

Impact of ILO on the Worst Forms of Child Labour: A Comparative Analysis between India and China

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I. Introduction to ILO:

The International Labour Organisation (ILO) was established in the year 1919 as a part of the Treaty of Versailles that ended the World War I, to ascertain the faith of social justice as a key force towards harmony and eternal peace.² The driving forces for ILO'S creation arose from security, humanitarian, political and economic considerations, in the backdrop of exploitation of workers in the capitalist nations during that period and the world's growing economic interdependence and the need for cooperation in order to obtain similarity of working conditions in countries competing for markets. Thereafter the Preamble was drafted which incorporated several social security notions like regulations regarding hours of work in the industry, unemployment, maternity protection, night work for women, minimum age and night work for children and young persons in the industries.³

The principal means of action by the ILO is through International Labour Standards in the form of conventions and recommendations aiding the nations to sketch their own set of labour laws for the preservation of the rights of the labourers.

Labour Standards can be categorised into core labour standards, embodied in the eight fundamental conventions and the balance of labour standards as adopted by the member states of the ILO. The core labour standards are described as “four internationally recognised basic right and principles”. These core labour standards are⁴:

1. Freedom of association and the effective recognition of the right to collective bargaining;
2. Elimination of all forced and compulsory labour;
3. Effective abolition of child labour;

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² <http://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm> (accessed 30th October, 2013)

³ *Ibid.*

⁴ P.H.C. Reyneke, ‘Labour Practices in South Africa and Korea’ (Dissertation, University of Johannesburg, Jan 2009), p. 28 ff. at <https://ujdigispace.uj.ac.za/bitstream/handle/10210/3465/Reyneke%20.pdf?sequence=1> (accessed 27th October, 2013)

4. Elimination of discrimination in respect of employment and occupation.

According to Asian Development Bank (2006)⁵, these four labour standards are applicable to all countries because these principles are also enshrined under the Universal Declaration of Human Rights, 1948, which bars any sort of international comparative advantage. They are the product of the Industrial Revolution. The Core Labour Standards are an inherent part of the membership of ILO and when the conventions are ratified by the respective countries, specific international obligations spring into existence. The members of the ILO are required to comply with the core labour standards even if they have not ratified the relevant convention. But it is advised to ratify at least eight key conventions.

The core principles are embodied in the eight fundamental conventions⁶. These conventions are:

1. Freedom of Association and Protection of the Right to Organise Convention, 1948. (No. 87)⁷
2. Right to Organise and Collective Bargaining Convention, 1949. (No. 98)⁸
3. Forced and Compulsory Labour Convention, 1930. (No. 29)⁹
4. Abolition of Forced Labour Convention, 1957. (No. 105)¹⁰
5. Minimum Age Convention, 1973. (No. 138)¹¹
6. Worst Forms of Child Labour Convention, 1999. (No. 182)¹²
7. Equal Remuneration Convention, 1951. (No. 100)¹³
8. Discrimination (Employment and Occupation) Convention, 1958. (No. 111)¹⁴

The non - core labour standards¹⁵ pertain to areas such as:

1. Occupational Health and Safety;

⁵ Supra note 4.

⁶ <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> (accessed 30th October, 2013)

⁷ Id. In Force, July 9, 1948

⁸ Id. In Force, July 1, 1949

⁹ Id. In Force, June 28, 1930

¹⁰ Id. In Force, June 25, 1957

¹¹ Id. In force, June 26, 1973

¹² Id. In Force, June 17, 1999

¹³ Id. In Force, June 29, 1951

¹⁴ Id. In Force, June 25, 1958

¹⁵ Supra Note 4 at p. 31ff

2. Employment promotion, including mechanisms (employment exchange and other);
3. Minimum wages and payment of wages;
4. Social security;
5. Labour administration, inclusive of labour inspection; and
6. Specific economic sectors or occupations (seafarers, dockworkers, nursing personnel, home workers, plantation workers and others.)

The ILO supervises the compliance perspective of the nations by analyzing their annual reports and issuing special procedures based on complaints, and thereby forwarding them to the Governing Body¹⁶. The ILO also acts as an international forum where nations can resolve their labour related issues. It provides a venue where complaints can be heard and where workers, employers and governments can be placed on a more equal footing.

The ILO nurtures the International Labour Standards which are considered as the nemesis against which governments, companies and workers measure the current conditions of freedom, equity, security and human dignity that workers enjoy, including those who are employed, unemployed, working in formal/informal sectors or self employed professionals through investigations aiming to establish a 'decent work standard'¹⁷.

The recent estimate pronounces that about 60 per cent of the member states of ILO have ratified all eight of the fundamental conventions, including not only the developed states but also a large number of developing ones.¹⁸

This Article will deal with the impact of ILO on developing countries. The scope of this article has been narrowed down to child labour pertaining to the Minimum Age Convention. The two countries that are selected for the purpose of this Article are India and China, both belonging to the generation of growing economies. It is significant to note here that China has a socialist approach while India has both socialist and capitalist tendencies.

II. Child Labour:

One of the most important conventions relating to child labour is the **Minimum Age Convention, 1973**¹⁹. With the aim to establish a general instrument to achieve a total obliteration of child labour, the Convention

¹⁶ Supra note 2

¹⁷ Supra Note 4 at p.39. Decent work has four strategic objectives; a. Fundamental principles and rights at work and international labour standards, b. Social protection and social security, c. Social dialogue, and d. Consultation between Govt., employers and employees.

¹⁸ Qiu Yang, 'ILO Fundamental Conventions and Chinese Labour Law', available at [https://www.law.upenn.edu/journals/ealr/articles/Volume2/issue1/Yang2ChineseL.&Pol'yRev.18\(2006\).pdf](https://www.law.upenn.edu/journals/ealr/articles/Volume2/issue1/Yang2ChineseL.&Pol'yRev.18(2006).pdf) (accessed 29th October, 2013)

¹⁹ Supra note 6

provides that each member state is under the obligation to pursue a national policy to ensure the effective abolition of child labour and elevate the minimum age for admission to employment and that no one under that age shall be admitted to employment or work in any occupation. Article 2(3) states that the minimum age is fifteen years but the convention permits certain underdeveloped countries to set the minimum age at fourteen. Also if the work carried on, is by its nature or circumstances in which it is carried on is likely to jeopardize the health, safety or morals of young persons, there is a blanket prohibition on employment or work of persons less than eighteen years old, provided that under certain circumstances the age could be lowered to sixteen.

ILO Convention on Worst Forms of Child Labour Convention, 1999²⁰ provides that the member states shall take immediate steps and effective measures to ensure the prohibition and elimination of worst forms of child labour as a matter of urgency. It outlines the worst forms of child labour as:

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 labor, including forced or compulsory recruitment of children for use in armed conflict;
2. The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
3. The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
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.

II.I. ILO and China - With a view to analyse child labour and its national policy

According to statistics from several international organisations, China has become the seventh largest economy in the world and it ranks first amongst the developing world owing to its outstanding economic growth over the last two and a half decades²¹. But as far as per-capita GDP is concerned, China remains as a low income country. According to China Modernization Reports of 2005, there is a 100 year modernization gap between China and United States, it has been duly forecasted that China still not harbor enough resources to join the group of developed countries until 2080. Pertaining to the labour force, it is expected to grow from 755 million in 1990 to its maximum 1013 million in 2025. After that it will fall to an estimated

²⁰ *Ibid.*

²¹ *Supra* note 18 at p. 3.

minimum of 898 million and then begin to move up again and come to a standstill at about 900 to 920 million.²²

On December 11, 2011, China joined the WTO and is becoming one of the world's largest foreign direct investment recipients²³.

As the founding member of ILO, China has ratified twenty three ILO Conventions constituting only 23 percent of the total 185 ILO Conventions.²⁴ As far as Eight Fundamental Conventions are concerned, China has ratified only three of them i.e., Equal Remuneration Convention, Minimum Age Convention and Worst Forms of Child Labour Convention.²⁵ But it has not ratified any conventions regarding freedom of association and conventions against forced labour.

II.I.I Magnitude of the Problem

Within China particularly in rural areas, there are large numbers of children engaged in some form of work after dropping out of school early. They can be classified under six main categories namely regular workers, casual workers, household helpers, Apprentices, work-study students, forced labourers²⁶.

Despite its fast-growing economy, China has witnessed a substantial increase in child labor risks over the past years. The report said that unofficial estimates suggested that 100,000 children are employed in the country's manufacturing sector.

In the year 2001, it was witnessed that there were more than twenty garment factories employing child labor with reports of one child dying of calenture. Also in Wuhan, in a small private Garment factory, there were more than two hundred child laborers working more than ten hours per day. In Neihuang county of Henan Province, within three days investigation, the government discovered that seven private enterprises have employed twenty-two child laborers (aging from thirteen to fifteen). In Zhenzhou, Henan province, during a one month investigation, the local government found twenty-eight cases relating to the employment of child labor, and more than fifty child laborers were sent back to their hometowns. In Jiangxi Province,

²² Supra note 18 at p. 4

²³ *Ibid*

²⁴ Ratifications of Conventions available at

<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11001:0::NO::> (accessed 30th October, 2013)

²⁵ *Ibid*

²⁶ China Labour Bulletin, 'A Survey Report on Child Labour in China', Sept 2007 available at

http://www.clb.org.hk/en/files/share/File/general/Child_labour_report_1.pdf (accessed 29th October, 2013)

an explosion at one of its rural schools killed forty-two people and most of them were third and fourth year students making fireworks at the time of the blast. In Shanghai, a Japanese-invested garment factory was also found to employ child laborers, many working as hard as adults and receiving much less pay.²⁷

II.I.II Constitutional Provisions²⁸

The Constitution of the People's Republic of China protects the life and secures the liberty and dignity through the following constitutional provisions:

1. Article 19 (2) - Universal, compulsory and free education.
2. Article 46(1) - Citizens of China not only have the right to education, but have the obligation to receive education as well.
3. Article 46 (2) - State guarantees that children have a healthy development both psychologically and physically.

Article 49 – State has an obligation to protect the children.

II.I.III. Legislative Provisions

- **The Labour Law of China²⁹** prohibits the employment of people below the age of sixteen, except under certain circumstances, such as in the area of arts, sports and certain special arts and crafts. Even under these exempted cases, the state's approval is a precondition, and the employers should guarantee these employed minors universal rights to the nine year free and compulsory education. This is considered as an employers' and states' prerogative. Therefore, this provision not only complies with China's obligations under Conventions No.138 and No.182, but also raises the standard of the minimum age for employment to 16 instead of 15. However, the exception "certain special arts and crafts" provides the required loophole for exploitation. The legislation, in those special cases does not specify or explain in detail the special fields, nor does it provide the minimum age of employment for these special circumstances. This lack of a clear legal definition has allowed widespread abuse of "summer employment" and "work-study" programmes by both employers and schools – sometimes even in collaboration with criminal gangs – and has hindered effective investigation and control of the child labour problem.

²⁷ *Ibid*

²⁸ *Supra* note 18 at p. 17.

²⁹ *Supra* note 18 at p. 19.

- **The Law on Compulsory Education**, which came into force on July 1, 1986,³⁰ established requirements and deadlines for attaining universal education in China and guaranteed children the right to receive education. Generally speaking, any child in China above the age of six, regardless of gender, nation, or race, has the right to universal education (for those less developed areas, the schooling age could be delayed to seven.) However, the Implementation Rule on Compulsory Education Law, have incorporated certain changes to these standards. Here, the provincial government is allowed to take steps, based on the status of its local economic and social development, to achieve progressively the full realization of the right to nine year compulsory education. This provision, if analysed correctly forms a loophole for the local government to take a gradual step instead of immediate measures to universalize the nine-year-compulsory education without a clear deadline. **The Minor Protection Law of People's Republic of China**³¹ was especially drafted for the welfare of the people under the age of eighteen. It obligates the state to protect minors and provides that it is actually the duty of the whole society to protect the minors because they are highly vulnerable. It also provides in detail as to how families, schools and other social groups shall protect minors. However, this law fails to design any provisions directly relating to prohibition of child labour.
- **The Regulations Prohibiting the Use of Child Labour**³² stipulate strict penalties for those arranging employment for minors or hiring child workers. Those arranging employment for minors are to be fined 5,000 Yuan per person for whom employment is arranged. Those employing child workers are to be fined 5,000 Yuan per child worker per month employed. If, after receiving notice from the Government Labour Bureau ordering compliance, an employer does not return the child worker to his or her parents or other guardian within the specified time, they are to be fined an additional 100 percent of the above amount and their operating licence is to be revoked.
- However, the current provisions of the **Criminal Law** on the punishment of those who force others into labour are very lenient. According to Article 244 of the revised Criminal Law, only "those

³⁰ *Ibid*

³¹ Supra note 18 at p. 20.

³² Supra note 26 at p. 8

who force minors to engage in excessive labour" are liable to imprisonment (up to a maximum of seven years).³³

III.IV. Enforcement Mechanisms³⁴

Along with enacting legislations prohibiting child labour, Beijing has placed the child labour problem within the remit of labour bureaus at all levels of local government. Working in conjunction with agencies in charge of public security and industry and commerce, as well as labour unions, labour bureaus can conduct a "concentrated attack" on labour-intensive factories and workshops. If the use of child labour is discovered, the employer is required to dismiss the child workers immediately, return them to their parents or guardian, and pay a fine. In addition, in the practice known as "handling on demand," labour bureaus can act on media reports or tip-offs from the public to inspect a business without prior warning, and if the use of child labour is confirmed, fine the employer according to the provisions of the law.

The legal enforcement methods used by the labour bureaus have curtailed the problem of child labour to some extent, but they have also forced many employers to actively conceal their child labourers and erect barriers to inspection. Child labour is not the only responsibility of the labour bureaus, and due to limitations in personnel and budget, bureau staff often struggle to control the problem. And faced with the defensive measures adopted by employers to conceal their child labourers, the labour bureaus have typically adopted a policy of indifference. If child workers from the locality are employed outside their jurisdiction, officials are even less concerned.

It was reported that local governments have been struggling to effectively implement laws and regulations relating to child labour. Moreover, their efforts at enforcement have often been counterproductive, creating other serious social problems in their wake. For example, an exclusively coercive approach can give rise to a situation in which employers fear being caught for using child labour, and child workers fear being caught and losing their jobs. And so the employer and employees gradually become "allies" in an increasingly covert atmosphere. As a result of this complicity, wages, working conditions, work shifts and so forth is significantly worse than the lowest standards stipulated by the labour laws. And the employers defied the law and paid low wages precisely because they had hired a group of illegal workers.

Child workers are generally less assertive than adults and, in order to hold onto their jobs and meager wages, will not report illegal behaviour to the authorities. Those child workers who are returned home and cannot find new

³³ *Ibid*

³⁴ *Supra* note 18: and 26

employment may, within a relatively short period of time, end up in the streets and eventually drift into a life of crime, or indeed become victims of crime like the children lured or abducted into slave labour.

II.II. ILO and India – With a View to Analyse Child Labour and its National Policy

India was a founder member of the ILO, the only non-independent country to be so. Indeed, this was not much appreciated by some other founder members, who regarded it as a way of giving an additional vote to the British Empire.³⁵ Nevertheless, in 1922, India became a permanent member of the ILO's Governing Body. The First ILO Office in India started in 1928.³⁶ Even before India became free of British rule-it had ratified fourteen conventions. Within 4 years of independence four more conventions were ratified, by which time ILO had passed 107 conventions.³⁷ Presently, India has ratified 43 conventions and 4 core conventions.³⁸

- Regarding freedom of association and collective bargaining, India has ratified Convention No. 87 and has not ratified convention no. 98.
- Regarding Elimination of Forced and Compulsory Labour, India has ratified both Conventions No. 29 and No. 105
- Regarding Elimination of Discrimination in respect of employment and occupation, India has ratified both the Conventions No. 100 and No. 111
- Regarding Abolition of Child Labour India has neither ratified Convention No. 138 nor has it ratified Convention No. 182.

According to the National Commission on Labour³⁹ “international obligations which devolve on India as a result of our long association with the ILO have to be discharged in the following directions-

1. Adopting aims and objects of the ILO for national action.
2. Cooperation in ILO's programmes.
3. Progressive Implementation of ILO's standards.

³⁵http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/gener icdocument/wcms_192565.pdf (accessed 28th October, 2013)

³⁶ http://www.ilo.org/newdelhi/aboutus/WCMS_166809/lang--en/index.htm (accessed 28th October, 2013)

³⁷ Supra note 35.

³⁸ <http://industrialasiaincsocialdialogue.files.wordpress.com/2010/08/ilo-conventions-ratified-by-india1.pdf> (accessed 28th October, 2013)

³⁹ <http://labour.nic.in/content/division/about-child-labour.php> (accessed 28th October, 2013)

II.II.I. The constitutional provisions⁴⁰ preserving the rights of the child are:

1. Article 21A – Right to free and compulsory education till the age of 14 years.
2. Article 24 – Prohibition of employment of children in factories below the age of 14 years.
3. Article 39 – State to direct policy protecting the health and strength of the workers, men, women and children.

II.II.II. Legislative Provisions⁴¹

- As per the **Child Labour (Prohibition & Regulation) Act, 1986** “child” means a person who has not completed his 14th year of age. The Act prohibits employment of children in 18 occupations and 65 processes contained in Part A & B of the Schedule to the Act (Section 3). Under the Act, a Technical Advisory Committee is constituted to advice for inclusion of further occupations & processes in the Schedule. The Act regulates the condition of employment in all occupations and processes not prohibited under this Act and any person who employs any child in contravention of the provisions of section 3 of the Act is liable for punishment with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than Rs 10,000 but which may extend to Rs 20,000 or both. The Central and the State Governments enforce the provisions of the Act in their respective spheres.
 - **Child Labour Technical Advisory Committee (CLTAC)** consists of a Chairman and nine other Members appointed in terms of Child Labour (Prohibition & Regulation) Rules.
 - **Central Advisory Board on Child Labour** has also been constituted to review the implementation of the existing legislations and suggest measures for welfare of working children.
 - Finally, in order to monitor the functioning of the NCLPs, a **Central Monitoring Committee** has been formed. The Committee sees the overall supervision, monitoring and evaluation of the National Child Labour Projects. It is set up under the Chairmanship of Secretary, Ministry of Labour &

⁴⁰ P.M. Bakshi, *Constitution of India*, (7th ed.), New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2006

⁴¹ <http://labour.nic.in/content/division/legislative-provisions.php> (accessed 28th October, 2013)

Employment with representative of State Governments and concerned Ministries/Departments.

II.II.III. Judicial Pronouncements

In **MC Mehta vs. State of Tamil Nadu**⁴² the Supreme Court of India, gave certain directions on the issue of elimination of child labour. The main features of judgment are as under:

- Survey for identification of working children;
- Withdrawal of children working in hazardous industry and ensuring their education in appropriate institutions;
- Contribution @ Rs.20,000/- per child to be paid by the offending employers of children to a welfare fund to be established for this purpose;
- Employment to one adult member of the family of the child so withdrawn from work and if that is not possible a contribution of Rs.5,000/- to the welfare fund to be made by the State Government;
- Financial assistance to the families of the children so withdrawn to be paid -out of the interest earnings on the corpus of Rs.20,000/25,000 deposited in the welfare fund as long as the child is actually sent to the schools;
- Regulating hours of work for children working in non-hazardous occupations so that their working hours do not exceed six hours per day and education for at least two hours is ensured. The entire expenditure on education is to be borne by the concerned employer.

II.II.IV. Magnitude of the Problem

According to the Census 2001 figures there are 1.26 crore working children in the age group of 5-14 as compared to the total child population of 25.2 crore. There are approximately 12 lakhs children working in the hazardous occupations/processes which are covered under the Child Labour (Prohibition & Regulation) Act i.e. 18 occupations and 65 processes. However, as per survey conducted by National Sample Survey Organisation (NSSO) in 2004-05, the number of working children is estimated at 90.75 lakh. It shows that the efforts of the Government have borne the desired fruits.⁴³

A 2009 joint UNICEF-IKEA initiative identified 200,000 children below the age of 14 working in the cotton plantation industry in Andhra Pradesh

⁴² Writ Petition (Civil) No.465/1986 ; December 10, 1996

⁴³ <http://labour.nic.in/content/division/nssso-data-on-child-labour.php> (accessed on 27th October, 2013)

producing hybrid cottonseeds. The vast majority of the children are girls and about 95 per cent of them were employed due to their families' indebtedness. The children did not receive any payment because their entire wage was paying back family debt. The children were predominantly Dalits and members of Scheduled Castes and Tribes.⁴⁴

Forced child labour is prevalent. Children are reported to be forced into prostitution, beggary, domestic servitude and numerous other practices. Particular problems are noticed in carpet production, seed production, textiles, circuses, brick kilns and mills, among others. Commercial sexual exploitation of children and child sex tourism remains a problem. The organisation End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT) and UNICEF estimate that half a million Indian children are forced into prostitution; however, other sources estimate the figure to stand at 1.2 million children. Particular problems are reported in Goa and other tourist areas.

II.II.V. Policy Initiatives

In consonance with the above approach, a **National Policy on Child Labour**⁴⁵ was formulated in 1987. The Policy seeks to adopt a gradual & sequential approach with a focus on rehabilitation of children working in hazardous occupations & processes in the first instance. The Action Plan outlined in the Policy for tackling this problem is as follows:

- Legislative Action Plan for strict enforcement of Child Labour Act and other labour laws to ensure that children are not employed in hazardous employments, and that the working conditions of children working in non-hazardous areas are regulated in accordance with the provisions of the Child Labour Act. It also entails further identification of additional occupations and processes, which are detrimental to the health and safety of the children.
- Focusing of General Developmental Programmes for Benefiting Child Labour - As poverty is the root cause of child labour; the action plan emphasizes the need to cover these children and their families also under various poverty alleviation and employment generation schemes of the Government. Project Based Plan of

⁴⁴ Report for the WTO General Council Review of the trade policies of India: Geneva, 14 and 16 Sept, 2011 available at http://www.ituc-csi.org/IMG/pdf/final_India_TPR_Report_3.pdf (Accessed 27th October, 2013)

⁴⁵ <http://labour.nic.in/content/division/labour-policies.php> (accessed 28th October, 2013)

Action envisages starting of projects in areas of high concentration of child labour. Pursuant to this, in 1988, the National Child Labour Project (NCLP) Scheme was launched in 9 districts of high child labour endemicity in the country. The Scheme envisages running of special schools for child labour withdrawn from work. In the special schools, these children are provided formal/non-formal education along with vocational training, a stipend of Rs.150 per month; supplementary nutrition and regular health checkups so as to prepare them to join regular mainstream schools. Under the Scheme, funds are given to the District Collectors for running special schools for child labour. Most of these schools are run by the NGOs in the district.

- **The International Programme on the Elimination of Child Labour⁴⁶** is a global programme launched by the International Labour Organization in December, 1991. India was the first country to join it in 1992 when it signed a Memorandum of Understanding (MOU) with ILO. The MOU that expired on 31.12.1996 has thereafter been extended from time to time and has recently been extended till 31st December, 2006. The long-term objective of IPEC is to contribute to the effective abolition of child labour. Its immediate objectives are:

- Enhancement of the capability of ILO constituents and NGOs to design, implement and evaluate programmes for child labour;
- To identify interventions at community and national levels which could serve as models for replication; and
- Creation of awareness and social mobilization for securing elimination of child labour.

The Indus Project⁴⁷ is jointly funded by the Ministry of Labour, Government of India and the Department of Labour, United States of America (USDOL) and is implemented in ten hazardous sectors in 21 districts across five states viz. Delhi, Maharashtra, Madhya Pradesh, Tamil Nadu and Uttar Pradesh. The Project has been completed on 31st March 2009. An estimated 103,152 children and adolescent workers withdrawn and rehabilitated against set target of 80,000 children. Under this programme several projects are

⁴⁶ <http://labour.nic.in/content/division/ipcc.php> (accessed 28th October, 2013)

⁴⁷ <http://labour.nic.in/content/division/indus.php> (accessed on 28th October, 2013)

carried on in India to eliminate child labour. Funded jointly by the Government of India and U.S. Department of Labor (USDOL),⁴⁸ the project which concluded in 2008 covered 21 districts in five states (Madhya Pradesh, Maharashtra, Tamil Nadu, Uttar Pradesh, and Delhi), and operated in close collaboration with the NCLP and SSA. Launched in February 2004, it identified children working in the target districts, withdrew them from hazardous work and provided them with transitional schooling, pre-vocational education, and social support to prevent relapse. Adolescents who were withdrawn from hazardous work were provided with vocational training and alternatives for income generation. For parents, the project encouraged savings and development of more lucrative livelihoods. The project sought to retain children mainstreamed from transitional to formal education by improving their access to quality schooling. In addition, the project included a monitoring and tracking system, advocacy, and capacity-building of national, state, district and local institutions.

III. Conclusion:

Considering that more than 80 percent of Fortune 500 companies have entered the Chinese market, China has become one of the world's largest FDI recipients. More and more labor-intensive products, labeled "Made in China" have appeared in international market, making China likely to become a *de facto* world factory in the foreseeable future. In addition, the hot debate on whether to introduce a Social Clause in the WTO also requires China, as a relatively new member state of WTO, to take its internal labor rights issue seriously so that a criticism of social dumping⁴⁹ from some WTO member states could be avoided in the future. As such, to compare China's labour standards with ILO Fundamental Conventions, and finally to internationalize China's standards has become a valuable topic. Generally speaking, China's legislation prohibiting child labor is consistent with ILO Conventions No. 138 and No. 182. There is still some leeway both in Labor Law and Compulsory Education Law.

The eradication of child labour should be the shared responsibility of all members of a civilised society. Trade union organisations, children's rights

⁴⁸ <http://labour.nic.in/content/division/new-ipeec.php> (accessed 28th October, 2013)

⁴⁹ Social dumping" is "the process whereby manufacturers close down factories in high-wage areas and set them up in areas where labor is cheap. See, supra note 18 at p.43

organisations, youth organisations, employers, and other non-governmental organisations should work together to create a network that both condemns and helps to eradicate child labour.

In recent years, the central government and local authorities across China have made efforts to eliminate child labour. International treaties and conventions have been signed, and domestic laws improved and to some extent enforced. However the government has thus far failed to encourage the participation of society at large in addressing this increasingly serious problem. We therefore believe that, in addition to reforming and strengthening its legal enforcement measures, the government should encourage all levels of society to join in a wide-ranging collaborative effort aimed at tackling the problem at its root. Most crucially, the government should rapidly overhaul China's primary and middle school structure, and invest sufficient funds to support an academic and vocational compulsory education system that is appropriate to the needs of the majority of rural families, and in this way reduce the supply of child labour at its source.⁵⁰

Coming to India, it has not ratified ILO Convention No. 138, the Minimum Age Convention or Convention No. 182, the Worst Forms of Child Labour Convention.⁵¹ The Constitution of India states that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment (Article 24). In this way, although Convention No. 182 on the Worst Forms of Child Labour sets the minimum age for hazardous work at 18 years of age, the minimum age for hazardous work in India is 14 years old. Article 45 stipulates that the State shall endeavour to provide free and compulsory education for all children up to the 14th year of age. However, this Constitutional provision was never implemented and school enrolment rates remain low. However, some of the laws' scope, including the Child Labour Act, does not cover family farms or family businesses.

In practice, child labour is a widespread problem in India due to the prevalence of extreme poverty in many areas, low law enforcing capacity, the absence of universal free education and tolerant societal norms. Governmental sources show that there are 16.4 million working children between 5 and 14 years old. However, NGO estimations consider the number to be between 55 and 87 million. Most of the children work in agriculture and perform informal economic activities, such as domestic servitude. Also they can be found in a wide variety of industries, sometimes undertaking hazardous tasks, including in mining and quarrying, textiles, leather and garment factories, fireworks factories and many others. Children

⁵⁰ Supra note 26 at p. 35

⁵¹ Supra note 24

are also employed in the services sector, particularly in restaurants, hotels and auto repair. Reports show that a considerable number of children are scavengers and manually collect trash for recycling.⁵² The Indian government should adopt a broader and more flexible approach to the problem of child labour. The legal enforcement system must be reformed, while government and social organisations should initiate a wide range of new measures aimed at eradicating the supply of child labour at its source.

In both the systems, despite the Governments enacting appropriate legislations and the executive implementing them, we do find the existence of mafia working informally corrupting the whole unorganized labour sector. The problem is identifiable but the groups are unidentifiable which makes the implementation procedure very arduous.

⁵² *Supra* note 44 at p. 8.