



A Comparative Analysis of the Existing Legal Framework of Sri Lanka with Regard to the Elimination of Child Labour in Comparison to the South Asian Jurisdictions of Nepal and Bangladesh

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Abstract

The primary objective of this research is to conduct a comparative analysis concerning the existing legal framework of Sri Lanka with regards to the elimination of child labour comparing to two other selected South Asian jurisdictions of Nepal and Bangladesh. From a legal perspective, this comparative study highlights the legal background of child labour in comparison to two other selected jurisdictions in order to find out whether the existing legal framework with regards to child labour is sufficient in addressing the presently existing child labour issues in Sri Lanka, Nepal and Bangladesh and the ways in which such child labour legislations could be improved in order to protect the children's rights. Thereby, the researcher scrutinizes the current legislative backgrounds of each of the aforesaid jurisdictions and further concerns the impact of COVID-19 towards the issues that emerged under the legalities regarding child labour. Furthermore, this research seeks to answer the existing research gaps due to the reluctance of legal academics to address this particular research area of social injustice except a few. This legal study is expedient since there is a lack of many research studies conducted by the Lankan and other Asian foreign researchers except a few and it would further address the loopholes existing in each of the aforesaid jurisdictions towards addressing the loopholes under child labour legislation. The primary research objective of this study is to examine the means and method child labour and suggest legal and civil standards to eliminate it.

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To fulfil the primary objective, the researcher mainly used a comparative legal study by comparing two other South Asian Jurisdictions namely Bangladesh and Nepal. The researcher follows a blend of qualitative and quantitative research paradigms of socio-legal research. As per the primary sources, the researcher utilizes Sri Lankan and selected Asian legislative instruments, local and foreign case laws, and statutes. As per secondary sources, the research has utilized books, law journals, newspaper articles, conference papers, and quotations of renowned judges, philosophers, and legal academics, and as per tertiary sources, the researcher has utilized credible and relevant e-journals and websites such as Emerald, Westlaw, LexisNexis, Google Scholars and JSTOR etc.. In undertaking this doctrinal legal research, the researcher has followed the black letter doctrinal research methodology focusing upon the letter of law rather than the law of action where the researcher focuses upon a detailed and descriptive analysis of the legal rules available in primary sources such as cases, statutes, and regulations etc. At last, the researcher undertakes revelational epistemology as the philosophical foundation of gathering new knowledge throughout the research by justifying the above-mentioned primary, secondary and tertiary data collection methods. The research findings and specific recommendations of the research shall be discussed in depth within the body of the research.

Keywords: *Child Labour, elimination of child labour, labour legislation on child labour, COVID-19 Impact on child labour, social injustice.*

Introduction

Child labour could be defined as jobs assigned to children causing depreciation and harmful impacts on their physical, mental, social, psychological, moral and ethical aspects interfering negatively with their well-being and education.¹ Even though Sri Lankan government has implemented a legal framework to eliminate child labour, the presence of child labour including child trafficking, convictions for illegal offences,

¹ A Sarveswaran, 'Review on the Existing Legal Instruments on Child Labour in Domestic Work in Sri Lanka' [2016], ILO Country office for Sri Lanka and Maldives, p 3.

deprivation of education, exposure to incurable and contagious diseases, deprivation of child rights, and engagement in illegal trades are still evident around the country.² There are international and national measures towards protecting children from child labour. The United Nations (UN) and International Labour Organization (ILO) have constructed many international conventions.³ These international conventions are being ratified by Sri Lanka along with many other Asian jurisdictions like Nepal and Bangladesh. Despite the existing framework to eliminate child labour, local legislations of Sri Lanka, Nepal and Bangladesh provides provisions and age limits at which children are permitted to work, however compelling to forcibly work is not allowed and considered illegal to deny children's right to education and limiting their chances of achieving good literacy to achieve favorable standards of future employments would take place.⁴

The existing Sri Lankan legislative framework, gaps, and recommendations

Sri Lanka has ratified fundamental international conventions including ILO C 138⁵ concerning minimum age of employment, ILO C 182⁶ concerning worst forms of child labour, ICCPR⁷, Convention on the Rights of the Child.⁸ Thus, National legislation has been enacted incorporating the provisions of the aforesaid conventions namely: National Human Resources and Employment Policy for Sri Lanka⁹, Shop and Office Employees (Amendment) Act¹⁰, Employment of Women, Young Persons,

² International Domestic Workers Federation and International Labour Organization, 'Tackling child labour indomestic work: a Handbook for action for domestic workers and their organizations' (1st Publication, Publications of the International Labour Office, 2017) 50.

³ G Betcherman, J Fares, A Luinstra and R Prouty 'Child Labour, Education, and Children's Rights' The World Bank, Social Protection Discussion Paper Series [2004] <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_090161.pdf> Accessed date- 25/10/2022.

⁴ Ibid.

⁵ ILO Minimum Age Convention (C 138).

⁶ ILO Worst Forms of Child Labour Convention 1999 (C 182).

⁷ International Covenant on Civil and Political Rights (ICCPR).

⁸ Convention on the Rights of the Child.

⁹ National Human Resources and Employment Policy for Sri Lanka.

¹⁰ Shop and Office Employees (Regulation of Employment and Remuneration) (Amendment) Act, No.01 2021.

and Children (Amendment) Act¹¹, Minimum Wages (Indian Labour) (Amendment) Act¹², Factories Ordinance (Amendment) Act¹³ and Amendments in 2021 by the four Bills on 5th January 2021.¹⁴

As per the Sri Lankan Charter on Rights of the Child, it's the state's duty in protecting children from exploitations and abuses due to economic needs and performing hazardous work by children negatively affects their education, and to protect children from any occupations of such which would cause harm towards children's best interests of health physically, mentally, spiritually, morally, and socially without causing any hindrances.¹⁵ Consequentially, The National Human Resources and Employment policy for Sri Lanka provides declarations upon hazardous kinds of child labour determining that; Hazardous activities related to child labour and worst forms of child labour shall be eliminated through awareness programs, provision of legal education towards such trades of child labour and government approach towards multi-disciplinary coordination with employers, organizations of workers and Civil society organizations.¹⁶

Irrespective of Sri Lankan stern legislation towards child labour prevention, it is unfortunate that child labour is present in society even today as per the statistics of the National Child Protection Authority.¹⁷ However, incidences of internal child trafficking are unreported or cannot be proven under court proceedings due to the presence of parental consent.¹⁸ Nevertheless, the Penal Code of Sri Lanka prohibits children being employed under eighteen years of age in slavery, child

¹¹ Employment of Women, Young Persons, and Children (Amendment) Act, No.02 of 2021, Minimum Wages (Indian Labour) (Amendment) Act No.03 of 2021.

¹² Minimum Wages (Indian Labour) (Amendment) Act No.03 2021.

¹³ Factories Ordinance (Amendment) Act No.04 2021.

¹⁴ Bills in Parliament on 5th January 2021.

¹⁵ Convention on the Rights of the Child 1991.

¹⁶ National Human Resources and Employment Policy (NHREP).

¹⁷ Available at- <http://www.childprotection.gov.lk/Accessed on- 25/10/2022>. EMYG Ekanayaka, 'Profile of child labour in Sri Lanka' [2018] International Journal of Business, Economics and Law, (17) 14 <<https://www.ijbel.com/wp-content/uploads/2019/01/LAW-134.pdf>> Accessed date- 22/10/2022.

¹⁸ A Sarveswaran, 'An Evaluation of Sri Lankan Labour Standards in the light of the Core Conventions of the International Labour Organisation' [2010] Research Paper <<http://archive.cmb.ac.lk:8080/research/handle/70130/178>> Accessed date-25/10/2022.

prostitution, forced labour, producing pornography and engaging children for illegal activities.¹⁹ Violations of the above provisions shall empower the Sri Lankan Department of Police to prosecute such criminal offenders under Sections 286 A²⁰, 288 B²¹, 358 A²², 360 A²³, 360 C²⁴ and 363²⁵ of the Penal Code respectively. Sri Lanka also ratified the Optional Protocol on Involvement of Children in Armed Conflicts.²⁶ However, the involvement of child soldiers in the Ethnic War of Sri Lanka shows the ineffective and impartial nature of practically applying the aforesaid Optional Protocol.²⁷

Moreover, Sri Lankan Government has taken measures to prevent children being employed as domestic workers. Accordingly, the enactment of the Prevention of Domestic Violence Act²⁸ and 2010 Extra Ordinary Gazette Publication of EWYCA Section 20(A) determined 51 categories of hazardous employment and obstruct individuals who are below the age of eighteen years from engaging in such works.²⁹ However, there are contradictions concerning definitions under the labour legislation.³⁰ Therefore, to uphold child domestic workers' rights, the term 'relevant person' under the above laws and regulations should be amended to

¹⁹ Penal Code (Amendment) No 16 2006.

²⁰ Ibid Section 286 A.

²¹ Ibid 288 B.

²² Ibid 358 A.

²³ Ibid 360 A.

²⁴ Ibid 360 C.

²⁵ Penal Code 363.

²⁶ Optional Protocol on Involvement of Children in Armed Conflicts [2000].

²⁷ SWE Goonesekere, S Goonesekere and International Labour Office, *Child Labour in Sri Lanka: Learning from the Past* (Illustrated, International Labour Organization, 1993) 67.

Watch List on children and armed conflict, 'Children affected by Armed Conflict in Sri Lanka: Recommendations to the Security Council Working Group' [2010] Coalition to stop the use of child soldiers-<http://www.refworld.org/pdfid/4b828b122.pdf>-Accessed date-23/10/2022. 90% of the children in North and East participated as child soldiers where their education rights and having best interests of childhood were violated grievously.

²⁸ Prevention of Domestic Violence Act No 34 2005.

²⁹ Extra Ordinary Gazette Publication of EWYCA No. 1667/41, Section 20(A). - Nevertheless, this gazette publication could be argued since it contradicts with certain labour law provisions. In fact, domestic family-oriented employments such as deep-sea fishing which shall be prohibited by this Gazette where it could also be signified as a family employment and children who involves in cutting tobacco leaves shall be restricted whereas it is listed to be an agricultural employment of non- hazardous nature.

³⁰ Department of Child Labour, 'Sri Lanka towards eliminating Child Labour' [2021] Report <http://www.labourdept.gov.lk/index.php?option=com_content&view=article&id=366&Itemid=101&lang=en#:~:text=The%20government%20of%20Sri%20Lanka,welfare%20and%20development%20of%20children.> Accessed date-28/10/2022.

cover child domestic workers to the same domain whereby Sri Lankan Magistrate Courts would be able to provide protection, maintenance, and counseling towards aggrieved parties from such circumstances.³¹

The child Activity Survey 2016³² estimated that 90.15% of Sri Lankan children of age gap 5-17 years were attending school, 9.9% were not attending school and the majority of children engaged in both household and economic activities. Children with the age gap of 15-17 years is mostly in the urban sector with 72% participating solely in domestic or economic activities without attending school. The survey further declared that most children engaged in unskilled jobs and work in enterprises without receiving payments. Thus, apart from having various statutory instruments in protecting child labour issues, exclusive monitoring systems should be improved and introduced as Sri Lankan child labour eradication mechanisms.³³

Furthermore, Sri Lanka has established a separate juvenile court system to adjudicate child-related matters. Thereby, establishing provision of privacy protection towards sensitive data concerning evidence and parties who corporate in such child labour issues would reduce the reluctance in participation of the public community towards juvenile matters where they would sufficiently disclose relevant evidence without facing privacy concerns.³⁴A gap in the existing legal framework is the absence of an exclusive set of legal provisions pertaining to cruelty faced due to child labour. However, the Department of Police is empowered to report such incidents under grievous hurt as stipulated in the Penal Code Sections of 314³⁵, 315³⁶ and 316³⁷. Thus, implementing such legislative

³¹ Ibid.

³² Child Activity Survey 2016.

³³ Ibid.

³⁴ EMYG Ekanayaka, 'Profile of child labour in Sri Lanka' [2018] International Journal of Business, Economics and Law, (17) 14 <<https://www.ijbel.com/wp-content/uploads/2019/01/LAW-134.pdf>> Accessed date- 25/10/2022.

³⁵ Penal Code (Amendment) No,16 of 2006, Section 314.

³⁶ Ibid Section 315.

³⁷ Ibid Section 316.

provisions directly depends on the perseverance of officers who are in charge of such cases.³⁸

In adhering to provisions of ILO C 138, Sri Lanka has increased the minimum age of employment from fourteen to sixteen years.³⁹ Furthermore, the minimum age of employment in Sri Lanka tallies with the age which children complete their compulsory schooling as required under Article 1⁴⁰ of ILO C 138.⁴¹ Consequently, the definition of a young person was amended as an individual who is between sixteen to eighteen years of age.⁴² Moreover, considering prevailing issues of child labour, the definition of a child was amended to include individuals below sixteen years as children through the passing of four Bills on the 5th of January 2021 which revised the existing laws and regulations.⁴³

When elaborating those amendments; Section 10⁴⁴ of the Shop and Office Employees Act was amended by Clause 2 of the Bill⁴⁵ increasing the minimum employable age from fourteen years to sixteen years. Section 34⁴⁶ of EWYCA was amended by Clause 7⁴⁷ of the Bill where a young person was defined as an individual from sixteen to eighteen years of age and defined a child as an individual under the age of sixteen years and increased the age of attending elementary school to sixteen years. Consequently, Section 3⁴⁸, Section 9⁴⁹ and Section 20⁵⁰ of the EWYCA to be amended upon new definitions of a child and young person derived from the Bill.

³⁸ Penal Code (Amendment) Act No. 22 1995.

³⁹ ILO C 138.

⁴⁰ *Ibid*, Article 1.

⁴¹ ILO C 138- states that Member States should undertake child labour abolition mechanisms raising minimum age of employment progressively to a consistent level by providing maximum mental and physical development of young persons.

⁴² *Ibid*.

⁴³ Bills in Parliament on 5th January 2021.

⁴⁴ Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 1954, Article 10.

⁴⁵ Bill in Parliament on 5th January 2021, Clause 2.

⁴⁶ Employment of Women, Young Persons, and Children Act (EWYCA) No.47 1956, Section 34.

⁴⁷ Bill in Parliament on 5th January 2021, Clause 7.

⁴⁸ Employment of Women, Young persons, and Children (Amendment) Act, No.02 of 2021, Section 3.

⁴⁹ *Ibid* Section 9.

⁵⁰ *Ibid* Section 20.

Considering amendments of Factories Ordinance; Section 127⁵¹ was amended by Clause 7⁵² of the Bill by increasing minimum employable age to sixteen years, Sections 66⁵³, 78⁵⁴ and 86⁵⁵ specified a young person to be an individual who has not attended eighteen years of age. As per working hours, Section 67(b)⁵⁶ was amended by Clause 2⁵⁷ of the Bill stating the employment period per day of a young person shall not exceed 12 hours on any day of the week between 6am to 8 pm and working hours shall end by 1pm one day a week.

Amendments of Minimum Wages Ordinance, Clause 2⁵⁸ of the Bill amended Section 4⁵⁹ increasing the employable age to sixteen years whereas; Section 18⁶⁰ was amended by Clause 4⁶¹ of the Bill increasing the employable age of female labour to sixteen years considering payment of minimum wages rates. Nevertheless, children however not being prevented or exempted from associating with agriculture-related family businesses, any charity-related business work, or of educational importance where the child can participate in such businesses prior to or after school's commencement.⁶² Thereby, it should be recommended in revising and amending the present Sri Lankan child labour legislation with the aim of persuading children's best interests and eliminating the loopholes.⁶³

⁵¹ Factories Ordinance (Chapter 128) No. 45 1942, Section 127.

⁵² Bill in Parliament on 5th January 2021, Clause 7.

⁵³ Factories Ordinance (Chapter 128) No. 4 1942, Section 66.

⁵⁴ *Ibid* Section 78.

⁵⁵ *Ibid* Section 86.

⁵⁶ Factories Ordinance (Chapter 128) No. 45 1942, Section 67(b).

⁵⁷ Bill in Parliament on 5th January 2021, Clause 2.

⁵⁸ Bill in Parliament on 5th January 2021, Clause 2.

⁵⁹ Minimum Wages (Indian Labour) Ordinance No.27 1927, Section 4.

⁶⁰ *Ibid* Section 18.

⁶¹ Bill in Parliament on 5th January 2021, Clause 4.

⁶² EMYG Ekanayaka, 'Profile of child labour in Sri Lanka' [2018] International Journal of Business, Economics and Law, (17) 14<<https://www.ijbel.com/wp-content/uploads/2019/01/LAW-134.pdf>> Accessed date- 25/10/2022.

⁶³ A Sarveswaran, 'Review on the Existing Legal Instruments on Child Labour in Domestic Work in Sri Lanka' [2016], ILO Country office for Sri Lanka and Maldives, p 3.

Although Sri Lankan child labour surveys give comparatively low rates of child labour, there are many cases which are unreported within the corporate sector upon child labour. These conditions take place since the Sri Lankan public has insufficient knowledge of child labour legislation and reluctance of the public in complaining about these sensitive issues concerning them to be violations of child labour rights by seeking necessary legal protection.⁶⁴ Thereby, it could be critically analyzed that, though Sri Lanka has ratified international conventions upon child labour by amending prevailing Sri Lankan Legislative provisions, still there prevails inconsistencies and loopholes in legislation towards implementing such child labour legislations.⁶⁵

The existing Nepal legislative framework, gaps, and recommendations

As per Nepal's national legislation, child labour includes individuals from five to seventeen years of age engaging in a single or a variety of occupations during a specific period of time; children of age five to thirteen years working a minimum of one hour at work, children aged fourteen to seventeen years working a minimum of 36 hours within a week, children who participate in hazardous occupations upon the hazardous work list and children who work in night shifts.⁶⁶ In the year 1990, Nepal Constitution protected children's rights and their interests in ensuring they are not to be exploited and abused.⁶⁷ Thus, Article

⁶⁴ S Khan and S Lyon, 'Measuring Children's Work in South Asia' [2015] International Labour Organization (ILO) and Understanding Children's Work (UCW) <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_359371.pdf> Accessed date- 26/10/2022.

⁶⁵ S Priyadharsan and AM Channa, 'Influence of Credit Rationing on Child Labour in Poor Household in Sri Lanka' [2019] Trincomalee Campus, Eastern University, Report <https://www.researchgate.net/publication/335740334_Influence_of_Credit_Rationing_on_Child_Labour_in_Poor_Household_in_Sri_Lanka_Special_Reference_to_Hulandawa_Estate_in_Matara_District?enrichId=rgreq-2703f3740e87670c510839bf5f019c0e-XXX&enrichSource=Y292ZjZlQWVldlOzMzNTc0MDMzNDtBUzo4MDE4NzEzMdAxNTc0NDFAMTU2ODE5MjQyNDMzOQ%3D%3D&el=1_x_2&_esc=publicationCoverPdf> Accessed date- 23/10/2022.

⁶⁶ International Labour Organization and Government of Nepal National Planning Commission, 'Nepal Child Labour Report' [2021] <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_784225.pdf> Accessed on- 25/10/2022.

⁶⁷ International Labour Organization and Government of Nepal National Planning Commission, 'Nepal Child Labour Report' [2021] <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_784225.pdf> Accessed on- 22/10/2022.

29⁶⁸, Article 39⁶⁹ and Article 51⁷⁰ of the Nepal Constitution of 2015, ensured children's best interests were safeguarded and preserved and guaranteed their rights stipulating all citizens to be ceased exploitation, forced and bonded labour, slavery and trafficking.⁷¹ Though at present the child labour population of Nepal seems to be lower its numbers, Nepali children often face high vulnerabilities and risks with regard to issues in child labour than any other South Asian country.⁷²

Concerning legislative instruments which majorly prevented the occurrence of forced child labour and bonded child labour practices in Nepal communities, they are Nepal Civil Code⁷³, Civil Rights Act⁷⁴, Child Labour Act⁷⁵, Child Labour Prohibition and Regulation Act⁷⁶, Bonded Labour (Prohibition) Act⁷⁷, Children's Act⁷⁸, Social Security Act⁷⁹, Foreign Employment Act⁸⁰, Human Trafficking and Transportation Act⁸¹, Labour Act⁸², Citizen Rights Act⁸³, Begging Prohibition Act⁸⁴, National Civil (Code) Act⁸⁵, Prison Act⁸⁶, Foreign Employment Act⁸⁷ and Public Offence and Punishment Act⁸⁸.

⁶⁸ Constitution of Nepal 2015, Article 29.

⁶⁹ Ibid Article 39.

⁷⁰ Ibid Article 51.

⁷¹ Constitution of Nepal 2015.

⁷² International Labour Organization and Government of Nepal National Planning Commission, 'Nepal Child Labour Report' [2021] <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_784225.pdf> Accessed on- 21/10/2022.

⁷³ Nepal Civil Code Act No. 67 2019.

⁷⁴ Civil Rights Act No.12 1955.

⁷⁵ Child Labour Act 1992.

⁷⁶ Child Labour (Prohibition and Regulation) Act 2000.

⁷⁷ Bonded Labour (Prohibition) Act No. 21 2002.

⁷⁸ Children's Act 2018.

⁷⁹ Social Security Act 2017.

⁸⁰ Foreign Employment 2007.

⁸¹ Human Trafficking and Transportation Act 2017.

⁸² Labour Act 2017.

⁸³ Citizen Rights Act 1995.

⁸⁴ Begging Prohibition Act 2018.

⁸⁵ National Civil (Code) Act 2017.

⁸⁶ Prison Act 1962.

⁸⁷ Foreign Employment Act 2007.

⁸⁸ Public Offence and Punishment Act 1970.

These Acts established in providing sufficient legal grounds towards curbing Nepal child labour concerned issues.⁸⁹ Based on Nepal Constitution, Child Labour Act⁹⁰ established where it strictly prohibits employing children under fourteen years. If such an act is encountered where employment of a child less than fourteen years would take place, then such perpetrator would be sentenced to three months of imprisonment and if work done by such a child is of hazardous nature, then culprit would be sentenced to one year of imprisonment.⁹¹ Moreover, this Act sternly acts upon circumstances where children are used for immoral professions where such actions are prohibited.⁹²

The Child Labour Act⁹³ was amended in 1999⁹⁴ establishing Child Labour (Prohibition and Regulation) Act⁹⁵ which precludes children from engaging in labour under fourteen years. Furthermore, it expressly determines that if children engage in labour against their will due to misinterpretation, persuasion, duress on threat or fear and by coercion or intimidation and such offenders are liable for one year of imprisonment or a fine of fifty thousand Nepalese Rupees.⁹⁶ Reforming Child Labour Act⁹⁷, the Children's Act⁹⁸ was formed securing thirteen fundamental rights and outlining the responsibilities of parents, state, institutions, and media to act in ensuring children's rights. Furthermore, the Act refrained children under fourteen years from working in hazardous work including

⁸⁹ International Labour Organization and Government of Nepal National Planning Commission, 'Nepal Child Labour Report' [2021]

<https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_784225.pdf> Accessed on- 24/10/2022.

⁹⁰ Child Labour Act 1992.

⁹¹ JE Lansford and P Banati, *Handbook of Adolescent Development Research and Its Impact on Global Policy* (Illustrated, Oxford University Press, 2018) 17.

⁹² International Labour Organization and Government of Nepal National Planning Commission, 'Nepal Child Labour Report' [2021]

<https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_784225.pdf> Accessed on- 25/10/2022.

⁹³ Child Labour Act 1992.

⁹⁴ Child Labour Act 1999.

⁹⁵ Child Labour (Prohibition and Regulation) Act No.14 2000.

⁹⁶ *Ibid.*

⁹⁷ Child Labour Act 1992.

⁹⁸ Children's Act 2018.

domestic work with payments.⁹⁹

Nepal Child Labour Report 2021¹⁰⁰ declares that the child labour percentage in rural areas is higher than that of urban area child labour percentage and female children have a higher tendency in engaging in child labour than that male children. Furthermore, the child labour population engaged in hazardous work has a significant decline compared to the Child Labour Survey of 2008.¹⁰¹

Nepal has ratified international conventions towards the elimination of child labour are ILO Convention 138¹⁰² concerning minimum age in 2003, ILO Convention 182¹⁰³ concerning worst forms of child labour in 2004, UN Convention on the Rights of the Child¹⁰⁴ and Convention on the Elimination of all Forms of Discrimination against Women¹⁰⁵ by providing legal standards for child labour and determining legal cornerstones prohibiting child labour and the worst forms of them. The Nepal Government is highly sentimental towards child labour issues where after ratifying UN CRC in 1990, Nepal has included children's rights and their protection towards national development and growth plans and

⁹⁹ Ibid.

¹⁰⁰ Nepal Child Labour Report 2021-15.3% among the ages of 5-17 years of Nepali children engaged in child labour which shows a distinct deterioration of child labour percentage compared to Nepal Child Labour Report 2008 which is 22.25%.

¹⁰¹ International Labour Organization (ILO) and Central Bureau of Statistics of Nepal, 'Nepal Child Labour Report' [2008] <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_182988.pdf> Accessed on- 24/10/2022.

Children of unemployed households has high tendency in engaging in child labour of them female headed households have an abundance in prevailing child labour more than the households headed by male. It's an indication of the survey that percentage of the child labour decrease upon the increase of the wealth index where it could be regarded as an important aspect in increasing the household income to eliminate child labour.

¹⁰² ILO Minimum Age Convention 1973 (C 138).

¹⁰³ ILO Worst Forms of Child Labour Convention 1999 (C 182).

¹⁰⁴ UN Convention on the Rights of the Child 1990 (CRC).

¹⁰⁵ UN Convention on the Elimination of all Forms of Discrimination against women 1979 (CEDAW).

programs.¹⁰⁶ These improve the best interests of children by constructing friendly communities in Nepal to develop children into capable qualified citizens towards eliminating the occurrences of any form of violence, exploitation, and abuses towards the children by combatting child labour and enabling children to take proper education within the state of Nepal.¹⁰⁷ Towards improving legislation towards child labour elimination, Nepal ceased traditional systems towards bonded labour by introducing Kamaiya Labour Prohibition Act¹⁰⁸.

The ministry of Labour, Employment and Social Security of Nepal (MOLESS) operates issues towards the prevention of child labour and conducts schemes which are affiliating child security with social security. Nepal Government has conducted programs towards children who are affected by child trafficking, child marriages, child prostitution, sexual exploitation, and abuse and provides funds for child labour eradication, implementing emergency child rescue programs, to raise public awareness programs to acknowledge these subjects and legal impediments.¹⁰⁹

¹⁰⁶ International Labour Organization and Government of Nepal National Planning Commission, 'Nepal Child Labour Report' [2021]

<https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_784225.pdf> Accessed on- 23/10/2022.

Some of such plans and programs are 10th National Development Plan, National Master Plan on Child Labour, 15th Plan, National Plan of Action on Education for All, National Plan of Action on Children, National Plan of Action on Human Rights and National Plans of Action on Trafficking of Women and Children and NMP.

¹⁰⁷ Dr. Bishnu, B Bhandari and Prof Abe, 'Education for Sustainable Development in Nepal' [2003] Japan Institute for Global Environmental Strategies (IGES), Views and vision report <https://www.iges.or.jp/en/publication_documents/pub/policyreport/en/749/999-report9_full.pdf> Accessed date- 18/09/2021.

¹⁰⁸ Kamaiya Labour Prohibition Act 2001- It enables prohibiting bonded labour related employments which invalidates any unsettled loans or bonds among landowners and labourers of Kamaiya, Kamlaris and Haliya.

¹⁰⁹ Office of the National Rapporteur on Trafficking in Women and Children (ONRT) and National Human Rights Commission (NHRC), 'Trafficking in persons especially on women and children in Nepal' [2006-2007] National Report

<https://www.unodc.org/pdf/india/Nat_Rep2006-07.pdf> Accessed date- 21/10/2022.

Furthermore, MOLESS has started implementation of National Master Plan on Eliminating Child Labour to implement Sustainable Development Goals by ambitiously targeting in cessation of worst forms of labour and exploitations by 2022 and all child labour types by 2025 respectively. Moreover, National Child Policy 2012 introduced a free help line service towards safeguarding and providing special protection towards such children facing difficulties. Thereby, local governments of Nepal consist of divisions which are child centric and corporate with issues related to child rights, development, and protection.

However, regardless of having legal enforcement through state laws, regulations, plans and monitoring schemes in monitoring children to eliminate and govern child labour concerns, such enforcements are weak in their implementation procedures since most of such legislations are limited to formal sector employment where informal sector child workers still suffer due to absence of proper remedies and legal protection towards their best interests.¹¹⁰ Thereby, it should be recommended that the Nepal government should take steps in conducting efficient implementation procedures by practically enforcing the local legislations of child labour to strengthen the practical aspects of dealing with issues related to child labour.¹¹¹

The existing Bangladesh legislative framework, gaps, and recommendations

Considering existing Bangladesh child labour legislation, being a British Colony, it inherits all laws and regulations of Britain.¹¹² Illiteracy rates become high in Bangladesh mainly due to grave economic conditions within the country's households.¹¹³ Furthermore, inefficiencies of children's registration procedures make child labour issues untraceable creating difficulties in adjudication due to cases being dismissed or left not investigated due to public concerns about societal reputation over children's safety and best interests.¹¹⁴ As per Bangladesh legislative instruments towards child labour, they are the Children Act¹¹⁵, Mines Act¹¹⁶, Employment of Children Act¹¹⁷, Road Transport Workers Ordinance

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² J Norpoth, L Grob and R Aktar, 'Child Labour in Bangladesh- An analysis of gaps and weaknesses of the existing legal framework' [2014] Institute of Development Research and Development Policy Ruhr University Bochum, An analysis report <<https://www.econstor.eu/bitstream/10419/183558/1/wp-204.pdf>> Accessed on-20/10/2022.

¹¹³ D Wright, 'Child Labour in Bangladesh: Recent Trends and Labour Standards' [2003] (XXVI) University of New England, Journal of South Asian Studies < <https://doi.org/10.1080/0085640032000178952>> Accessed on- 21/10/2022.

¹¹⁴ Ibid.

¹¹⁵ Children (Pledging of labour) Act No. XI 1933.

¹¹⁶ Mines Act No. IV 1923.

¹¹⁷ Employment of Children Act No. XXXVI 1938.

Act¹¹⁸, East Pakistan Domestic Servants' Registration Ordinance¹¹⁹, Tea Plantation Labour Ordinance¹²⁰, Shops and Establishments Act¹²¹ and Factories Act¹²² respectively. The export-oriented garment industry of Bangladesh has created the emergence of child labour where Bangladesh government has taken several mechanisms in combatting such issues.¹²³ Even though international and national legislature has often made efforts in eliminating child labour, Bangladesh being a developing country still encounter child labourers due to prolonged societal acceptance.¹²⁴ The Bangladesh Constitution could be determined as the core of human rights though it hasn't expressly mentioned the prohibition of child labour.¹²⁵

Nevertheless, Articles 15¹²⁶, 17¹²⁷, 28(4)¹²⁸ and 34¹²⁹ provide for several regulatory norms upon child labour.¹³⁰ Bangladesh Labour Act consolidated and replaced labour laws by incorporating aspects of labour rights and acts as the highly influential national legislation regarding child labour.¹³¹ As per 2013 amendment, some new provisions are brought

¹¹⁸ Road Transport Workers Ordinance Act No XXVIII 1961.

¹¹⁹ East Pakistan Domestic Servants' Registration Ordinance No. XLIV 1961.

¹²⁰ Tea Plantation Labour Ordinance No. XXXIX 1962.

¹²¹ Shops and Establishments Act No. VII 1965.

¹²² Factories Act No. IV 1965.

¹²³ MN Asadullah and Z Wahhaj, 'Bangladesh's garment industry: Child labour and options' *Himalayan Times* (Nepal, 11 May 2017) <<https://thehimalayantimes.com/opinion/bangladeshs-garment-industry-child-labour-options>> Accessed on- 20/09/2021.

¹²⁴ Government of Bangladesh, 'Understanding children's work in Bangladesh'[2011] Understanding Children's Work (UCW) Programme, Country report<https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_169128.pdf> Accessed date- 20/10/2022.

¹²⁵ J Norpoth, L Grob and R Aktar, 'Child Labour in Bangladesh- An analysis of gaps and weaknesses of the existing legal framework' [2014] Institute of Development Research and Development Policy Ruhr University Bochum, Analysis Report<<https://www.econstor.eu/bitstream/10419/183558/1/wp-204.pdf>> Accessed on-21/10/2022.

¹²⁶ Constitution of Bangladesh, Article 15 determines fundamental necessities including right to education, right to proper medical care, right to reasonable rest and right to recreation and leisure.

¹²⁷ Ibid, Article 17 states that education shall be granted free and compulsory to all the children until the age determined by Bangladesh legislation.

¹²⁸ Ibid, Article 28(4) declares regarding non-discrimination of children and women towards their advancements.

¹²⁹ Ibid, Article 34 signify the prohibition of all categories of forced labour and such offences shall be punishable by the law of Bangladesh.

¹³⁰ Ministry of Labour and Employment Government of the People's Republic of Bangladesh, 'National Child Labour Elimination Policy' [2010] Unofficial Translation <[https://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/policies/7e663ccb_2413_4768_ba8d_ee99091661a4/National%20Child%20Labour%20Elimination%20Policy%202010%20\(English\)%2010.pdf](https://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/policies/7e663ccb_2413_4768_ba8d_ee99091661a4/National%20Child%20Labour%20Elimination%20Policy%202010%20(English)%2010.pdf)>Accesseddate-22/10/2022.

¹³¹ Labour Act 2006.

under; Section 2¹³² of the Labour Act a child as an individual who has turned fourteen years of age. The Act declares young people of fifteen to eighteen years as adolescents under Section 34¹³³ and Section 34(1)¹³⁴ and restrains child labour in any occupation or establishment. Section 35¹³⁵ re-establish Section 34(1) by prohibiting parents or guardians of children in making agreements towards their children to be used for any occupation.

Furthermore, the Supreme Court of Bangladesh has questioned the lack of child labour protection where sternly criticising the Bangladesh Government for not acting towards such workers as if a fundamental right of the Bangladesh Constitution being neglected and guided to take measures to protect such rights by widening the scope of Labour Act 2013 in covering all forms of domestic workers.¹³⁶ However, not addressing informal sector-related child labour systematically by excluding specific domestic work such as family businesses, domestic work and agricultural work, the revised Labour Act of 2013 failed in modifying the provisions as per the Supreme Court's advice.¹³⁷

Nevertheless, Section 44¹³⁸ grants an exception towards light work done by children from age twelve or upper mentioning that such work is allowed without hindering their education, mental and physical development in their schooling environment. Section 34(2)¹³⁹ elaborates conditions to consider towards employments of adolescents. Sections

¹³² Labour Act (Amended) 2013, Section 2.

¹³³ Labour Act (Amended) 2013, Section 34.

¹³⁴ Ibid Section 34(1).

¹³⁵ Ibid Section 35.

¹³⁶ E Islam, K Mahmud, and N Rahman, 'Situation of Child Domestic Workers in Bangladesh' [2013] (13) Double Blind Peer Reviewed International Research Journal, Global Journal of Management and Business Research Finance <https://globaljournals.org/GJMBR_Volume13/4-Situation-of-Child-Domestic-Workers-in-Bangladesh.pdf> Accessed on-21/10/2022.

¹³⁷ Ibid.

¹³⁸ Labour Act (Amended) 2013, Section 44.

¹³⁹ Ibid Section 34(2).

39¹⁴⁰, 40¹⁴¹ and 42¹⁴² mentions hazardous work prohibited for adolescents. Section 41¹⁴³ mentions working hours permitted for adolescents against extensive work-related hazards. Thereby, a major deficiency of Labour Act is its limited application scope where several economic sectors are being excluded from this application though territorial scope extends to the whole country.¹⁴⁴

Additionally, the Children Act¹⁴⁵ repealed the old Act of 1974¹⁴⁶ by providing comprehensive protection towards child labour based on norms of UN CRC designating to be a milestone for Children in Bangladesh. Whereby, a child is defined to be a person below the age of eighteen which the former Act mentioned to be of sixteen years of age.¹⁴⁷ Furthermore, the law penalizes certain actions regarding child labour with many strong sanctions such as imprisonment in circumstances where the children are forced to beg, supply drugs, deal with arms to children, maltreatment, and criminalization of children at the place of work.¹⁴⁸

The Bangladesh government has made progress in abetting the worst forms of child labour by establishing Human Trafficking Deterrence and Suppression Act¹⁴⁹. The main function of this Act is to subdue human trafficking, and labour trafficking focusing on internal and transitional trafficking activities. This Act is very much essential to be enforced and implemented in Bangladesh since child trafficking is distinguished as one of the worst forms of child labour.¹⁵⁰ Furthermore, it shall provide

¹⁴⁰ Ibid.

¹⁴¹ Ibid Section 40.

¹⁴² Ibid Section 42.

¹⁴³ Labour Act (Amended) 2013, Section 41.

¹⁴⁴ Ibid.

¹⁴⁵ Children Act 2013.

¹⁴⁶ Children Act 1974.

¹⁴⁷ J Norpoth, L Grob and R Aktar, 'Child Labour in Bangladesh- An analysis of gaps and weaknesses of the existing legal framework' [2014] Institute of Development Research and Development Policy Ruhr University Bochum, Analysis Report <<https://www.econstor.eu/bitstream/10419/183558/1/wp-204.pdf>> Accessed on-20/10/2022.

¹⁴⁸ Ibid.

¹⁴⁹ Human Trafficking Deterrence and Suppression Act 2021.

¹⁵⁰ Ibid.

high-end penalties such as fines, imprisonment, and the death penalty.¹⁵¹ Additionally, the Bangladesh government has introduced policies to regulate child labour-related issues under National Education Policy¹⁵² and Child Labour Elimination Policy¹⁵³

UNICEF¹⁵⁴ and MOLE 2002¹⁵⁵ aid to reach out to children and eliminate child labour in both urban and rural areas. More specificity is given through the first and second Optional Protocols towards worst forms of child labour and sale of children, child pornography and prostitution of children respectively which are being signed and ratified by Bangladesh.¹⁵⁶ However, the Committee on the Rights of the Child recently expressed in 2009 concerns that enforcement mechanisms towards child labour protection lacks in Bangladesh where the worst forms of child labour still prevail though such international conventions have been ratified.¹⁵⁷

Bangladesh has also ratified international conventions such as ILO Convention of 182¹⁵⁸ and UN CRC¹⁵⁹ to eliminate child labour issues and to reduce loopholes in the child labour-related Bangladesh legal framework. Furthermore, Bangladesh Government has announced ratifying ILO C 138 which is not yet ratified and if it were signed, then Bangladesh accomplishes in ratifying all UN conventions related to child labour.¹⁶⁰ Considering the ILO statistical studies conducted through surveys, it was determined that forced labour cases have been significantly reported in

¹⁵¹ Ibid.

¹⁵² National Education Policy 2010.

¹⁵³ Child Labour Elimination Policy 2010.

¹⁵⁴ United Nation's International Children's Emergency Fund (UNICEF).

¹⁵⁵ Ministry of Labour and Employment (MOLE).

¹⁵⁶ N Banu, S Bhuiyan, Kushtia and S Sabhlok, 'Child Labour in Bangladesh' [1998] (4) American University of Cairo, International Journal of Technical Cooperation <https://www.researchgate.net/publication/275349072_Child_Labour_in_Bangladesh> Accessed on-20/10/2022.

¹⁵⁷ S Zaman, S Matin, AMBG Kibria, 'A Study on Present Scenario of Child Labour in Bangladesh' [2014] (16) IOSR Journal of Business and Management (IOSR-JBM), Accessed on-23/10/2021.

¹⁵⁸ ILO Worst Forms of Child Labour Convention 1999 (C 182).

¹⁵⁹ UN Convention of the Rights of the Child (CRC) of 1990.

¹⁶⁰ J Norpoth, L Grob and R Aktar, 'Child Labour in Bangladesh- An analysis of gaps and weaknesses of the existing legal framework' [2014] Institute of Development Research and Development Policy Ruhr University Bochum, Analysis Report<<https://www.econstor.eu/bitstream/10419/183558/1/wp-204.pdf>> Accessed on-23/10/2022.

the Dry Fish Industry of Bangladesh where hazardous work and the worst forms of child labour too are identified.¹⁶¹

Concerning statistical surveys conducted towards child labour issues in Bangladesh, it's reported that children participate in child labour for payment or profit or any support towards the family businesses.¹⁶² While conducting hazardous work, these children often face severe abuse such as sexual and verbal abuse and exploitation from such household owners. When considering reasons towards the prevalence of a considerably high rate of child labour, they are; poverty, low-income families, debts, deaths, severe sicknesses of adults due to factors like natural disasters and effects of the economic condition of Bangladesh where children are being provoked towards working below the minimum employable age. Thereby, society would depend upon the income of child labour.¹⁶³

Furthermore, towards enforcement of child welfare, establishing a national level Children Welfare Board and making a child desk available

¹⁶¹ J Norpoth, L Grob and R Aktar, 'Child Labour in Bangladesh- An analysis of gaps and weaknesses of the existing legal framework' [2014] Institute of Development Research and Development Policy Ruhr University Bochum, Analysis Report <<https://www.econstor.eu/bitstream/10419/183558/1/wp-204.pdf>> Accessed on-20/10/2022.

Furthermore, around 27,000 children work as domestic workers in Bangladesh households where 78% of such child household workers are female. Considering the working hours of such children, they perform mostly of hazardous nature work since 99% works throughout the week of average nine hours a day.

¹⁶² IREWOC, 'The Worst Forms of Child Labour in Asia' [2010] Main findings from Bangladesh and Nepal <<https://resourcecentre.savethechildren.net/sites/default/files/documents/3990.pdf>>, Accessed on-21/10/2022.

The statistical information gained by the National Child Labour Survey 2013 evaluate that minimum 3.4 million children of age limit from five to seventeen years are economically active and around 1.8 million children work as child labourers. These children encounter bonded labour, slavery and forced labour where highest number of cases reported from Dhaka which is the highest populated city in Bangladesh. The survey further confirms that working rate of children rises with the age of the children where children's working percentage shows similar numerical amounts in both rural and urban areas. Hence, hours of work too increase with the age of the children. Studies further confirms that higher percentage of male children works as child labourers than that of female child population. Moreover, Bangladesh shows a considerably higher percentage upon children who work outside their family businesses as paid domestic workers, paid employees, self-employed individuals, apprentices. Since the working hours of manufacturing and service sector falls consequent to the school hours, children who work faces grave difficulties in participating in school by encountering challenges to get proper and sound education.

¹⁶³ J Norpoth, L Grob and R Aktar, 'Child Labour in Bangladesh- An analysis of gaps and weaknesses of the existing legal framework' [2014] Institute of Development Research and Development Policy Ruhr University Bochum, Analysis Report <<https://www.econstor.eu/bitstream/10419/183558/1/wp-204.pdf>> Accessed on-24/10/2022.

in every police station where children could make complaints towards violation of their rights at workplace could be recommended.¹⁶⁴ However, these welfare procedures can only be implemented impactfully upon governmental considerations and allowing such enforcements to be taken place effectively and efficiently.

Impact on COVID-19 on child labour in Sri Lanka, Nepal, and Bangladesh

The COVID-19 pandemic has created a considerably negative economic impact on the South Asian region where the loss of jobs in the informal sector, closing of schools by making a huge disturbance to children's education, increase in poverty, lack of social protection has caused families of below the poverty line to think of child labour as an option to save their bread and butter where the children are being forced to work in low-income places with unsound working conditions.¹⁶⁵ This situation is common to Sri Lanka, Nepal and Bangladesh which face challenges in maintaining the stability of the country's income where there is a many lives being lost each day.¹⁶⁶

UNICEF's objective during the pandemic is to announce the countries in preventing a health crisis which would become a child crisis condition. Thereby, it guides to keep the children healthy by nourishing them, reaching out to vulnerable children populations with the needs providing necessary sanitary and hygienic genes, providing sufficient education to children, supporting families in need to take care of children and their health, protect children from violence, abuse and exploitation, protect refugees and migrated children, and provide vaccinations towards immunizing the families of the kids as advised by the health authorities respectively.¹⁶⁷

¹⁶⁴ Dr. R Siddiqua, 'Laws Relating to Child Labour in Bangladesh and their Shortcomings' [2003] Bangladesh Journal of Law, Short Article <<http://www.biliabd.org/article%20law/Vol-07/Rehena%20Siddique.pdf>> Accessed date- 25/10/2022.

¹⁶⁵ I Idris, 'Impact of COVID-19 on child labour in South Asia' [2020] University of Birmingham, K4D Research Article <<https://resourcecentre.savethechildren.net/library/impact-covid-19-child-labour-south-asia>> Accessed date- 22/10/2022.

¹⁶⁶ Ibid.

¹⁶⁷ UNICEF, 'UNICEF in South Asia Regional Situation Report' [2021] Regional Situation Report < <https://www.unicef.org/media/102946/file/UNICEF%20ROSA%20COVID-19%20Situation%20Report,%20>

ILO's responses towards COVID-19, it has four pillars in facing the pandemic, they are firstly stimulating of economy and employment, secondly; supports jobs enterprises and incomes, thirdly provide adequate protection to the workforce and finally seeks solutions from approaching society.¹⁶⁸ Furthermore, ILO Standards provide guidelines and safeguard measurements during the COVID-19 crisis by providing International Labour Standards Employment and Decent Work for Peace and Resilience Recommendation 2017 (No. 205)¹⁶⁹ which was adopted by most ILO Member States establishing that responses towards crisis need to be ensured consequential to rule of law and all human rights.¹⁷⁰ However, this situation has made children the most vulnerable towards fighting against the pandemic since their immunity systems are still growing. Not being vaccinated by COVID shield vaccines and being exposed to COVID patients could make the children at a high risk of being infected. Thereby, child labour being forced over a period as such would be crucial and the result would be unpredictable which could create a huge loss of lives for children. Thereby, it's the duty of all states to protect their future by eliminating child labour under any circumstances and providing maximum protection towards the health and well-being of children.¹⁷¹

Conclusion

In conclusion, each of the aforesaid jurisdiction's duty to amend, review, renew and implement proper legislation to prevent such unfortunate situations in which children lose their ability to get proper education facilities under sound economic conditions. If the children of nations do not get a sound education in with best interests, there is a higher tendency towards illiteracy creating barriers towards economic, social, and political

31%20May%202021.pdf> Accessed on- 23/10/2022.

¹⁶⁸ International Labour Standards Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), Preamble and Paras. 7(b) and 43.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ UNICEF, 'UNICEF in South Asia Regional Situation Report' [2021] Regional Situation Report <<https://www.unicef.org/media/102946/file/UNICEF%20ROSA%20COVID19%20Situation%20Report,%2031%20May%202021.pdf>> Accessed on- 24/10/2022.

standards of the countries. It's the collective duty of the legislature, judiciary, and executive bodies to protect the future of each nation by building a sound environment where the economy is stabilized to eliminate child labour issues. Therefore, a collective understanding of the fact that any country's future is held by the literacy rate of its future generations would be of great help in mitigating and eliminating child labour from the societal traditions which have been maintained over decades.