must take immediate and effective action to prohibit and eliminate all forms of child labour, in particular the worst forms of child labour with urgency.
- **Implementation:** Implementation includes the reviewing of existing laws to ensure their compliance with international standards. Most importantly, the initiation and execution of relevant programs and measures i.e. schemes that are adequately resourced by the government.

Effective enforcement, through the use of penal or other sanctions, is also integral to the implementation process. Most importantly, the initiation and execution of relevant programs and measures i.e. schemes that ensure that

- **Monitoring implementation:** The integrity of international instruments rests on the efficient implementation of their principles and provisions. National governments are obligated to carry out the responsibilities of implementation and establish mechanisms to monitor this implementation. This can be done by formulating national committees or advisory bodies on child labour, or through the adoption of other means of assessing and evaluating national action programs⁷

A multi-stakeholder approach can be efficient in monitoring the efficacy of child labour policies. Monitoring and assessment can be achieved by conferring responsibility to and empowering a myriad of stakeholders including those in all levels of governance, in the corporate sector, unions, and organisations functioning from the grassroots. Measures should be taken to align goals and efforts, meanwhile procedural mechanisms should be made accessible to all stakeholders for a holistic eradication of child labour in all its forms.

D. International Cooperation to Eliminate All Forms of Child Labour

International cooperation is imperative in the elimination of all forms of child labour. The abuse of children is an international phenomenon and with the growing permeability of national boundaries, child labour concerns all levels of the international and intra- national relations. Inter-government cooperation and complex interdependence between international stakeholders can empower efforts for the eradication of child labour. This cooperation may include financial assistance between governments for social and economic development, exchanging of information on international criminal offences, prosecution of offences even when they are committed in another country and enhancing interdependence in terms of legal assistance.⁸

Chapter 2

Definitions and Concepts

"We are not the sources of the problem; we are the resources that are needed to solve them.

We are not expenses; we are investments.

We are not just young people; we are people and citizens of this world."

UN Special Session on Children held in New York in 2002⁹.

"The child is to be respected as a subject of rights and a human being needing special attention and assistance from the State and society"

Inter-Parliamentary Workshop on Children, February 1997¹⁰.

I. Definitions

A. Child: A child is every human below the age of eighteen years (UNCRC Art. 1).

B. Child labour: According to the International Labour Organization (ILO), child labour is "any work that interferes with the completion of a child's education or is mentally, physically, socially and morally dangerous and harmful to a child is considered child labour." Children performing child labour are prematurely leading adult lives, working long hours for little to no wages under conditions that are damaging to their health and their physical, mental, social and moral development. They are frequently separated from their families and deprived of meaningful educational and training opportunities that would otherwise prove beneficial for their future.¹¹

It refers to work that:

- is mentally, physically, socially or morally dangerous and harmful to children and/or
- interferes with their schooling by depriving them of the opportunity to attend school, obliging them to leave school permanently or requiring them to combine school attendance with long and/or heavy work.

Children who are working as part of family labour in agriculture and in home-based work should also be perceived as child labourers. According to ILO statistic, 60% of child labour is found in the agriculture

sector¹². In working 12-14 hours a day along with their parents, while sacrificing their education, their circumstances are not so different from those involved in other occupations. In fact many children, particularly girls, are expected to take on work burdens by parents in complete disproportion to their strengths and abilities. These children account for a huge portion of out-of-school children and those working full time. It is here that the largest percent of girls working at the cost of education are found.

C. Child Work: Child work, contrary to child labour, can be work done by children and young persons in schools or training institutions for general, vocational or technical education. It can also be work done by persons at least 14 years of age, carried out in accordance with conditions or standards prescribed by competent authorities, after consultation with employer or workers organisations, so that the work undertaken does not impede on a child's development¹³. This form of child work is directly linked to a child's educational enhancement. In fact, children are encouraged to undertake such work to complement their education with pragmatic training instrumental for skill acquisition. Child work can also be work that is light and properly structured either in the farm or family-centred service establishments which allows children sufficient time for education, leisure and recreation.

D. Hazardous Work: The distinction between hazard and risk should be clarified in the discourse of hazardous work. According to the ILO, a "hazard" is anything with the potential to do harm. A "risk", on the other hand, is the likelihood of potential harm from that hazard being realized. For example, the hazard associated with machinery might be the chance of getting trapped in or entangled by moving parts. If precautions are taken to secure the machines, the risk may be reduced however, the hazardous nature inherent in the machinery will still persists. In this regard, hazardous work is the practice of any task that has the potential, irrelevant of the extent, to do harm to the labourer. Hazardous child labour is defined in ILO Convention for the Elimination of the Worst Forms of Child Labour, 1999 (ILO Convention 182) as "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children" (Art. 3 (D)).

Hazardous work may include long hours of work, exposure to physical, psychological or sexual abuse; work underground, under water, at dangerous heights or confined spaces, with dangerous machinery, equipment and tools or work which involves the manual handling or transport of heavy loads; work in unhealthy environment which may, for example, work that exposes children to hazardous substances, agents or processes or to temperatures, noise levels, or vibrations damaging to their health.¹⁴

E. Worst forms of child labour: According to the ILO Convention 182 (Art. 3) the worst form of child labour comprises of the following:

- a. all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including the forced or compulsory recruitment of children for the use in armed conflict;
- b. The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- c. The use procuring or offering of a child for illicit activities, in particular for the production and trafficking of drug as defined in the relevant international treaties;
- d. work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

- F. Forced Labour:** According to the ILO Forced Labour Convention (ILO Convention 29), forced labour means all work or service which is exacted from any person under the menace of any penalty and for which said person has not offered himself voluntarily. In India, the Supreme Court in *PUDR vs. Union of India* has directed that "force arising from compulsion of economic circumstances which leaves no choice of alternatives to a person in wants and compels him to provide labour or services even though the remuneration received for it is less than the minimum wage" should be construed as forced labour. The judgment adds, "where a person provides labour or service to another for remuneration which is less than minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the word 'forced labour' as described in article 23 of the Indian Constitution.

According to the Supreme Court judgment in *Bandhua Mukti Morcha vs. Union of India* "whenever it is shown that a worker is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance, or other economic consideration received by him and is therefore a bonded labourer." Thus in India, forced labour/ bonded labour/ unlawful compulsory labour denotes similar working conditions. The judgment also states, "in situation where a trafficking victim is not getting minimum wages, the presumption shall be that the victim is a bonded labourer, regardless of age.

According to the National Commission for Protection of Child Rights (NCPCR), bonded labourers include "children who have either been pledged by their parents for paltry sums of money or those working to pay off the inherited debts of their fathers. Bonded child labour is an acute problem in some states. Bonded children are in many ways the most difficult to assist because they are inaccessible. If the carpet owner has bought them, they cannot escape. If the middle-class housewife has paid for them, they cannot run away. If the landlord in the village owns them, they will spend their life in servitude till they get married and can, in turn, sell their children."¹⁵

- G. Slavery:** The United Nations Slavery Convention, 1926 defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised" (Article 1). Implicit in the notion of ownership of human beings is the reduction of these individuals to the status of property, divesting them of their freedom and personal rights, denying them free will that is the capacity by which one chooses or decides upon a course of action.

Forced labour and bonded labour are different faces of slavery. The congruence between these practices is in the force used to elicit an individual into a course of action, negating their volition, and as a means or as a consequence, denying their rights to personal sovereignty and free will. Either under the menace of penalty, or simply by the means of coercion they are forcefully subjected to an ownership type of control synonymous to the practice of slavery. Understanding these practices as congruent is instrumental in, not only, appropriating to the notion of forced labour, bonded labour, and trafficking the same weighty and disconcerting connotation entrenched in the perception of slavery, but also emphasising the contemporary persistence of slavery, which is falsely, yet frequently believed to be an antiquated practice.

Slave Trade: According to the Slavery Convention, 1926, slave trade include "all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged and, in general, every act of trade or transport in slaves".

- H. Trafficking:** Trafficking is a process by which range of exploitations are inflicted on vulnerable individuals. The Indian Penal Code Section 370 defines the process of trafficking with a threefold delineation that specifies the action, the means, and the subsequent exploitation that entails trafficking.

"(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

First.—using threats, or

Secondly.—using force, or any other form of coercion, or

Thirdly.—by abduction, or

Fourthly.—by practicing fraud, or deception, or

Fifthly.—by abuse of power, or

Sixthly.—by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1.—The expression "exploitation" shall include prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.—The consent of the victim is immaterial in determination of the offence of trafficking."

II. Myths and misconceptions of child labour

Certain myths and misconception perpetuate **the employment of children for labour:**

- A. The child wanted to work:** The consent of children is irrelevant by virtue of their age and their presumed incapacity to make autonomous decisions. Lack of better alternatives available to children, including education institutions, economic support, etc, should not be confused with a child's seeming preference to enter the labour force. The submission to the allurements of child labour is driven by poor circumstances. It is also important to recognise that a child's desire to work is a manifestation of societal apathy and lack of choice.
- B. Their family knew what they were getting into:** The notion of informed and rational decision is skewed because information provided to the family of recruited children is manipulated to paint an alluring image of the child's future which is never carried through. Parents also submit their children to child labour accredited to a lack of better alternatives. Their pilfered freedom of choice can be construed as a form of coercion, thus nullifying the legitimacy of their consent.
- C. The child labour was paid for services/ labour despite the hazardous nature of work:** If a child is put to work in hazardous tasks, the physical, emotional and social trauma suffered by the child trumps any wage amount s/he receives. Raising a child's purchasing power would be irrelevant without allowing necessary development and freedom that should be enjoyed by all children.

- D. The employer is providing basic sustenance to child labour inaccessible to the child prior to the employment:** Basic sustenance comprise of food and shelter, which as vital as they are, should not be the baseline determinant of a humane existence. The "sustenance" argument neglects other essential rights of human beings most importantly the right to a life of dignity, freedom and development. Providing basic sustenance to children fails to empower them with the capacity to be self-dependent. Instead, it hampers their chance of gaining education and skills to participate in the economic system to attain appropriate remuneration and a humane standard of living.
- E. Poverty is the sole cause of child labour:** Poverty is a multidimensional phenomenon that does not exclusively entail the notion of economic destitutions, but can also be accredited to low skill level, lack of education, lack of assets, poor health, food insecurity and other conditions that require not only supplementary sources of income but other forms of support from state and civil society organisations. Moreover, due to the fact that child labourers are generally paid below minimum wage, the practice of child labour is a causal factor that leads to poverty.
- F. There is nothing wrong in allowing children to work in non-hazardous works:** The prohibition of child labour is founded on the perception that "hazardous" work should be taboo. However, the term "hazardous" is subject to interpretation and is highly contested. Work that may not be overtly and immediately hazardous, domestic labour, for instance, may nonetheless pose hazard in the long run in impeding the holistic development of a child. Any type of work that removes a child from attaining education and other relevant skills and threatens their chance to enjoy their childhood should be construed detrimental to the child's development
- G. Work equips child labourers with skills for the future:** Tasks of child labour comprise of repetitive, mundane and demoralising drudgery that diminishes the creativity and free thought of the workers. Child workers are not taught any skills that prove useful for their futures because children rarely continue in the same types of jobs after reaching the legal age of employment. Furthermore, employers forcefully remove children when they cross their age of childhood, leaving these workers displaced and unprepared to pursue a self-dependent and healthy life.
- H. Legislation prohibiting child labour is a sufficient recourse:** Legislative action is futile without strengthening the efforts of law enforcement. Moreover, income generation, welfare schemes and skill development programs should be made accessible to establish preventative measures to combat child labour, and re-victimization of rescued/withdrawn child labourers.

III. Myths and misconceptions perpetuate the trafficking of children for child labour

- A. The child had freedom of movement:** Victims of trafficking for forced labour are displaced from their homes and disconnected from their families and community. Lack of familial support and unfamiliar surroundings leave trafficked victims vulnerable to various forms of exploitation. These victims are stripped of their power of self-dependence, therefore any freedom of movement granted to these

individuals would be futile without providing appropriate guidance, protection and resources to these displaced individuals, whether they be children or adults.

- B. The child had opportunities to escape during the process of trafficking but s/he did not:** Any opportunity given to the child to escape is irrelevant because the crime of trafficking is already committed the moment the child is taken away from his/her home and community with the intention of exploitation. Moreover, young children cannot be expected to protect themselves when forced to escape from a precarious situation.
- C. Trafficking occurs only if borders are crossed:** Trafficking can take place within national and state borders. The notion of trafficking in person in its simplest forms comprises of the assumption or transfer of authority over an individual from one person to another without a valid consent, irrelevant of any exchange of remuneration, or distance covered in the transfer. In terms of child labour, in the recruitment of a child for employment, the employer assumes authority of the child rendering the employment of the child a crime of trafficking.
- D. If the trafficker is related to the victim, there is no trafficking:** The relationship between the employer/trafficker and the victim is immaterial if a child is subjected to any heinous forms of exploitation.

Chapter 3

Child Labour Legislations

"...We are seeing the development of more national action plans on child labour and they are increasingly linked to national decent work and development agendas. Decent work, enforcement of laws, social protection, education for all: these are the foundation stones on which we can build effective action. It is this action at the national and community levels that is really making the difference."

Guy Ryder, Director General ILO

Opening speech at the third Global Conference on Child Labour, 2013¹⁶

Prohibition of child labour is a significant step in guaranteeing children their fundamental rights and an opportunity for holistic development. First and foremost, it is imperative for the Indian government to ratify the ILO Convention 182 to initiate the process of incorporating international standards into domestic law for the elimination of all forms of child labour. National policy to tackle child labour should comply with the Convention that requires state parties to:

- (a) Prevent the engagement of children in the worst forms of child labour;
- (b) Provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
- (c) Ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
- (d) Identify and reach out to children at special risk and
- (e) Take account of the special situation of girls.

Recommendation for the Plan of Action: Recommendation No. 190 (1999) supplementing the Worst Forms of Child Labour Convention advocates

“The programmes of action referred to in Article 6 of the Convention should be designed and implemented as a matter of urgency, in consultation with relevant government institutions and employers' and workers' organisations, taking into consideration the views of the children directly affected by the worst forms of child labour, their families and, as appropriate, other concerned groups committed to the aims of the Convention and this Recommendation. Such programmes should aim at, inter alia:

- (a) Identifying and denouncing the worst forms of child labour;
- (b) Preventing the engagement of children in or removing them from the worst forms of child labour, protecting them from reprisals and providing for their rehabilitation and social integration through measures which address their educational, physical and psychological needs;
- (c) Giving special attention to: (i) Younger children; (ii) The girl child; (iii) The problem of hidden work situations, in which girls are at special risk; (iv) Other groups of children with special vulnerabilities or needs;
- (d) Identifying, reaching out to and working with communities where children are at special risk;
- (e) Informing, sensitising and mobilising public opinion and concerned groups, including children and their families.”

I. Definition of child labour

In India, Parliamentarians should establish a strong definition of child labour that adheres to international standards and agreed definitions, and maintains consistency throughout all legislations dealing with child rights, labour rights, education rights and other relevant legislations. Any definition of child labour will, first and foremost define the nature of work that falls under the category of child labour. This should extend beyond the notion of hazardous work which poses risk to the health, safety and morals of the child, and seeks to include labour that is ostensibly safe but may prove adverse in the long run, due to the range of impediments posed on the child's development. Unpaid work, including home-based work, or family owned agricultural endeavours, that removes children from education or other developmental activities should also be construed as child labour and should be articulated in the definition.

With that, it becomes obvious that child labour and education are two sides of the same coin hence, relationship between education and child labour should be explicitly established, adhering to international norms and standards. According to the discourses alluding to links between child labour and education, the prevalence of child labour is viewed as an indicator of the inefficiency in education systems. Simultaneously, child labour is also viewed as interference to a child's ability to acquire adequate education.¹⁷ Either perceptions point to the undeniable and consequential link between the two hence a definition of child labour bereft of this concomitance will remain inadequate.

A strong definition of child labour will also incorporate the relationship between the employer and the child labourers, consequently imposing the weight of liability on the employer for the crime of employing children. This should entail the type of exchange between the employer and the labourer, whether it is some form of payment or perceived benefits, in return for services or labour. This relationship also materialises through the

extent of authority exercised by the employer on the child, which should also be considered in the definition of child labour. It is important to recognise that child labour is inherently exploitative and only an-encompassing definition that pursues to criminalise all forms of child labour and creates a strong aspect of liability will be efficient in acting as a deterring force.

Role of Parliamentarians

Unfortunately, the cannon of Indian law lacks such a definition that can be referred back to for the effective prohibition of all facets of child labour. Various legislations are formulated to prohibit or regulate specific types of child labour, however what qualifies as child labour is not only ambiguous but also extremely limited. Keeping that in mind, it is important that Parliamentarians must make all efforts to clarify and define the notion of child labour.

II. Prohibition of All Forms of Child Labour

Indian government has established various legislative mechanisms to prohibit child labour in hazardous tasks. Some of these legislations are as follows:

- Child Labour Prohibition and Regulation Act (CLPRA), 1986: The legislation contains a list of processes and occupations in which employment of children below 14 years of age is prohibited.
- The Factories Act, 1948: Children who have not completed their fourteenth year shall not be required or allowed to work in a factory (Section 67).
- The Mines (Amendment) Act, 1983: Children who have not completed 18 years of age shall not be permitted to work in a mine.
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966: Children below the age of 14 shall not be required or allowed to work in any industrial premises (Section 24).
- The Merchant Shipping Act, 1958: This Act prohibits children under 15 to be engaged to work in any capacity in a ship, except in certain specified cases.
- The Motor Transport Workers Act: No child below the age of 14 years shall be required or allowed to work in any capacity in any motor transport undertakings.
- Juvenile Justice (Care and Protection Act) Act: criminalises, prohibits and penalises the employment of children for "hazardous" work in (Section 26).

Parliamentarians should recognise that child labour extends beyond the notion of hazardous tasks and include all activities that prove harmful to the overall development of a child. The existing legislations, which target employment of children exclusively in hazardous forms of labour neglect other ostensibly non-hazardous employment undertaken by children that are not overtly injurious to their health and safety, but rather divests them of their freedom and impedes their ability to enjoy developmental opportunities. These occupations may include:

- A. Children working in households:** Apart from children who are employed for wages, there are a large number of children (especially girls) who are working in their own houses, engaged in what is not normally seen as an “economic activity”. These children are engaged in taking care of their younger siblings, cooking, cleaning and other such household activities. Discourse on child labour has frequently

upheld unpaid work as acceptable, especially work that is conducted under the supervision of parents. It is important for Parliamentarians to recognise that although taking up household and unpaid tasks is not adverse in itself, in fact, it may prove to be a positive exercise in building responsibility and skill development, however the imposition of such tasks on children, with the simultaneous denial of educational or other developmental opportunities, challenges those commonly accepted types of child work that may hinder the positive and holistic development of a child.¹⁸ This challenge can be met by advocating policies and legislation that encourage the prioritisation of education, be it a supplement to household unpaid, or other light work.

B. Agriculture: Underpaid and unpaid work may also include children working in the agriculture sector. Global estimates provided by the ILO reveal that agriculture sector accounts for 59 per cent of all those in child labour and over 98 million children in absolute terms.¹⁹ In many cases, farms are also family residences and comprise of few non-family employees. The close geographic proximity between farms and residential areas propels children to be used for unscheduled work on family farms. Their easy availability to participate in agriculture work makes it difficult to distinguish when children are undertaking laborious work or conducting household chores.²⁰ This ambiguity in the distinction between household work and labour in the agriculture sector poses a challenge for law maker when drawing the line between acceptable and unacceptable forms of labour. Considering this ambiguity on the one hand, and the overt exploitation ensuing even through the wage employment of children in agricultural practices, a total prohibition of child labour in the agriculture sector should be pursued.

Legislations Dealing with Agriculture Sector

Plantation Labour Act, 1951: "No child and no adolescent shall be required or allowed to work in any plantation unless- (a) A certificate of fitness granted with the reference to him under Section 27 is in the custody of the employer; and (b) Such child or adolescent carries with him while he is at work a token giving a reference to such certificate". (Section 26)

The Child Labour Prohibition Act has prohibited the employment of children in "processes in agriculture where tractors, threshing and harvesting machines are used and chaff cutting" (Schedule B). The provision takes into account the limited conception of child labour and ignores other work performed by children that might be detrimental to the health and safety of children by exposing them to pesticides, extreme temperatures and climate conditions, poor sanitation, fatigue and stress, amongst others.

C. Child Domestic Labour: Apart from employment in hazardous labour, children are also employed in households for domestic tasks. The salience of domestic labour in metropolitan areas is crucial in sustaining metropolitan economies at the expense of children's development and safety. Child domestic labourers, most frequently brought from rural areas, are quick to jump at a chance for a better life as promised by placement agency recruiters through a system of appealing propaganda. Upon arriving to major cities, they are subjected to a wide range of abuse and exploitation, realizing little that they are often victims of trafficking.

(International Programme on the Elimination of Child Labour (IPEC), International Labour Office, , 2013) (United Nations)

Although domestic work is added to the Schedule of the CLPRA in the list of prohibited occupations, inspection mechanisms do not adequately cover the domestic service sector. There is no systematic means of revealing covert employment of children in households. National policies and procedure should remedy this consequential gap in the inspectorate and enforcement machinery. Parliamentarians should institutionalise mechanisms to reach out to domestic labourers to rescue them from forced labour and other abuses and institute frameworks for regulating the placement agencies. Campaigns should also be initiated to transform deeply entrenched value systems that perpetuate the employment of children for domestic service or the general maltreatment of domestic labourers.

III. Establishing Minimum Age for Employment

The establishment of a minimum age for the admission into employment is an essential yardstick to define and regulate child labour. Although the CLPRA has set a minimum age of employment to be 14 years, the legislation carries a specified list of occupations and processes under its ambit, neglecting a range of tasks commonly undertaken by children that are highly deleterious to their development. Parliamentarians should acknowledge the actual extent of child labour and establish a minimum age for all forms of child labour including those unaccounted for by the CLPRA. After due consideration and adequate research, minimum age should be appropriately increased for types of labour that are especially hazardous to the development of children.

IV. Penalties

Legislations that seek to eradicate child labour must recognise that child labour is a serious crime and in its worst form can be construed as slavery. The congruence between slavery and forced or child labour is visible when individuals are elicited, without their volition, into a course of action, and are, as a means or as a consequence, denied their rights to personal sovereignty and free will. Either under the menace of penalty, or simply by the means of coercion they are forcefully subjected to an ownership type of control synonymous to the practice of slavery. Similarly, child labourers are forced to relinquish their rights to those exercising control over them, and are thus denied the freedom to live a life of dignity and make their own choices. The congruence between slavery and child labour should be kept in mind to perceive the dire inhumanity of child labour to subsequently establish rigorous penalties that correspond to the severity of the crime.

Efficient penalisation for the crime of child labour should also ensure that the economics of the practice is being targeted, so that the fines and disincentives imposed are greater than the profit accrued by traffickers, contractors, employers etc, through the employment of children for labour. Penalisation should render the employment of children unprofitable on one hand, while also deterring further law-evasion through the imposition of rigorous terms of imprisonment.

V. Procedural Law

Efficient mechanisms to identify and rescue victims of child labour are essential to remove children from employment, reinstate their fundamental rights and render child labour as uneconomical. Adding effective and

clear procedural provisions to child labour legislations is essential not only to empower all relevant agencies and departments, but obligate them to fulfil their duties to implement the procedural action from raid operations to the overall rehabilitation of victims. Procedural law should stipulate each step of action taken against child labour practices, establish the authority conferred to each agency during each step and allude to the resources allocated to the fulfilment of responsibilities.

The notion of rehabilitation should be an essential procedural aspect of child labour related legislations. Detailed process of rehabilitation must be delineated and defined to include educational rehabilitation, economic rehabilitation for the families, psychological rehabilitation for the victim and vocational training for victims who are 14-18 years of age.

Other procedural additions to child labour laws should include protection of victims and witnesses of child labour crimes. Victims of child labour should also be afforded due protection should they choose to cooperate with authorities during prosecution of cases of child labour and trafficking for forced labour. Victims and witnesses are frequently subjected to intimidation and reprisals from employers and traffickers. Child victims and witnesses are particularly vulnerable and hence, require extra measures of protection that go beyond those given to adults. Extending protection to victims and witnesses encourages them to cooperate during prosecution proceedings. Certain procedural amendments to child labour legislations may include, stipulations to establish children's courts for child labour trials, special interviewing techniques for working with child victims and witnesses, and other procedures implemented to spare them trauma of testifying in court.²¹

Chapter 4

Causes of Child Labour

“We will need new impulses. In the case of child labour, poverty is cause and consequence in one. The vicious circle must be broken.”

Mr. Andreas Storm, Parliamentary State Secretary of Germany
Hague Child Labour Conference, 2010²²

“Some 15 million children of around primary school age are working rather than attending school. That figure represents fully one-quarter of all out of school children. An obvious conclusion to be drawn is that the international development target of achieving universal primary education by 2015 will not be achieved without a concerted global drive to eradicate child labour.”

Gordon Brown, UN Secretary-General's Special Envoy on Global Education 2011²³

Although child labour has been condemned by the international community, and prohibited by national laws, the practice of child labour persists internationally and in India. Abating the crime of child labour requires the demystification and comprehension of various causes of child labour while adequately understanding the extent of the phenomenon. It is important to recognise that the causes of child labour are multidimensional and overlapping, thus the challenge for Parliamentarians is to find ways to target all these factors for an effective resolution.

I. Globalisation

Increasing globalisation and market competition are international factors that perpetuate child labour. National borders have become permeable to external control due to the globalised nature of international relations. The increasing expanse of multinational companies compels countries to compete for investments, resulting in the phenomenon aptly known as the race to the bottom in which corporations and governments seek to minimise production costs by adopting cheap, yet unsustainable practices, while resisting national and international laws. In this, countries are competing to reach the lowest possible level in terms of their standards of conduct for corporate activity. Labour laws are first to be shunned. Companies are quick to hire children for cheap labour. A

holistic perspective reveals that the negative impact on children's rights is due to the omission or instrumental policies of a range of business units that work in consonance, namely parent companies, subsidiaries, contractors, suppliers etc. For instance, suppliers may be responsible for hiring children for labour, subsidiaries may be involved in land acquisition and contractors or licensees may be engaged in the marketing of goods and services that are produced with child labour and other detrimental practices. These practices are perpetuated due to the State increasingly conceding to private powers. It must be recognised that unhampered globalisation and unregulated multinational companies (MNC) policies are encouraging the employment of children for production activities. Parliamentarians should ensure that foreign investment priorities should not take precedence over the safety and development of India's children.²⁴

II. Informal Economic Sectors

Although India has become increasingly industrialised in the recent decades, agriculture production, artisanal and manufacturing sector largely fall under the informal category as they are unaccounted for by formal labour statistics and remain unregulated by legal and legislative guidelines. In India, which classifies workers in this way, 86 per cent of the total workforce is in the informal sector, which includes casual day labourers and industrial outworkers.²⁵ These sectors are scattered and decentralised, for the most part, the structure and functioning of which are founded on a complex mix of traditional, industrial and global practices. Meanwhile, the production sector is also found in micro and informal hubs of activity, regulation of which has posed a challenge to both legislatures and law enforcement agencies, alike. Most often, the production industry is reduced to family businesses, or single person run operations that tend to hire workers on informal basis without guaranteeing job security, benefits or adequate labour rights.²⁶ For instance, working in home-based establishments is one way in which child labour can go unnoticed by regulatory authorities. Child labour is also endemic in the garment industry and it is a customary practice for registered factories to outsource elements of production such as embroidery, beading, embellishments and often whole garments to sub contractors who run small domestic units that easily evade law enforcement.²⁷ The increasingly informal nature of production industries have left workers unprotected by labour legislations and collective bargaining agreements and remain beyond the reach of law enforcement authorities.

III. Demand and Supply Chain

Salient in the Indian context is the phenomenon of global supply chain characterised by the practice of contracting and sub-contracting that poses another challenge in ensuring rights to labourers. In the global supply chain system, foreign and leading national firms sustain negotiations with the first tier of suppliers who retain the majority of control over the chain of production, while, ignoring the harsh conditions and breach of rights endured by labourers lower in the chain. A considerable portion of child labour occurs in the bottom of the supply that inevitably goes unnoticed. Child labourers work in the production of cash crops and manufactured goods that are exported directly, or in the production of specialised goods that serve as inputs into final products. Child labour is prevalent in assembly lines and finishing of products. The first tier negotiators then use contractors and sub-contractors to designate tasks, thus disbanding responsibilities to micro-enterprises and outworkers who work from informal, unregulated and unregistered locations including workshops, small-scale industries, leatherwork, and carer weaving centres, cheap hotels, brick kilns and garages.²⁸ The unregulated nature of the informal economic sectors allows employers to easily evade labour laws.

Moreover, state regulations and normative processes are taking a backseat, making way for co-regulation with

private sectors or altogether de-regulation that empowers private firms to formulate their own policies on labour standards. This has resulted in the emergence of co-regulation or a system of multi-stakeholder regulation of production, creating an inconsistency and divergence of authorities thus diminishing the efficacy of monitoring and regulations, altogether. The role of the State is to retain primary control over the regulatory responsibilities by providing a normative framework and establishing regulatory agencies to ensure that labour rights, as well as human rights are protected.

IV Children are easily exploited

Profit maximisation goals intrinsic to the system of supply chain production, encourages the employment of children to lower production costs and accrue high returns. Children, who are easily exploited by the virtue of their age, inevitably fall victim to this system. In fact, children are decisively employed over adults for the greater advantage they provide to the employers. For one, children are more willing to work for low wages than adults. Children, due to the desperation of their circumstances that push them into child labour in the first place, are not empowered to bargain for descent wages. Children are easily manipulated during wage negotiations or frequently negated from the process, altogether. Moreover, their meagre experience in the work force and low levels of education makes them gullible to employers' influence, distorting their expectation to settle for low wages and poor working conditions that few adults would agree to. Their vulnerability in the labour market is exacerbated by the fact that they do not enjoy the security that adults may under collective organisation or unions, making it easy for employers and contractors to take advantage of disunited child workers and manipulate them into working in hasardous and unsanitary conditions for long hours doing tasks which are repetitive and full of drudgery.²⁹

V. Poverty

Poverty is a significant factor that elicits children to undertake economic responsibilities. The notion of poverty in its simplest form is the absence of economic welfare and opportunity, an unfortunate reality for a large segment of the Indian population. Economic opportunity includes methods of wage procurement, availability of social welfare schemes, and presence of positive affirmative action plans for marginalised groups, and access to educational and vocational training to allow poor families the opportunity to alleviate their standards of living.

The notion of urban bias has been persistent in India's economic policies weighing in favour of urban over rural development. Whether measured in terms of income, literacy, or access to social services, economic opportunities have been systematically denied to remote and rural areas of India. In India, poverty rates are higher in rural than in urban areas. In addition, rural areas are still home a large portion of the total population suggesting that poverty is more concentrated in rural areas. Moreover, scheduled castes and scheduled tribe communities primarily living in rural areas, have been continually subjected to institutionalised discrimination, and are even more neglected from access to economic opportunities.

Numerous studies show that within households, women and children bare a disproportionately greater weight of poverty.³⁰ When adults in a community are not equipped with economic welfare and opportunities, they are incapable of providing basic sustenance to their families and thus inclined to send their children to work. Children are forced to enter the labour force to either supplement family incomes, or in many cases learn to be self-sufficient in the absence of family members and guardians. It is internationally recognised that child labour is a complex problem deeply entrenched in poverty and inequitable distribution of capital through the diverse segments of a nation's population. Therefore, policy makers and civil society action groups should target factors

that lead to poverty, keeping in mind the needs of the most marginalised communities to find a preventative solution to child labour.

VI. Child Poverty

Poverty is traditionally conceived in terms of the level of purchasing power and the ownership of material possessions measured through the standardisation of a poverty line.³¹ This monetary approach is however insufficient comprehending and measuring child poverty. In recent years, UNICEF has definitively distinguished between child poverty and the traditional conception of poverty. According to this definition, "Children living in poverty [are those who] experience deprivation of the material, spiritual and emotional resources needed to survive, develop and thrive, leaving them unable to enjoy their rights and achieve their full potential or participate as full and equal members of society".³² It is perceived that "the poverty children experience with their hands, minds and hearts is interrelated". For example, material poverty leads to malnutrition, which in turn affects health and education, which, as a result may impact a child's long term development. Furthermore, the lack of financial resources may push children from poor households to engage in child labour which will negatively impact a child's cognitive and physical development by depriving him/her the opportunities to attain adequate education. The UNICEF definition recognises that children's needs are different from those of adults, and the wellbeing of children depends not merely on market-goods, but also the availability of services and a safe environment to enjoy their childhood. These services cannot become commodity in market terms, but must be provided by collective action initiated by the government and civil society alike. The definition of child poverty hence, goes beyond the monetary approach that holds the notion of household income and consumption level paramount, instead addresses the holistic developmental needs of children. This child-centric approach to poverty should be considered by Indian policymakers and civil society working on children's rights.³³

VII. Lack of Education as a Cause and Consequence of child labour

The relation between education and child labour can be viewed with a twofold perspective namely, the absence or inefficiency in the education system as a cause of child labour and child labour as a factor that hinders children from receiving an education. Although poverty is a strong impetus that forces parents to remove their children from school and put them to work, inaccessibility to or inefficiency of educational intuitions also pushes children into child labour. Diminishing demand for education can be accredited not only to the familial needs for supplementary incomes brought in by child labourers, but also direct and indirect costs of schooling that deters parents from sending their children to school. These costs may include tuition fees, costs of books and food, and travel expenses, etc. In many areas, especially in remote rural communities, schools are physically inaccessible. Distance from school can make parents unwilling to send their children to classes because of travelling costs and uncertain levels of safety, particularly hostile to girls.

Poor quality of education is also a significant deterrent in achieving literacy. School curriculum frequently lack in innovation to aptly endow children with power of critical thinking and practical skills that will prove lucrative for their futures. Poor infrastructure is yet another factor that hampers a child's ability to enjoy quality education. Many accounts reveal that children are forced to sit in crowded classrooms with disproportionate teacher to student ratio. Educational institutions that are short in funding are known to uphold rundown edifices uncomfortable at best and hazardous at worst.

There is also a discrepancy in the education available in rural and urban areas. Rural areas are often worse off than

urban areas in terms of both accessibility and quality of education. The numbers of schools are often disproportionate to the rural population, and when they are available, they are frequently low in quality, in terms of infrastructure and resources, with teacher retention issues, poor attendance rates and low standards of education performance. It is clear that free, full time and compulsory education proves futile without ensuring that education is also made accessible, affordable and structurally sound, and perceived as valuable by parents and children, alike. Illiteracy leaves children further susceptible to exploitation and bares long-term consequences that easily subject them to manipulative practices in the future. Education is a sustainable means of empowering children to become civically and economically valuable members of society. Public policy should thus prioritise education while empowering parents and children, monetarily and in terms of values, to choose education over child labour.³⁴

On the other hand, child labour should also be perceived as a significant barrier in achieving the international development goal of universal primary education. Children forced into the labour force work long hours in hazardous circumstances, which inevitably removes them from their educational obligations. Education priorities are put to the back-burner with more basic and pressing needs, such as food, shelter and security, requiring immediate attention. As the UN Secretary-General's Special Envoy on Global Education, Gordon Brown in 2011 stated that "as part of a wider strategy to achieve the 2015 goal of universal basic education, every developing country should be urged to draw up plans for reaching children who have been left behind. Child labourers, especially those involved in hazardous employment and the worst forms of child labour, should figure prominently in these plans, with a clear focus on the policies, the regulatory framework, and the financing requirements for combating child labour in different sectors. The plans should also include expanded provision of non-formal and second chance opportunities for adolescent and teenage children who have missed out on their education. Currently, education ministries play a peripheral role in guiding policy formulation and implementation, undermining the effectiveness of wider national strategies".³⁵

VIII. Gender Issues

Gender segmentation in India's economy, in terms of types of employment, the extent of participation and wage discrepancies helps elaborate on the understanding of child labour. According to recent ILO global statistics, boys tend to be involved in more dangerous jobs than girls, while girls represent approximately 42 per cent of all children in hazardous work. Girls, however comprise a large proportion of the children in the other worst forms of child labour that does not fall under the category of hazardous work. These include sexual exploitation, forced labour, trafficking of children, armed conflict, illicit activities, etc. It should be noted that household surveys used to derive global estimates are often ill-suited to measure informal forms of labour and exploitation.³⁶

Gender stereotypes are entrenched in the economic and social values in India, and prove to be an overbearing factor that pushes young girls into the labour force. From a young age, girls are subjected to gender based discrimination visible in the poverty driven or value based decisions of families to send their male child to school over their female child. Women account for two-thirds of the 776 million illiterate people in the world demonstrating the lack of value placed on girl's education. These patterns are founded on the value that holds boy's education as a more lucrative investment. The denial of education leaves girls with a distinct social and economic disadvantage when they reach the minimum age of legal employment.³⁷ A large portion of young girls and women, especially those from economically marginalised communities are denied resources and skill based training, as much as educational opportunities that would otherwise generate self-dependency and decent standards of living.

Although there has been a growth in female employment opportunities, women workers are generally concentrated in low status; low-skill and low paid jobs in subsistence and plantation agriculture, in small industries, modern assembly line industries and in petty trade in the informal sector.³⁸ ILO statistics show that out of the total number of children aged 5-17 years engaged in domestic work, approximately 73% are girls and 27 percent are boys, attesting to the traditional feminisation of this sector which upholds the role of women to be preferential, thus perpetuating the recruitment of young girls for employment.³⁹ It is also found that boys have better opportunities to integrate into other better remunerated sectors upon reaching the minimum legal working age; however the only prospect for many unskilled girls are to resort to domestic work. Statistics also show that an overwhelming majority of girl child labourers also perform supplementary household chores, therefore the total number of hours girls spend working is greater than that spent by boys.⁴⁰

Apart from the above mentioned factors, it is also important to recognise that the physical weakness of young girls put them at a greater risk of physical, in particular sexual abuse. Hence, a gender-centric approach that conforms to international standards and targets the discrepant needs of both boys and girls is essential for the effective prevention of child labour.

IX. Political and Law Enforcement Factors

Poor coordination between law enforcement agencies, ministries of labour, social welfare and child protection, and civil society groups can prove detrimental to the action taken for the prevention and abatement of child labour. Enforcement of labour laws has a direct bearing on the demand for child labour. A single case of non-enforcement encourages competitors to indulge in more transgressions. Figures indicate that qualitatively a very large number of inspections are conducted every year by the labour department; however the number of detected cases and subsequent convictions are rare. Successful prosecution are low with fines and punishment that are not enough to pose stringent disincentives for further deterrence. An indifferent attitude of the enforcement authorities towards the plight of children and their families influences the efficacy of law enforcement.

In India, a comprehensive national strategy to abate child labour is under works by which legal codes are strengthened, monitoring and enforcement is made more efficient through the adoption of institutionalised guidelines, enforcement of punitive measures is heightened through the effective use of legal regimes at the governance and civil society levels and finally the scope of welfare and rehabilitation are extended to cover a larger segment of the population. However, political non-commitment in implementing this progressive code is palpable in the continuing persistence of child labour in India.

X. Interstate Migration and Trafficking

Compelled by deteriorating socio-economic conditions, a large number of children are migrating from economically backward areas to big cities for work. Denial of economic security fosters within children a sense of inexorable eagerness to attain better standards of living. Children are propelled to migrate from their local communities to urban centres to gain benefits from the urban bias that persists in big cities. After migrating, however children are generally pushed in child labour practices, forced to perform hazardous labour, being denied the security that was initially promised to them. Their insecurity is compounded by the fact that migrants are unprepared to face the demands of fast paced and frequently exploitative cities, the rural to urban migration proving particularly noxious to vulnerable children. Alien to their new surrounding, migrant children easily fall

prey to manipulation and abuse. Disconnected from their family and communities they are bereft of familial security and access to better alternatives.

Trafficking unlike migration, is the systematic and organised method developed to displace individuals, especially vulnerable children, from their rural setting, pushing them into migration for forced labour or other forms of exploitation. Exploitative recruiters decisively reach out to different areas to propagate the benefits of migrating to cities for work, luring vulnerable individuals with false promises of health security, education and jobs only to put them in the hands of grave exploitation. Lack of informed choices and the general vulnerability espoused by children make them easy targets of trafficking. Migration induced through trafficking is particularly heinous in that it divests individuals of their right to self-determination and volition. They are subjected to an ownership type control in which they are forced to succumb to the will of another, while suffering acute displacement and alienation associated with trafficking.

Chapter 5

Trafficking and Child Labour

"Human trafficking is a vicious chain that binds victims to criminals. We must break this chain with the force of human solidarity.

In this effort, we have to listen to the voices of the victims."

Ban Ki Moon, UN Secretary General⁴¹

I. Background

Child labour and trafficking go hand in hand, in that the availability of child labour is directly accredited to the practice of trafficking. Child labourers, at some point or another, are recruited, transported and transferred or at the least received and harboured for the sake of physical exploitation i.e. for labour, irrespective of the child's consent, or the means by which the consent is acquired, all of which constitutes trafficking. The issue of trafficking of children for economic exploitation, especially in slavery like practices and related crimes requires a concerted and systematic attention of the central and state government, as well as a convergence of diverse policies procedures and schemes, for its solutions.

Trafficking is a continuing and cyclical offense which begins from the point of recruitment to the transfer of authority of the trafficked individual to the subsequent exploitation endured by these victims, which renders them susceptible to further trafficking. Trafficking is also an organised crime extending beyond boundaries and is multi-dimensional in nature, because it involves several crimes, such as selling, buying, physical and sexual abuse, harassment, wrongful confinement, kidnapping and abduction, assault, threat, bonded labour, child labour, cruelty to children etc. Moreover, it involves multiple abuses and abusers, who are networked and well organised. For the prevention and intervention of trafficking for forced labour, a threefold perspective should be comprehended which includes, first, the recruiters who undertake the recruitment, transportation and transfer of trafficking victims, second, the principle employers who receive and harbour trafficked children and altogether ignore labour laws, and finally, third, target the exploitation suffered by victims of trafficking by providing them with appropriate care, protection and rehabilitation.

Framework for the eradication of child labour should comprise of interventionist and prevention measures that target stakeholders that play a leading role in trafficking and its solutions, namely the recruiters, the principal employers, and the institutions responsible for providing care and protection to victims. In regards to intervention,

robust inspectorate, heightening of law enforcement and efficient information sharing technique can extend the scope of anti-trafficking policies and laws. Meanwhile, prevention strategies should work on establishing a culture of accountability and responsibility founded on positive child-centric values. This can be done by targeted policy frameworks and awareness generation campaigns that aim at each stakeholder groups to make them aware of their social and legal responsibilities, while transforming their knowledge, attitude and practices. Most importantly, awareness generation programs reaching out to remote and marginalised communities can play a significant role in sensitising unaware populations about the phenomenon of trafficking.

II. International Law

Trafficking in persons is a grave and heinous form of abuse and is the third largest form of organised crime after drug trafficking and arms trade. Trafficking has taken an international face with the rise in globalisation and increasing opportunities of exploitation of vulnerable groups. Mounting accessibility to technology and the rapid spread of globalisation has made the world more interconnected, the permeability of borders making it easy for traffickers to supply labour capital. International cooperation is hence most pressing in the current world order, deeming it imperative to formulate international measures to combat trafficking while holding domestic governments accountable for the safety and protection of its citizens.

With the signing of the United Nations Convention against Transnational Organized Crime in Palermo, Italy, in December 2000, the international community demonstrated the political will to answer a global challenge with a global response. The purpose of the Palermo Protocol is to prevent and combat trafficking in persons between international and domestic borders to ensure the protection of human rights in cooperation with all state parties. Special emphasis is paid to the issue of trafficking in women and children due to their particularly vulnerable status in society. The Convention obliges state parties to adopt domestic legislations that criminalise trafficking by utilising a threefold mechanism including the prevention, investigation and prosecution of trafficking offences. The Protocol has established an intricate definition of trafficking that inspired the definition of trafficking adopted by the Indian Penal Code in 2013. According to the Palermo Protocol, trafficking is:

"the transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

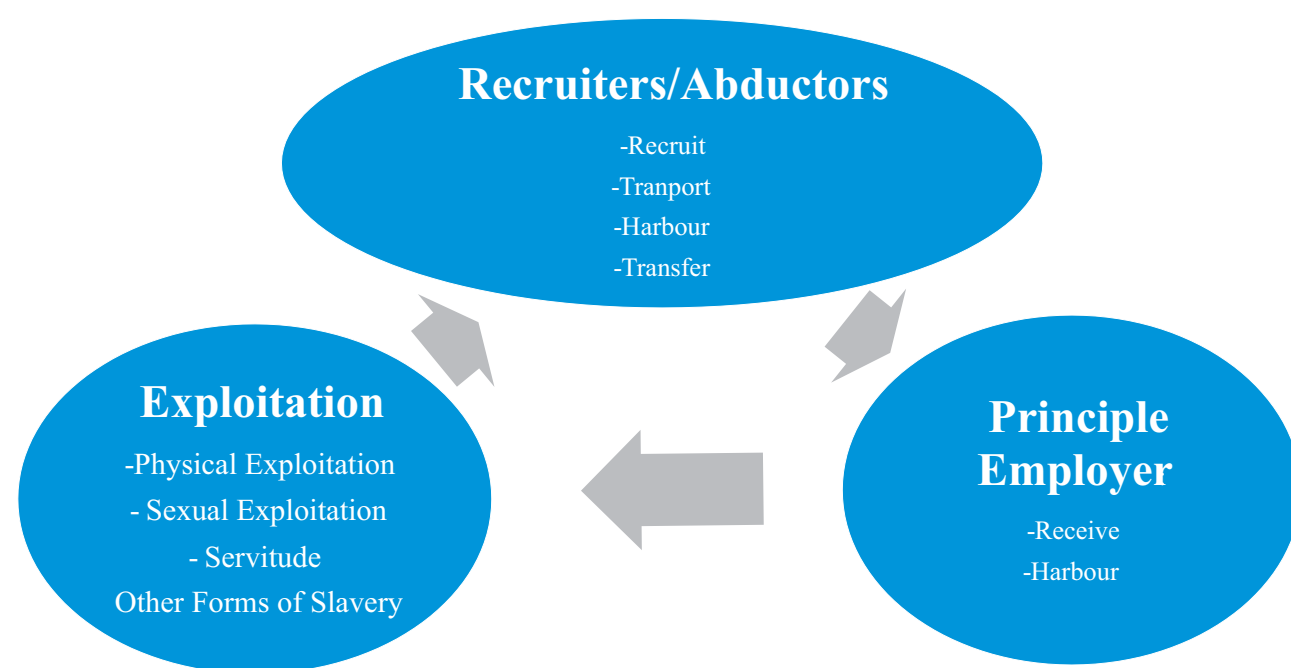
III. Domestic Law

The Indian government has committed itself to the prevention and abatement of trafficking by adopting legislations that substantiate these goals. Article 23 of the Indian Constitution bans trafficking in human beings, begar and other similar forms of forced labour. An amendment made to the Indian Penal Code in 2013 criminalises trafficking by providing an all encompassing definition of trafficking, delineated in following table: Under

Section 370 of the Indian Penal Code, trafficking is -

The act of	Through the means of	For the purpose of
Recruitment	Threat	Exploitation including, at a minimum:
Transportation	Force or coercion	Physical exploitation
Transfer	Abduction	Sexual Exploitation
Harbour	Fraud or Deception	Slavery or practices similar to slavery
Recruit of a person	The abuse of power or the positions of vulnerability	Servitude
	Inducement including giving or receiving of money or benefit.	Forced removal of organs

IV. Trafficking: A Continuing and Cyclical Offense



A. Recruiters and abductors as traffickers: Pertaining to the legal definition, trafficking begins at the point of recruitment or abduction when vulnerable individuals are removed from their immediate physical and social environments and structures, through the various means stipulated in the definition in Sec. 370 of IPC. Central to trafficking are people who pose the lowest risk and can be easily treated as commodities to be rendered profitable, reusable and resalable. Factors such as illiteracy, social discrimination, exclusion from economic welfare and deprivation of decent standards of living push individuals into deplorable vulnerability, and expendability. Recruiters and abductors systematically reach out to marginalised and vulnerable groups to prey on their desperation, luring or forcing them into migration only to put them in the hands of grave exploitation. Hence, intervention and prevention strategies should specifically target abductors and recruiters to curb criminal and exploitative activities. Licensing and registration mechanisms to assume recruiter and placement agency into the legal system can further play a preventative role in curbing illegal recruitment practices.

B. Employers as traffickers: Trafficking is a continuing offense in that there is a transfer of authority of the

trafficked person from the abductors, recruiters or placement agents to the principle employer. Principle employers who receive and harbour trafficked individuals to exact labour or other exploitative services are hence, as much involved in the crime of trafficking as the initial recruiters and abductors. In many instances, especially in the case of domestic labour, employers who have received labourers from intermediary recruiters use ignorance as a form of justification to relinquish the burden of accountability that would otherwise fall on them. In most cases of child labour employers afflict upon their workers physical, psychological and, in many instances, sexual abuse, by breaching the rights of workers and indulging in heinous practices. Interventionist mechanisms and awareness generation and training programs should be formulated to target principal employers, particularly in the informal sectors to take responsibility for their employees and hold them liable for breach of worker's rights through legal proceedings.

A trafficker could be any of the following person(s) involved in the process of trafficking:

- Recruiters
- Agents of recruiters
- Sellers of trafficked person
- Buyers of trafficked person
- Conspirators
- Financiers
- Transporters
- Abettors
- Placement Agencies
- Parents and guardians who knowingly sell/ cause to sell/ traffic their children/ ward
- People who keep custody of the victim during the act of trafficking
- Any other person who is involved in any act in the process of human trafficking
- Employers (contractors as well as principle employers).

C. Exploitation that perpetuates further trafficking: Trafficking is another face of slavery. It is the process by which slavery and slave-like conditions are imposed on vulnerable individuals. Hence, human trafficking for forced and child labour is a gross violation of human rights and worker's rights, alike. An antithesis of decent work, child labour and forced labour involves exploitation in the forms of displacement, denial of rights to self-determination or parental support, withholding of education and vocational training, physical, psychological and sexual abuse and an infringement of worker's rights. The consequences of trafficking, in the exploitations that ensue, are to the say the least, dehumanising. Moreover, grave exploitations imminently leave workers further vulnerable and susceptible to trafficking, continuing this cyclical malaise.

Types of forced Labour and Modern Day Slavery:

- Traditional forms of bonded labour
- Debt bondage and other forms of coercion
- Forced child labour
- Forced labour linked to migration
- Forced labour as a result of organised criminal trafficking

The nature of exploitation endured by trafficked labourers deserves appropriate comprehension and recourse to attain a holistic resolution to ensuing practice of trafficking. It is also imperative to extend wage and welfare incentives to empower workers in the informal sector and ensure descent standards of living. Meanwhile, institutions responsible for providing rehabilitation to forced and bonded labourers, or care and protection to child victims should be honed through monitoring and assessment, and allocation of adequate resources, financial and otherwise, to provide a holistic solution to the crime of trafficking.

Role of Parliamentarians in criminalising and penalising all forms of trafficking in persons

- **Enact criminal laws that make trafficking in persons a crime**
- **Enact criminal laws that criminalise all forms of trafficking in persons**
- **Enact criminal laws that recognise individual trafficking and organised trafficking**
- **Enact criminal laws that cover both domestic and international trafficking in persons**
- **Enact criminal laws that provide for serious penalties commensurate with the gravity of the crime**
- **Mainstream gender issues in all relevant anti-human trafficking policies, legislation and proceedings**
- **Adopt or amend existing procedural codes to reflect a human rights approach to the treatment of victim witnesses during court proceeding and to protect the security and privacy of victim witnesses**
- **Adopt or amend existing procedural codes to reflect and respond to the special needs of child victim witnesses**
- **Enact legislative, policy and other measures targeting demand for trafficking in persons, whether for sexual, labour or other forms of exploitation**
- **Enact laws that punish public officials for engaging in, facilitating or allowing trafficking in persons to take place**
- **Ensure that cases of corruption connected to trafficking in persons are investigated and prosecuted**
- **Promote broad accountability and transparency of government institutions by engaging in regular evaluations of governance, with the participation of both governmental and non-governmental actors**
- **Consult with anti-corruption ombudspersons, task forces, commissions, auditing agencies, concerned international organisations and civil society to monitor levels of corruption in the country, especially in connection with trafficking in persons.⁴²**
- **As influencers in the communities, make action against trafficking in persons a priority and a social issue.**

Chapter 6

Prevention of Child Labour

"We have to address these issues through public policies that go to the root cause of the problem: family poverty. This means, above all, three things: education, social protection, and decent work for adults...We must treat the child labour issue as a development challenge. We must help to create the conditions through which families can work their way out of poverty"

Mr. Kari Tapiola, Executive Director at the ILO
The Hague Global Child Labour Conference, 2010⁴³

Prevention of child labour requires a multidimensional approach that targets the root cause of child labour. Prevention is the long terms goal and it means establishing an overarching culture adverse to child labour. Preventing child labour requires strong child rights and child labour policy, mechanisms to identify children at potential risk, and means to keep them out of hazardous work by stopping them from becoming child labourers in the first place. This would entail establishing the link between education and child labour by fostering education values amongst parents and children. It also requires harnessing the connection between social welfare and child labour by ensuring income security and long-term social benefits, especially to the most vulnerable segments of the population. Parliamentarian should lead efforts on prevention mechanisms, as these are the most cost efficient investments in the eradication of child labour.

I. Strengthening of legislations

Strengthening legislations is the first step in preventing child labour. Child labour laws in India are extensive and cover a wide range of child labour perspectives; however various loopholes inherent in these legislations weaken their integrity. Such legislative shortcomings should be rectified to ensure that all children below the age of 18 are protected by law. The first step to ensuring child rights is to establish a uniform age for defining 'a child' that conforms to international standards and is consistent across all legislations in Indian law. According to the UNCRC, "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier" (Article 1).

Legislation specially targeting child labour should also be strengthened. Child labour legislations should incorporate a holistic policy approach that tackles the issues of child labour from the inception of the crime, namely recruitment, to the rehabilitation of the victim. Finally, entrenched in child labour laws should be stringent disincentives for the crime of employment of children and trafficking to ensure rigorous prevention.

What are the provisions to be added to the existing CLPRA, 1986?

- The prohibition of child labour till the age of 14 years and the prohibition of labour of adolescents between the ages of 14- 18 years in all forms of hazardous labour.
- The detailed provisions for Rescue and Rehabilitation of child and adolescent labourers.
- Provisions for strict laws which will create a strong legal deterrent against employing child labourer in all occupations and adolescent labourer in hazardous occupations.
- Provisions to ensure accountability enforcement mechanisms of both rescue and rehabilitation and provision for punishment of public servants who do not follow the direction of law.
- Process of Rehabilitation including education, economic rehabilitation and back wages.
- Provisions for strict laws against trafficking for child and adolescent labour
- Provisions to regulate the performance of children in audio or visual media which earns economic returns.
- Provisions for rescued children whose parents are not found or not in a position to take care of the child and the child is vulnerable to re-trafficking then the child may be rehabilitated to a Children's Home (The same is in convergence with the Juvenile Justice Care and Protection Act, 2000).

II. Improving the system of education

Access and quality of education can play a significant role in preventing child labour, hence honing of education policies is essential to carry out education priorities. Compulsory and quality education can play a significant role in eradicating child labour by reducing poverty. "Poverty forces many households to withdraw children from school and send them to work. But many children are working at least in part because education is unaffordable, inaccessible, or seen as irrelevant. Put differently, failures in education policy can increase the number of children drawn into labour markets. It follows that strategies for the eradication of child labour have to tackle the underlying source of the problem in an integrated fashion, combining more stringent enforcement of rules and incentives to combat poverty with improved education provision".⁴⁴ In the Indian context, the Right to Education Act, 2009 should guide the efforts of Parliamentarians to improve access, inclusion, equity and quality of education to all children across the country. Improving the national policy on education should be the first step to reaching the goal of universal education.

A. Improving Accessibility of Education

Improvement in accessibility of schools can be achieved by making infrastructural changes. Parliamentarians should make resources available to build more schools, particularly in the rural areas to cover the vast span of parochial communities, and second to refurbish existing buildings to make them safe and healthy for children. Transportation issues should also be considered when thinking of accessibility of education and public transportation system should be strengthened and made to be child friendly. Infrastructural and material constraints can be tackled by subsidising extra costs of education. Lowering the cost of supplementary materials such as equipment, uniforms, and teaching aids can make a difference in whether a child goes to school or not.

State and National Parliamentarians should work in coordination to push the implementation of Sarva Siksha Abhiyan Schemes by making financial, infrastructural and training resources available. Sarva Shiksha

Abhiyan is the Indian Government's flagship programme for achievement of Universalisation of Elementary Education (UEE) makes education free and compulsory for children between the age groups of 6-14. Competent cooperation between national and state government, through funds allocation and monitoring and assessment can enhance the scope and efficacy of the SSA scheme.

B. Improving the quality of education

Parliamentarians must recognise that quality of education is best ensured by improving the competency and capacity of teachers central to providing children with education that meets their holistic developmental needs. Parliamentarians should initiate public programs, in collaboration with educational institutions, NGOs and community-based organisations to provide skill development and training for teachers. This may include administrative training crucial for the efficient utilisation of state and national resources and the maintenance of records. Furthermore, Parliamentarians should perceive teachers as resourceful partners and stakeholders during policy formulation. Parliamentarians should establish systematic methods of consultations when designing curriculums and education plans to ensure the best interest of children. Teacher organisations should be utilised for targeted prevention, because educators are in direct contact with children and the community where they live and work. Keeping in mind the significant role in achieving education priorities, organisational capacity of teachers should be harnessed such that proactive efforts can be made to influence the commitment of children and parents to education. Teacher organisations should be encouraged to enhance their roles in the community by becoming involved in family support, school based nutrition and after school programs.

It is essential to improve the quality of education to make it relevant and to equip children with the appropriate knowledge and tools so they can pursue better conditions in the future. An amalgamation of theoretical education and vocational training in education curriculum provides children with range of learning opportunities that proves practical on the one hand, and also generates critical thinking and creative capacity. Generating positive and pragmatic behaviour and values through education will prevent children and parents from succumbing to economic pressures and manipulation that pushes children into child labour. Moreover, targeted approaches to seek out non-enrolled students and drop out students should be implemented to put children back to school.

C. Equity and Inclusion of Education

Education policies should ensure the inclusion of all groups and regions, especially targeting the most vulnerable and marginalised communities. Inclusion agendas should take into consideration the discrepancy in gender, social, geographic terms. In previous chapters, it is made apparent that women, tribal and certain caste communities, and people in rural areas and urban slums are generally more disadvantaged. Parliamentarians should recognise and seek to remedy this inequity by adopting specific measures to target the most vulnerable populations to enrol them into schools and maintain their retention.

Example of motivation building to encourage school attendance

Action Plan for the Abolition of Child labour in Delhi in 2010: "About 100 children from 3 to 4 wards/slums, who have never been to school, are brought together for a short term camp (3 days) to learn and draw strength from each other. They are identified during campaigns and door-to-door social mobilisation. During this process they realise that they are not alone in their struggle and they gain confidence to pressurise their parents to send them to the short-term camps. There is a need to track how the parents adjust their time in order to do the work usually done by their children while the latter are attending the camps. These evidences are later used with parents while motivating them to send their children to schools".

National and state Parliamentarians should seek to adopt similar plans to encourage child enrolment and retention into schools

III. Provisioning of Livelihood

Targeting the underlying causes of vulnerability is the key to prevention of child labour. Breaking the cycle of poverty is central to the reduction of vulnerability; however this income-centric perspective leaves out other aspects of human well being which, if neglected, also play a role in reinforcing chronic vulnerability. It is important to comprehend that the notion of well-being extends beyond economic welfare and includes other determinants as well. These include the ability to generate sustainable income, to avail education resources, to be adequately nourished, to be free from avoidable disease, to live in an environmentally clean and safe shelter, to have adequate and clean drinking water, to have clean air, to have energy to keep warm, and to cope with natural disaster. This type of all encompassing well-being can be guaranteed by ensuring a sustainable provisioning of livelihood and creating accessible social welfare mechanisms, to generate self sufficiency on the one hand, while providing support for marginalised groups.

Human beings can achieve self-sufficiency through a sustainable access to livelihoods, hence the provisioning of livelihood is integral to the empowerment of individuals. Livelihoods provide households with the means to live in good health, safety and dignity. Approaches to livelihood provisioning should seek to not only fulfil the life-saving needs of humans, but it also strengthens and diversifies the means by which livelihoods can be ensured.⁴⁵

Parliamentarians should consider the eco-system perspective when designing policies that convert natural resources into instrumental material of value. Livelihood generation policies should focus economic empowerment through the implementation of sustainable and conservationist practices and the utilisation of resources available in the eco-system. Parliamentarians can initiate community-based programs that utilise land, natural resources and respective eco-systems for the production of food, fibre, and animal products either for direct consumption or for sale. Developmental policies should pay greater attention on agricultural development to empower the rural population that relies heavily on the agriculture economy. This can limit the rural to urban migration that proves particularly noxious to displaced migrants, while also ensuring sustainable livelihood provisioning to rural communities. Policy focus on the agriculture sector can provide employment to adult members of households who may not be employed otherwise, meanwhile, the produce itself can be self-

consumed before moving to the market for sale, reinstating food security and creating a culture of self-sufficiency amongst the rural population. It is imperative for policy makers to formulate economic and social policies that mitigate the setback of the agriculture sector due to the increasing urban bias. Parliamentarians should establish public income generation programs run by local leadership to improve the conditions of the rural poor, curbing the need of alternative income that may otherwise be generated by working children.

Parliamentarians should embark upon new developmental paradigms that hold the integrity of the natural environment as the cornerstone of development practices. This is preserve natural habitats to prevent environment induced displacement and vulnerability of populations that rely heavily on their surrounding ecosystems. Development policies should develop and uphold environmental priorities and conservationist goals. A combination of market instruments that offset negative effects of globalisation, community-based conservationist projects, and awareness campaigns that propagate self-determination and self-sufficiency can equip local communities with tools for developing economic security, without the harmful effects of forced migration.

Parliamentarians should consider the following empowerment principles for rural development (The Barefoot College)

1. Knowledge, skills and wisdom found in villages should be revered and utilised for rural development
2. Sophisticated technology should be used in the agriculture sector for rural development, but it should be in the hands and in control of the poor communities so that they are not dependent or exploited.
3. A distinction between 'literacy' and 'education' should be made with a focus to institutionalise each to foster a socially and economically self-sufficient rural population. 'Literacy' is what one acquires in school, but 'education' is what one gains from family, traditions, culture, environment and personal experiences.
4. Equality of women should be enforced to mainstream the role of women in social, political, and economic activities.⁴⁶

IV. Safety Net Schemes

Parliamentarians should apply safety net instruments to mitigate economic vulnerabilities associated with child labour. Safety net instruments may include transfer programs, public employment programs, income security in old age and unemployment protection.

Safety net instruments can prevent child labour indirectly by extending economic security to vulnerable individuals, and directly by encouraging healthy practices adverse to child labour. Parliamentarians can consider options such as Cash and In-kind Transfers with supplementing behavioural conditions that requires the fulfilment of certain obligations to qualify for said schemes. Behaviour conditions may include obligating parents to provide their children with education and avail health care benefits for members of their families. These schemes should therefore particularly target households with children in order to directly impact potential child labour families. Meanwhile, Unconditional Cash Transfer schemes that may not require behavioural qualifications can also be useful as a tool for addressing the overall vulnerability of households by providing child support grants, family allowances, need-based social assistance and social pensions.⁴⁷

Parliamentarians can incorporate child-friendly In-Kind Transfer mechanisms into safety net policies. In-Kind Transfers can directly abate child labour by increasing the accessibility of education that is ideal for preventing child labour. This can be done by allocating school vouchers and providing food for education programs as a part of In-Kind Transfer programs. Endowment of school vouchers encourages children to attend school by covering the cost of education at public or private institutions. Meanwhile, food for education programs like in-school meals and take-home rations fulfil their basic sustenance needs and act as incentive to sustain their retention in schools.⁴⁸ Parliamentarians should understand that while incorporating such programs into policies is the first step, the onus of resourcing these schemes also falls upon them as they make practical and child-friendly decisions in regards to budget allocation.

Parliamentarians should increase institutional support and financial resources to strengthen unemployment and disability protection aspects of safety-net policies, and improve food and health security policies to make them more inclusive and adequately funded. Through these measures Parliamentarians can significantly improve the scope of safety net policies to ensure social welfare and consequently abate child labour.

V. Robust Labour Inspectorate

Stringent and systematic inspections in the formal and informal sector and subsequent actions on non-compliant parties pressures employers to adhere to labour laws. The role of the labour inspector is central to effective inspection to identify child labour practices. The responsibility of inspectors is to ensure that labour laws are followed by employers through a scrutinised analysis of a workplace. Creating a strong and consistent regime for inspections with assured penalisation can act as a significant preventative to child labour. The role of Parliamentarians is to first, adopt legislations that regulate all areas of the formal and informal sectors, and explicitly stipulate the powers of the Labour Department, including its role in inspecting each economic sector. Secondly, Parliamentarians should pursue the formulation of an overarching policy on the labour inspections to establish a strategic framework for a robust inspectorate. Such a policy should initiate a range of procedural legislations to guide qualitative inspection and formulate a "way forward" approach to hone existing procedures and incorporate new methods by following international examples and national innovation.

VI. Engaging the Private Sector

Parliamentarians and other stakeholders should recognise the role and responsibility of businesses in promoting the wellbeing of all its employees. This responsibility extends to all categories of employees and extends beyond the boundaries of physical establishments, covering contractors, sub-contractors, home based work, etc. Hence, businesses should be held liable for the use of child labour and be subjected to appropriate repercussions.

Apart from regulation of corporate conduct, Parliamentarians can benefit from engaging the corporate sector in policies child labour related policies formulation. Parliamentarians should establish platforms to open dialogue with the corporate sector to understand the nature of the various existing economic industries, and the patterns of employer-employee relationships. Such communication can help identify and map employment risks. Engaging the corporate sector can help develop market instruments for the abatement of child labour. Such policy instruments can give businesses an incentive to adopt ethical principles in their structural and procedural policies to promote responsible behaviour.

VII. Child Participation

Recommendation 190 associated with ILO Convention No. 182 states: “The programmes of action referred to ... in the Convention should be designed and implemented ... in consultation ... taking into consideration the views of the children directly affected by the worst forms of child labour ...”. Children should be perceived as significant stakeholders of child labour eradication framework and should be consulted during policy formulation. Parliamentarians should engage with children groups and encourage their participation when designing and implementing programmes dealing with child labour intervention, prevention and rehabilitation. Parliamentarians can guide meaningful participation by children by establishing interactive programs that are based on child friendly techniques and initiating campaigns and community mobilisation endeavours.⁴⁹

VIII. Inter-Agency Cooperation

Inter-agency cooperation allows the establishment of a culture of prevention by concerting multi-dimensional efforts that pursue unified goals like the elimination of child labour. Cooperation should be ensured vertically between different levels of stakeholders which may include politicians, local governments, law enforcement agencies and civil society organisations etc. Specifically, close relationships between labour inspectors, employer organisations, industry groups, trade unions, as well as technical, scientific and medical experts should be harnessed to promote a flow of dialogue and create a culture of interdependence in tackling labour issues. This type of collaborations results in agreements on standards and action programs. Horizontal alignment of priorities should also be established between specialised agencies working for specific issues, for instance, between the ministry of education, health and social affairs to achieve consistent and concerted results. Inter-agency cooperation paves a foundation for prevention by which unified efforts tackle salient issues like child labour. Moreover, it allows for the effective exposure of law evading parties and attains appropriate recourse for victims from resources made available by relevant agencies.

Parliamentarians should encourage coordination between

Ministries

Coordinate with the Ministry of education, health and social affairs, whose mission is to protect the safety and welfare of the public at large, and of children in particular.

Know about the policies, priorities and structures of the social welfare and education authorities

Know about the support program for children removed from work eg. special schools, non formal education, vocational education, skill training for children and economic assistance programs for parents.

Local Authorities

Maintain cooperation with local authorities who can help locate the establishments employing children to facilitate an ease of access by labor inspectors.

Cooperate with police during inspections

Employer and Workers Organizations

Understand the fundamental role of organized employers and trade unions and other concerted efforts like national steering committees working on combating child labor.

Establish good working relations with such organizations to attain assistance and support on necessary agenda

Negotiate with local employers and local trade unions to achieve consensus on special issues

The inspector should be actively involved in concerted efforts to combat child labor-sharing what they know and identifying how they can work collaboratively with other parties involved.

NGOs

Work with NGOs as these groups are often well placed to identify instances of abuse.

Be acquainted with victim support programs run by NGOs and connect rescued children to with institutional and non-institutional forms of rehabilitation and other forms of support.

Other Agencies/Institutions concerned with the eradication of child labor

The Central Government (Ministry of Labour)

The State Government (Labor Department, Factory Department)

Child labor Technical Advisory Committee

Trade Unions

Voluntary and non-governmental organizations engaged in the task of elimination of child labor
parents

media

society in general

police authorities

magistracy

IX. Fighting corruption and targeting public persons

Child labour practices thrive in a major part due to the complicit action of public officials. It is also accredited to inefficient framework for government accountability and the cost benefits for individual public officials due to a lack of transparency, inadequate oversight, weak enforcement, and ineffective electoral systems. In terms of child labour, it has been reported that labour department officials and police frequently collude with law evading employers and traffickers for self-serving profits. Moreover, corruption through diversion of public spending and leakage of funds hampers the delivery of public services such as health care and education that are integral forces in child labour prevention.

Parliamentarians can play a role in curbing corruption by formulating legislative framework dealing with child labour that promote integrity amongst public officials by preventing, detecting and rigorously punishing public officials. This can be done by initiating government run auditing programs in collaboration with civil society organisation to identify and deter corruption activity within law enforcement agencies.

Chapter 7

Interventionist Strategies for the Eradication of Child Labour

“Child labour is both and consequence of poverty and social exclusion and education is a vital intervention in preventing child labour and providing vital support service to children withdrawn from exploitation.”

Kailash Satyarthi, Chairpeson Global March Against Child Labour⁵⁰

Strategies to eliminate child labour include the mitigation of existing cases of child labour through interventionist measures. Interventionist strategies comprises of a range of intricate processes, central to which is the removal of children from all forms of child labour. Such strategies require interdependence and coordination between various agencies namely the police, the labour department, the SDM, the CWC, other law enforcement departments, legal services, institutional authorities responsible for the care and protection of children and relevant NGOs and civil society groups. Parliamentarians should, first and for most, empower each of these agencies through financial resources, non-financial incentives, work force, volunteer recruitment processes, issue-specific training programs and technical support to ensure an efficient institutional structure that allows each agency to fulfil their responsibilities to efficacy. Through legislative action, Parliamentarians should further focus on strengthening communication mechanisms through well-functioning databases and institutionalise alignment of agenda and efforts.

Central to all interventionist strategies is a victim-centric approach that upholds the best interest of child victims throughout the process of intervention. A victim-centric approach in regards to child labour interventions is founded on the belief that it is the employer who is violating the law, not the child, therefore the child should be endowed with the utmost care and protection, and looked upon as a partner in exploring particular situations of the crime. Child victims may come from different social, cultural and ethnic backgrounds and subjected to a range of exploitation and abuse. To tackle this heterogeneity, agents interacting with children during intervention procedures should be trained persons empathetic and compassionate to fragile condition. Throughout the process of intervention, creating a comfortable atmosphere is integral not only to attain relevant information for legal purposes, but also providing children with the appropriate help and resources for their healthy rehabilitation and reintegration into society. Parliamentarians should seek to institutionalise the victim-centric approach by entrenching this notion in child labour related policies and legislations and initiating training programs for all

agencies participating in intervention procedures to sensitise them to the multi-dimensional needs of children and train them to efficiently carry out their responsibility.

NCPRC recommendation on training should be carried out: "youth volunteers, gram panchayats, school teachers, officers of labour department and so on must all be given training about child labour and their respective roles in abolition of child labour. Training modules are to be prepared on the issue of child labour and education. All the participants must have a legal literacy and have a full knowledge of children's rights and their entitlements, the role of various departments, and awareness of the schemes and programs meant for children. Trainings for Social Mobilisers at village level and block level officers must be designed and conducted by the National Labour Institutions".⁵¹

I. Withdrawal

Withdrawal is a form of interventionist strategy to remove children from hazardous labour. Through legislative action, Parliamentarians should institutionalise the method of withdrawal into child labour eradication policy framework. The strategy includes a three prong approach that includes the identification of children who are employed in hazardous work, the removal of these children from the work place, and finally, enrolling these children into school or skills training. This is done by establishing a community based integrated method of initiating dialogue with parents, children and employers to encourage children to go to school instead of participating in the labour force. Education is hence central to the strategy of withdrawal.

A) Identification

Identification of children employed in hazardous work is the first step to withdrawal. Parliamentarians should strengthen education policy and formulate action plans on child labour prevention that stipulates systematic procedures of withdrawal that are parochially targeted and hold education institutions as central to the process. A strong way to achieve efficient identification is to adopt an "area-based approach" that maps out the demographic of children in a specific area and determines whether these children are in school or out of school. This can be done by engaging with education institutions and community groups that maintain records on details of children in their communities. Moreover, educational institutions should take proactive steps to monitor enrolled children so they do not drop out and join the labour force.⁵²

Meanwhile trafficking cases can be identified by reaching out to areas that see a heavy movement of trafficking children. These may include transport areas including railway and bus station, shipping docks, etc. Mapping the flow of children and determining their status can help identify cases of children being trafficked for child labour. Parliamentarians should make human and financial resources available to carry out targeted identification of children for their subsequent withdrawal from child labour.

B) Targeting out of school children

After identification, out-of school children, their parents and employers are involved in the process of removing them from hazardous labour. Community based groups and NGOs are integral to this process. Activists and social workers in community organizations reach out to parents to persuade them to remove children from labour by telling them the benefits of education and the ill-effects of child labour. Activists approach employers that are

under suspicion of child labour to raise awareness about the possible legal repercussions of employing children for labour and to sway them into adopting responsible labour practices. Meanwhile, students groups functioning from schools and civil society organise to spawn student activists and student leaders to persuade existing child labourers to leave their employments.

C). Educational Intervention

Education is central to the process of withdrawal in that connecting children to some form of educational institution is the ultimate goal. Therefore, out of school children and those involved in the labour force, before joining the formal education system, are first put in transitional education centres or bridge courses that provide them with basic knowledge and skills to built their confidence and motivate them to enrol in full time schools. This multi-dimensional approach has proven vital in removing children from child labour.

II. Rescue

Rescue procedure is a widely used interventionist strategy that removes children from child labour, especially the worst forms of child labour. The purpose of rescue is not only to reinstate the fundamental rights of children, but also to efficiently prosecute crimes of child labour to deter further law evasion. This twofold perspective requires those participating in the rescue process to be mindful of child victims, while thoroughly collecting evidence to be used for prosecution.

A) Intelligence collection & Investigation

The first step to rescuing children from child labour, especially forced and bonded labour is to collect intelligence for the identification of the various centres where child labour is taking place. There are various methods that can be used for the collection of intelligence, namely the inspections by the labour department, decoy operations, and informant knowledge.

Sharing of intelligence is essential in formulating appropriate rescue strategies. Sharing intelligence may include indentifying and communicating linkages of crime and criminals within jurisdiction or inter-state and international boundaries with concerned law enforcement authority.

Investigation is a linked and another integral part of the rescuing procedure. The information collected through investigations is crucial in seeking appropriate judicial recourse for crimes of child labour. Efficiency in investigation reveals significant information to determine the degree and nature of the crime committed. Investigation also reveals the extent of harm done to child during and prior to employment, which is necessary to link child victims to appropriate types of rehabilitation.

B) Rescue

Once the identification process is complete, a plan of action is prepared and operationalised to facilitate the safe rescue of children. The rescue process requires communication and complex interdependence between efforts of various agencies. It is essential that Parliamentarians guide legislations that formulate procedural guidelines for rescue processes and mechanisms for monitoring the efforts of each agency to hold public officials liable in cases of non-compliance of guidelines.

United Nations Office for Drugs and Crime in collaboration with Bachpan Bachao Andolan has issued a Standard Operating Procedure for the Investigation of Crimes of Trafficking for Forced Labor. The SOP has laid out step by step procedural guidelines to carry out rescuing of children from forced labor. Parliamentarians should institutionalize the document and make sure that the SOP is strictly adhered to during the rescue, investigation, prosecution and restoration of victims of child labor.

III. Prosecution

A successful rescue intervention is followed by appropriate prosecution, the first step of which is the drafting of FIR. Drafting of FIR is also the first point where laws are invoked to criminalise law-evading practices. Parliamentarians should establish monitoring mechanisms to ensure that law enforcement agencies are adequately fulfilling their role in terms of drafting rigorous FIRs.

Lack of judicial recourse limits the integrity of rescue intervention; therefore prosecution of crime is integral to the intervention process. The role of Parliamentarians is to create a strong judicial regime by empowering public and grassroots legal institutions to take up child labour cases. Moreover, public programs should be initiated to recruit paralegal volunteers to assist law enforcement agencies on legal matters that can guide child labour prosecutions to fruition.

IV. Hitting the Economics

Economics of cheap labour is the eminent factor that entraps children into forced labour; hence, hitting the economics of child labour is imperative in establishing efficient disincentive for employers. This is done through the cancellation of licenses and sealing of factories/establishments and confiscation of property. Initiating procedures for recovering back wages earned by children during their employment can serve as a disincentive for the employer and act as a rehabilitative measure for the victim. Targeting the economic aspect of child labour is ideal for the deterrence of future child labour practices; hence Parliamentarians should consider strengthening legislations to pose stronger disincentives to make it unprofitable for employers to exact labour from children.

V. Care and Protection of Victims

Children rescued from forced employment are in all cases presumed to be victims of exploitation, and are hence in need of care and protection. The process of child labour intervention would be incomplete without connecting rescued children with the appropriate support necessary to remedy the trauma inflicted on their young minds and bodies. Care and Protection can be guaranteed through legislative efforts that delineate and empower the role of various agencies involved in the victims' assistance programs. Meanwhile, well-resourced schemes founded on strong rehabilitation policies play a vital role in helping victims recover from traumatic experiences.

A) Restoration

Restoration is the process of repatriating a child victim back to the care of his/ her parents or guardians. However, before restoring the child to the parents, adopted parents or foster parents, Child Welfare Committee is responsible for conducting thorough home verification to ensure that the child is given adequate opportunity for physical,

mental and social development so that s/he does not fall back into patterns of child labour and trafficking. The rescued child meanwhile is placed in a "children's home" that acts as a temporary shelter during the pendency of inquiry and verification, before the s/he is repatriated back to his/ her parents.

B) Rehabilitation

When children are rescued from child labour, they emerge from traumatic conditions, and are thus in need of rehabilitation to reinstate their physical, psychological and social health. The physical abuse suffered by children have long term health ramifications, meanwhile the traumatic impressions engraved in their memory harrow their mental and emotional stability. The state in coordination with civil society and non-governmental groups is responsible for establishing means by which adequate and appropriate rehabilitation is endowed to rescued children.

List of Rehabilitation Activities for Rescued Child laborers:

- Health care and psychological support or counseling, particularly for those who have been exposed to traumatic situations;
- Legal aid and protection for children threatened with reprisals.
- Non formal or basic education to bring older children up to grade level so that they can successfully enter or re-enter regular schools;
- Facilitating entry directly to regular schools for younger children, including provision of school supplies, and occasionally stipends, or scholarships to offset costs of schooling.
- Vocational training for older children
- Economic support and income substitution for child labour victims and their families.
- Institutional care in cases where children are not repatriated to their families.

The role of parliamentarians is to understand the value and necessity of rehabilitation and to ensure that these schemes are well resourced and readily available for all working children that are rescued. It is imperative that adequate proportion of budget is allocated for the sustenance of these schemes and infrastructural support and other resources are provided for special schools and other civil society organisation working to supply rehabilitation. Mechanisms should be established to map those children in need of care and protection to ensure that the most vulnerable children are reached out to. Targeted rehabilitation should be extended not only children rescued from processes and occupations stipulated in the Child Labour Prohibition and Regulation Act, but also to children withdrawn from any work that may prove detrimental to their well-being.

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