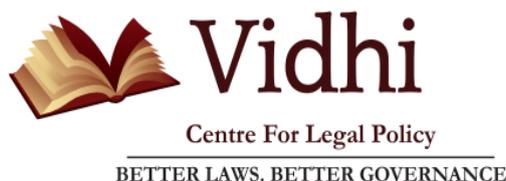


# COMMENTS AND SUGGESTIONS ON THE PROPOSED AMENDMENTS TO THE CHILD LABOUR (PROHIBITION AND REGULATION ACT), 1986

*A Note by Vidhi Centre for Legal Policy*

*New Delhi*



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## EXECUTIVE SUMMARY

The Child Labour (Prohibition and Regulation) Amendment Bill, 2012 (hereinafter ‘Amendment Bill’) primarily seeks to amend the Child Labour (Prohibition and Regulation) Act, 1986, (hereinafter ‘Child Labour Act’) to bring it in compliance with national and international standards concerning the prohibition on child labour. In this regard, the Bill endeavours to prohibit employment of all children below fourteen years of age in order to comply with Article 21A of the Constitution of India and be consistent with the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter ‘RTE Act’). Further, the Bill strives to make a distinction between children and adolescents restricting the employment of adolescents in hazardous processes and occupations.

In this report, we recommend specific changes to the Amendment Bill to ensure that the aim of enforcing the prohibition on all forms of child labour is successfully met in India. We have also examined India’s obligations under international law with regard to the prohibition on child labour and suggested changes to make sure that these obligations have been complied with, within the text of the amendment Bill.

We recommend the following changes in the clauses in the Amendment Bill:-

1. The definitions of “child” and “adolescent” under Clause 4 of the Amendment Bill, should be changed in order to make them more consistent with the definition of “child” under the RTE Act.
2. Clause 5 of the Amendment Bill which deals with the applicability of the Child Labour Act should be re-worded in harmony with Indian laws such as the RTE Act and the Industrial Disputes Act, 1948 (hereinafter ‘ID Act’) terms “occupation” and “employed” should be specifically defined in order to clarify the applicability of the Child Labour Act.
3. Clause 6 of the Amendment Bill pertaining to employment of adolescents in hazardous industries, should be amended to ensure that the language and structure is consistent with the aim and objectives of the Child Labour Act.
4. Clause 8 of the Amendment Bill removes Part III of the Act which provided for the conditions of employment for children. This Clause should be modified with the requisite changes, in order to make Part III applicable to the work conditions of adolescents under the Amendment Bill.
5. A fresh clause be introduced empowering the Central Government, on the advice of the Child Labour Technical Advisory Committee, to exempt the application of the provisions of this Act to certain industries, subject to Rules and Regulations governing the conditions of work of children.

## INTRODUCTION

The Ministry of Labour and Employment vide office memorandum dated 16.06.2014 has sought comments and suggestions of the general public on the proposed amendments to the Child Labour (Prohibition and Regulation) Act, 1986 (hereinafter 'Child Labour Act') within a period of thirty (30) days. The amendments to the Child Labour Act have been proposed through the Amendment Bill which was introduced in the Rajya Sabha on December 4, 2012. The present comments and suggestions have been prepared by Vidhi Centre for Legal Policy in response to the above office memorandum and addressing the legal aspects of the Amendment Bill.

This note consists of two parts; the first part will examine the proposed amendments, clause by clause and comment on the legal feasibility of the same. The second part will analyse the note from the perspective of international law obligations of India with respect to child labour and see if the proposed amendments deviate from or adequately fulfil such obligations. In addition, this part will also examine if further amendments are required to fulfil India's international obligations.

In preparing this note, we have analysed the amendments from the perspective of five relevant parameters on the basis of which legislation must be assessed. These are:

- **Constitutionality:** Ensuring that legislation is not in conflict with the Constitution of India and relevant Supreme Court precedent.
- **Compliance:** Drafting legislation that complies with India's obligations under international law.
- **Coherence:** Harmonising conflicting laws and rules that govern similar subjects.
- **Clarity:** Recommending appropriate institutional reform to make laws clear in form and substance.
- **Contemporaneity:** Incorporating international best practices in Indian law-making.

## I. CLAUSE-WISE COMMENTS ON THE AMENDMENT BILL

In this part we propose to offer our comments and suggestions on the specific clauses of the Amendment Bill. Of the thirteen clauses in the Amendment Bill we have focussed only on those clauses which we think require amendment or modification for the reasons we have discussed below.

### A. Clause 4 - Amendment of Section 2

At present, sub-section (ii) of Section 2 of the Child Labour Act defines “child” to mean any person who has not completed fourteen years of age. This definition is key to the scope and applicability of the Act as it defines who is a “child” who may not be permitted to be engaged for employment under the Act.

The amendment Bill seeks to change the definition of a child by linking the age to the maximum age of applicability of the RTE Act or fourteen years, whichever is higher. Further “adolescent” is defined to mean a person who is between the ages of fourteen and eighteen. The latter provision is an expansion in the scope of the Child Labour Act to cover adolescents who are presently outside the purview of this law.

From the proposed amendments, it is clear that the two terms, “child” and “adolescent” are supposed to be mutually exclusive. A child cannot be engaged for any kind of employment or labour, but an adolescent can, subject to certain restrictions. However, the definitions of “child” and “adolescent” proposed in the amendment Bill, in our view, are likely to overlap, given that the definition of “child” is proposed to be partly linked to the RTE Act, while the lower age of “adolescent” is fixed at fourteen.

If the two terms are intended to be mutually exclusive, it should be clear from a plain reading of the provisions leaving no scope for confusion in application. By linking the definition of “child” to the RTE Act, but not doing so for the definition of “adolescent”, Clause 2 of the Amendment Bill creates scope for confusion. At present, since the upper age limit for the application of the RTE Act is fourteen years, there is no confusion. However, if Parliament were to increase the maximum age of applicability of the RTE Act to fifteen, the definitions of “child” and “adolescent” under the Child Labour Act would overlap unless the Child Labour Act is also amended at the same time, there will be confusion.

While it is understandable that the Child Labour Act defines “child” in congruity with the RTE ACT, there must be consistency within the Child Labour Act itself to ensure that any changes in the RTE Act do not lead to confusion. Either the Child Labour Act should clearly define child and adolescent with no reference to the RTE or both should be defined with reference to the RTE. We are of the view that the latter approach is preferable. Since the RTE is the threshold fulfilment of a Constitutional right of children, it should be linked to the Child Labour Act to ensure that the rights of children are properly protected under law. This view has also been expressed by the Standing Committee and has been accepted by the Ministry of Labour.

For these reasons therefore, we suggest that the definition of “adolescent” and “child” as contained in Clause 4 be modified as follows:

(ii) “adolescent” means a person who is not a “child” for the purposes of this Act and has not completed his eighteenth year;

(iii) “child” shall have the same meaning as contained in sub-section (c) of Section 2 of the Right of Children to Free and Compulsory Education Act, 2009;

## B. Clause 5 - Substitution of new Section for Section 3

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As it stands, Section 3 of the Child Labour Act prohibits employment of children in any of the occupations mentioned in Part A of the Schedule to the Child Labour Act and in any of the processes mentioned in Part B of the Schedule to the Child Labour Act. The ban on employment of child labour is not exhaustive but is restricted to the listed professions and processes mentioned in the Schedule.

The proposed amendment to Section 3 seeks to make the ban on employment of child labour total. It also seeks to clarify however, that as with the existing legislation and in line with international obligations, assisting one’s family or receiving any training in a technical institute would not constitute “child labour”.

The manner in which Clause 5 of the amendment Bill is structured however, does not provide complete clarity on the matter. The present Child Labour Act does not provide an exhaustive definition of what constitutes “child labour”, but the proposed amendment Bill must contain such an exhaustive definition. The need to properly and carefully define what “child labour” arises because the manner in which child labour is being banned has changed; in the present law, child labour in certain areas enumerated in the Schedule is banned where in the Amendment Bill, all forms of child labour are totally banned. In order to achieve these purposes therefore, the Amendment Bill must therefore define the terms “employed or permitted to work”, “occupation”, “process”, “technical institutions” and “subordinate relationship of labour or work” contained in Clause 5.

These terms also need definitions since no existing labour legislation defines these terms despite using them. These terms have also been subject to judicial interpretation by courts in the context of these legislation; such interpretations may be relied upon for drawing up a comprehensive and clear definition.

“Occupation” has been defined by the Supreme Court of India in the context of the ID Act to mean ‘principal activity that earns money in the form of wages or salary for a person.’<sup>1</sup> Here the Supreme Court has distinguished “occupation” and “profession” and a wider definition would be required for the purposes of the ID Act. A wider definition can be found in *Sodan Singh v New Delhi Municipal Committee*<sup>2</sup> where it was held that “occupation” was ‘any regular work, profession, job, principal activity, employment, business or a calling in which an individual is engaged.’<sup>3</sup> This was in the context of the term “occupation” as it is contained in Article 19(1)(g) of the Constitution and is an expansive definition that would fit the purpose of an expansive definition under the proposed definition.

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<sup>1</sup>*Muir Mills Unit of NTC (UP) Ltd v Swayam Prakash Srivastava* (2007) 1 SCC 491, 503, para 38.

<sup>2</sup> (1989) 4 SCC 155.

<sup>3</sup>*Ibid* at 174, para 28.

The term “process” is generally defined to mean any ‘series of actions which are carried out in order to achieve a particular result.’<sup>4</sup> It is not a term that has been used in any other labour legislation but has been defined in Section 2(o) of the Bureau of Indian Standards Act, 1986 to mean ‘any practice, treatment and mode of manufacture of any article.’ If a wide definition of the term “occupation” is used, then the term “process” would become redundant. It was necessary when specific occupations and processes prohibited for the use of child labour were listed in the Schedule to the Child Labour Act, but since that distinction is proposed to be removed, it would therefore be preferable to remove the term “process” as well to avoid any confusion.

The term “employed” is used in multiple legislations such as the Factories Act, 1948, the Motor Transport Workers Act, 1961, the Employees’ Provident Act, 1952 and also the Income Tax Act, 1961. The definition of “employed” is however not provided anywhere but has been given a wide or narrow interpretation depending on the context in which it has been used.

For instance, in the context of Section 32(i)(v) of the Income Tax Act, it has been held that it includes not just contractual employment but includes all persons engaged in the business of the assessee as well, including apprentices.<sup>5</sup>

Given the purposes of the amendments to the Child Labour Act, it would be advisable therefore to adopt the wide definition of “employed” and include the same in the definition clauses of the legislation.

Another source of confusion relates to what constitutes permissible activities for a child. The proviso to Section 3 borrows language from the International Labour Organisation’s (ILO) Convention No. 182 on the Worst Forms of Child Labour without however making the text suitable for the Indian context. The terms used are not defined in Indian law and can cause confusion when being interpreted by judicial authorities. The purpose sought to be achieved can be met by replacing the terms with words and phrases already well defined in Indian law. For this reason, we recommend that the term “technical institute” be replaced with the term “school”. The former would be inappropriate in the context of a child since, by definition, a child between the ages of six to fourteen should be in a “school” as defined under Section 2(n) of the RTE. Furthermore, the term “subordinate relationship of labour or work” has not been defined and it is unclear what the scope of this term is. It is not found in the Convention either and has not been defined in Indian law as well. As such, it would be rendered redundant in any case with a wide definition of the term “occupation” and may therefore be removed from the Clause.

It is therefore recommended that the amendment to Section 3 read as follows:

*3. No child shall be employed or permitted to be employed in any occupation.*

To clarify the meaning of the words used in Section 3, the following definitions need to be inserted into Section 2 of the Child Labour Act and we suggest that these be included in the amendment Bill:

*In section 2 of the principal Act, the following shall be inserted, namely-*

<sup>4</sup> See “Process” in Sandra Anderson, *Collins English Dictionary* (HarperCollins 2007).

<sup>5</sup> *CIT v Tata Engineering and Locomotive Co Ltd* (1993) 201 ITR 1036.

(iiia) “employed” shall mean engaged in any activity, whether for profit or not;

(va) “occupation” shall mean any regular work, profession, job, activity, employment, business or a calling in which an individual can be engaged but does not include,

- a) any not-for-profit activity or work carried out within a school for the purposes of education within the school.
- b) any activity or work carried on at a child’s home, for the benefit of the child’s family, in a manner that does not interfere with education at school.

(viiiia) “school” shall have the same meaning as contained in sub-section (n) of Section 2 of the Right of Children to Free and Compulsory Education Act, 2009;

### C. Clause 6 - Insertion of new Section 3A

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The Amendment Bill also introduces Section 3A to the Child Labour Act which prevents the employment of adolescents in the hazardous occupations or processes set forth in the Schedule. The Schedule itself contains three entries relating to “Mines”, “Inflammable substances or explosives” and “Hazardous processes” as defined in the Factories Act, 1948. At present these include only ‘processes’ as commonly understood and don’t involve any occupation. However, if the Central Government so chooses, it may include occupations as well in this list.

The purpose of this particular amendment seems to be to provide additional penalties under this Act for the employment of adolescents in the hazardous occupations or processes listed in the Schedule. However, in order to fulfil this purpose properly, and in the interests of consistency and uniformity, a few amendments are necessary. We therefore recommend that Section 3A may be amended as follows:

*3A. No adolescent shall be employed or permitted to be employed in any of the occupations or processes set forth in the Schedule.*

### D. Clause 8 - Omission of Part III

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Part III of the Child Labour Act, at present, applies to those establishments where child labour is permitted. These are establishments which do not carry out any of the processes or do not involve any of the occupations mentioned in the Schedule to the Act. The provisions of Part III prescribe working conditions for children involved in such establishments providing *inter alia* for weekly holidays, notice to inspectors, and health and safety. Since all forms of child labour have been abolished under the proposed amendment, this Part would be rendered redundant in its present form.

However, it may be noted that the scope of the Child Labour Act itself has been expanded to include not just children but also adolescents. The proposed amendment to the long title of the Act expressly includes adolescents within the purview of the Act in addition to the provisions which prohibit

employment of adolescents in certain hazardous industries. The purpose of Part III being to provide a safe working environment, there is no reason why, with a few suitable amendments, it cannot be applied to adolescents.

At present, different laws provide for different health and safety standards for adolescents depending on the industry. For instance, Section 109 of the Merchant Shipping Act or Section 40 (2) of the Mines Act, 1952. In some cases they may be entirely unregulated with no special standards for adolescents employed in that workplace. Keeping in mind the specific needs of adolescents employed at the workplace, it would be advisable therefore to retain provisions akin to part III, suitably amended to protect the interests of adolescents at the workplace. This suggestion has also been made by the Standing Committee and accepted by the Ministry of Labour. In addition, sub-section (b) of Section 18 which grants rule making power in respect of children at work should also be amended to make it clear that it applies only to adolescents.

Clause 8 may therefore be amended as follows:

*In Part III of the Act and in Section 18(b) of the Act, wherever the word “child” or “children” occurs, it shall be replaced with the word “adolescent”.*

## E. Child actors and children employed in the audio-visual entertainment industries

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An issue that has been raised by the Standing Committee relates to the engagement of children in the audio-visual entertainment industry. The Ministry of Labour has accepted that specific rules and regulations need to be framed in this respect. In addition, a separate clause needs to be inserted to permit the framing of such Rules and Regulations and excluding the application of the Child Labour Act to the audio-visual entertainment industry. Since, at present, the inclusion or exclusion of an occupation into the Schedule takes place upon the advice of the Child Labour Technical Advisory Committee, it is advisable that a similar procedure be followed in exempting any occupation or industry from the application of the Child Labour Act.

Since there is no clause in the amendment Bill to create exemptions or provide such Rule making power, we suggest that the following clause inserting sub-section (3) of Section 18 of the Child Labour Act be put into the amendment Bill as follows:

*After sub-section (b) of Section 18 of the Act, the following sub-section shall be inserted:*

*“(3) Notwithstanding anything contained in the Act and without prejudice to the generality of the powers in sub-section (1), the Central Government may, by notification, exempt the application of the provisions of this Act to any occupation, subject to such conditions as may be prescribed in Rules providing for such exemption.*

*Provided that before such Notification is issued, the Central Government shall obtain the advice of the Child Labour Technical Advisory Committee on the desirability of exempting the provisions of this Act for the occupation it proposes to exempt.”*

## II. INTERNATIONAL LAW AND CHILD LABOUR LEGISLATION IN INDIA

The employment of children in commercial establishments has been one of the most challenging issues in the world since the industrial revolution. To address this issue, the international community has framed several international treaties and conventions that take the needs of the child into account and provide for safeguards to protect its mental, physical and psychological health.

In developing economies such as India, where child labour is rampant, several efforts have been made to address the issue of child labour. In this regard, India has signed and ratified several noteworthy conventions that address issues pertaining to children and has endeavoured to adhere to several other conventions, to which it is not a party.

### A. International Conventions related to prohibition on Child Labour

A comprehensive list of the conventions India has consented to adhere to under International Law and the specific obligations under each of them is provided below. Of the Conventions listed below, India is a party to those listed from Sl. No. 1 to 10.

Sl. No.	Convention	Obligations
1.	International Covenant on Civil and Political Rights (ICCPR)	<p><b>Article 8:</b> (1) No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.</p> <p>(2) No one shall be held in servitude.</p> <p>(3) (a) No one shall be required to perform forced or compulsory labour;</p> <p><b>Article 24:</b> (1) Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.</p>
2.	International Covenant on Economic, Social and Cultural Rights (ICESCR)	<p><b>Article 10:</b> (3) Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.</p>

3.	Convention on the Rights of the Child (CRC)	<p><b>Article 6:</b> (2) States Parties shall ensure to the maximum extent possible the survival and development of the child.</p> <p><b>Article 32:</b> (1) States Parties recognize the right of the child 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.</p> <p>(2) States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:</p> <p>(a) Provide for a minimum age or minimum ages for admission to employment;</p> <p>(b) Provide for appropriate regulation of the hours and conditions of employment;</p> <p>(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.</p> <p><b>Article 36:</b> States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.</p> <p><b>Article 39:</b> States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.</p>
4.	Minimum Age (Industry) Convention, 1919 (No. 5)	Work done by children of less than 14 years of age in industrial undertakings is prohibited. <sup>6</sup>
5.	Night Work of Young Persons (Industry) Convention, 1919 (No. 6)	Codification for the rules for the "employment of children during the night"

<sup>6</sup> International Programme on the Elimination of Child Labour (IPEC), *Combating child labour: A Handbook for Labour Inspectors* (International Labour Organization (ILO) 2002).

6.	Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)	Prohibition on the employment of persons under the age of eighteen years as trimmer or stoker in a “vessel”.
7.	Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	Compulsory medical examination of children and young persons employed at the sea after regular intervals. <sup>7</sup>
8.	Forced Labour Convention, 1930 (No. 29)	Protection of children from forced or compulsory labour, such as trafficking, bondage, prostitution and pornography.
9.	Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)	Revision of the Night Work of Young Persons (Industry) Convention, 1919 adopted at the first session of the ILO.
10.	Minimum Age (Underground Work) Convention, 1965 (No. 123)	Minimum age for admission to employment in mines including the nature of employment in such mines, keeping in mind the existing conventions on minimum age and women’s employment.
11.	Minimum Age Convention, 1973 (No. 138)	India is not a party to the present Convention No. 138, but is making efforts to abide by the principles embodied in the text of this Convention through the Child Labour Bill to later on consider signing and ratifying the Convention. <sup>8</sup> This Convention amends and updates the previous minimum age conventions
12.	Worst Forms of Child Labour Convention, 1999 (No. 182)	In spite not being a party to Convention No. 182, India has endeavoured to focus on the priority areas with regard to child labour and its worst forms without losing the long term goal of the effective elimination of all child labour. <sup>9</sup> Efforts have been made to incorporate the text of this Convention into the Bill. <sup>10</sup>

## B. Compliance of International Legal Obligations by India

### 1. Minimum Age Requirement and the Role of the Right to Education Act:

Clause 5 of the Amendment Bill proposes to ban all child labour below the age of 14 years and proposes to ban the employment of adolescents who are above 14 years of age but below 18 years

<sup>7</sup> Medical Examination of Young Persons (Sea) Convention, 1921 (ILO Convention No 16), 38 UNTS 217, 218, Preamble.

<sup>8</sup> Standing Committee Report on Labour, Ministry of Labour and Employment, Government of India, *Child Labour (Prohibition & Regulation) Amendment, Bill, 2012* (2013-2014) (hereinafter ‘Standing Committee Report on Labour’).

<sup>9</sup> *Ibid.*

<sup>10</sup> Standing Committee Report on Labour (n 8).

in hazardous industries and processes. This amendment with respect to age has been proposed in the Bill to bring India in conformity with the ILO Convention Nos. 138 and 182, which provide the minimum age for admission to employment or work to be not less than the age of completion of compulsory schooling and that prohibits all the children below 18 years from working in hazardous industries and processes. India is not a party to the above mentioned Conventions, but has endeavoured to adhere to them through this amendment.<sup>11</sup>

It is also pertinent to note that the age amendment as proposed is in line with the RTE Act, wherein all children in India are entitled to free and compulsory primary education till the age of 14. The rationale in bringing both legislations in consonance is to avoid situations wherein children between the ages of 15 to 18 years would have no access to either education or employment.<sup>12</sup> Therefore the requisite age of 14 years has been added keeping in mind the socio-economic conditions in India and observing the ILO standards under Convention No. 138 wherein the minimum age for employment may be 14 years under certain defined circumstances.<sup>13</sup> Further, the strategy to equate education with the eradication of child labour has been developed by the ILO through its International Programme on the Elimination of Child Labour (IPEC) Program. This Program promotes education among children and thus dissuades them from working or getting employed as they feel the need to attend school for their future growth and development.<sup>14</sup>

The proposed amendment to the age and the distinction between children and adolescents does not violate any of India's obligations under any other Convention. For example, treaties such as the ICCPR and ICESCR do not address the notion of age within their provisions relevant to children. Additionally, treaties such as the CRC allow for State Parties to set the minimum age of employment as per their national legislation keeping in mind the child's best interests and his/her maximum survival and development.<sup>15</sup>

## 2. Exception regarding household work.

In the amendment Bill, all establishments are prohibited from employing children below the age of 14. A proviso to this requirement states that a child helping his family after his school hours or in fields, home-based work, or forest gathering does not amount to child labour with the exception of any help where there is subordinate relationship of labour or work which is outsourced and carried out in home.

It is pertinent to note that even though the proposed amendment strives to ban child labour in all occupations or process, whether the informal sector including households where children are employed as domestic servants is covered under the amendment Bill, is unclear. It does not appear to cover employment of children in households other than their family. The proviso to Clause 5 has

<sup>11</sup> Standing Committee Report on Labour (n 8).

<sup>12</sup> Standing Committee Report on Labour (n 8).

<sup>13</sup> Convention concerning Minimum Age for Admission to Employment (ILO Convention No 138), 1015 UNTS 297.

<sup>14</sup> IPEC, 'Combating Child Labour Through Education, International Program on Elimination of Child Labour' (ILO, 2008) <<http://www.ilo.org/ipecinfor/product/download.do?type=document&id=7850>> accessed 7 July 2014.

<sup>15</sup> Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of Child* (3rd edn, United Nations Children's Fund 2007).

been framed too widely and could be construed to mean that such employment is permitted, which would be contrary to India's obligations.

The Committee on the Rights of the Child had recommended as per its implementation handbook that informal sectors need to be included within the purview of the child labour legislation in India in order to address the form of child labour that is almost invisible.<sup>16</sup> Further, given that some of the worst forms of child labour occur within the confines of the domestic households or informal industries, where the physical, mental and psychological abuse due to the lack of reach is the most pronounced, the applicability of the ILO Convention No. 182 in the informal sector, especially domestic households, is most relevant in India.<sup>17</sup>

Therefore, in the light of the above, the amendment Bill needs to adequately clarify the extent of noneconomic activities, particularly domestic chores, falling within the scope of child labour.<sup>18</sup> The amendments proposed by us take care of this concern as well.

### 3. Scope of Hazardous Activities and Conditions of Work for Adolescents under the Bill:

Under Part II of the recommendations concerning the prohibition and immediate action for the elimination of the worst forms of child labour to the ILO Convention No. 182, the determinants of hazardous work have been provided for and include:-

- (a) Work which exposes children to physical, psychological or sexual abuse;
- (b) Work underground, under water, at dangerous heights or in confined spaces;
- (c) Work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- (d) Work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; and
- (e) Work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

These recommendations also demand that national laws or regulations, after consultation with the workers' and employers' organizations concerned, authorize employment for adolescents on the condition that the health, safety and morals of the adolescents are fully protected, and that they

<sup>16</sup> Implementation Handbook for the Convention on the Rights of Child (n 15).

<sup>17</sup> IPEC, 'Helping hands or shackled lives? Understanding child domestic labour and responses to it' (ILO, 2004), <[http://www.unicef.org/violencestudy/pdf/2004\\_domestic\\_Helpinghands\\_en.pdf](http://www.unicef.org/violencestudy/pdf/2004_domestic_Helpinghands_en.pdf)> accessed 10 July 2014; See also 'Domestic workers lowly paid in India on inequality: Economist' (*The Times of India*, 1 March, 2014) <<http://timesofindia.indiatimes.com/business/india-business/Domestic-workers-lowly-paid-in-India-on-inequality-Economist/articleshow/31228662.cms>> accessed 10 July 2014; 'Shadow Workforce's Battle for Dignity' (*The Washington Post*, 3 November 2008) <<http://www.washingtonpost.com/wp-dyn/content/article/2008/11/02/AR20081102022203.html>> accessed 10 July 2014.

<sup>18</sup> Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, ILO, *The end of child labour: Within reach* (2006).

have received adequate specific instructions or vocational training in the relevant branch of activity.<sup>19</sup>

The ILO Convention Nos. 5, 15, and 123, to which India is a party do not address either of these concerns, however given India's inclination to sign Convention Nos. 138 and 182, the recommendations and directions listed under these Conventions should be paid heed to.

In light of the above, some of the listed points in the requisite ILO Conventions and recommendations could be included within the purview of the Bill, to address the concerns regarding the identification of appropriate indicators and standards for hazardous work including the conditions of work for adolescents. For this reason as well, we have recommended that Clause 6 be changed to apply Part III of the Child Labour Act to adolescents as well to provide a minimum threshold protection in terms of workplace safety.

#### 4. Rescue and Rehabilitation of Child Labour:

The Bill does not address the rescue and rehabilitation of child labourers and as per the Standing Committee Report, relies upon the Juvenile Justice (Care and Protection of Children) Act, 2000, (hereinafter 'JJ Act') that addresses concerns relating to juveniles in conflict with law to address this issue.

Under Article 7 of the ILO Convention No.182, effective and time-bound measures that address the educational, physical and psychological needs of the child are necessary. In this regard, removal of children from the worst forms of child labour and their rehabilitation and social integration, are important steps to assist the child victims in moving forward. Further, the ILO Declaration on Fundamental Principles and Rights at Work<sup>20</sup> and the ILO Declaration on Social Justice for a Fair Globalization<sup>21</sup>, all lay down necessary measures to identify, rescue and rehabilitate child labourers by strengthening labour inspection and law enforcement machinery at the national level. These measures have also been elaborated upon under Article 25 of the ILO Convention No. 29 and in the IPEC Good Practices regarding Child Labour and Related Inspections.<sup>22</sup> In addition, the 12<sup>th</sup> Five Year Plan of the Government of India had indicated that when the Act would be amended to get it in line with the RTE, measures regarding skills development, vocational training, and rehabilitation of children who are victims of child labour, would be provided for.<sup>23</sup>

We would like to point out in this regard that, the JJ Act provides for such rehabilitation. Under subsection (d) of Section 2 of the JJ Act, a "working child" has been specifically defined to mean a

<sup>19</sup> 'Worst Forms of Child Labour Recommendation, 1999 (Recommendation No 190)', (ILO, 1999) <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?R190>> accessed 6 July 2014.

<sup>20</sup> 'ILO Declaration on Fundamental Principles and Rights at Work' (International Labour Conference, 86th Sess., Geneva, 18 June 1998).

<sup>21</sup> 'ILO Declaration on Social Justice for a Fair Globalization' (International Labour Conference, 97th Sess., Geneva, 10 June 2008).

<sup>22</sup> Report of the Committee of Experts on the Application of the ILO Conventions and Recommendations, ILO, *Giving Globalization a Human Face: General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization* (2012).

<sup>23</sup> 'India: Decent Work Country Program' (ILO Publication 2013-17) <<http://www.ilo.org/public/english/bureau/program/dwcp/download/india.pdf>> accessed 7 July 2014.

‘child in need of care and protection’. This implies that Chapter III of the JJ Act providing for rescue and rehabilitation of children in need of care and protection would also automatically apply to working children. This is a satisfactory arrangement in our view as it ensures compliance with International law obligations within the existing framework and institutions in India.

A detailed chart outlining the compliance status of the various obligations of India under international law related to child labour is annexed to this note.

### III. SUMMARY OF CONCLUSIONS AND SPECIFIC RECOMMENDATIONS

The amendment Bill has been introduced with the necessary and laudable objective of outlawing all forms of child labour and prohibiting the most hazardous forms of labour for adolescents within the framework of the Child Labour Act. It also seeks to fulfil India's obligations under international law and bring India's laws in line with international best practices in tackling the problem of child labour. However, there are certain legal concerns in the present form of the Amendment Bill which need to be rectified in order to meet this objective.

Our suggestions therefore are as follows:

1. Clause 4 of the Amendment Bill be modified as follows:
  - (ii) *“adolescent” means a person who is not a “child” for the purposes of this Act but has not completed his eighteenth year;*
  - (iii) *“child” shall have the same meaning as contained in sub-section (c) of Section 2 of the Right of Children to Free and Compulsory Education Act, 2009;*
2. Clause 5 amending Section 3 be modified as follows:
  3. *No child shall be employed or permitted to be employed in any occupation.*
3. A separate Clause be inserted into the Amending Bill which reads as follows:
 

*In section 2 of the principal Act, the following shall be inserted, namely-*

  - (iiia) *“employed” shall mean engaged in any activity, whether for profit or not;*
  - (va) *“occupation” shall mean any regular work, profession, job, activity, employment, business or a calling in which an individual can be engaged but does not include,*
    - a) *any not-for-profit activity or work carried out within a school for the purposes of education within the school.*
    - b) *Any activity or work carried on at a child's home, for the benefit of the child's family, in a manner that does not interfere with education at school.*
  - (viiia) *“school” shall have the same meaning as contained in sub-section (n) of Section 2 of the Right of Children to Free and Compulsory Education Act, 2009;*
4. Clause 8 of the Amendment Bill may therefore be amended as follows:
 

*In Part III of the Act, wherever the word “child” occurs, it shall be replaced with the word “adolescent.”*
5. Following clause inserting sub-section (3) of Section 18 of the Child Labour Act be put into the amendment Bill as follows:

*After sub-section (b) of Section 18 of the Act, the following sub-section shall be inserted:*

*(3) Notwithstanding anything contained in the Act and without prejudice to the generality of the powers in sub-section (1), the Central Government may, by notification, exempt the application of the provisions of this Act to any occupation, subject to such conditions as may be prescribed in Rules made for such purpose.*

*Provided that before such Notification is issued, the Central Government shall obtain the advice of the Child Labour Technical Advisory Committee on the desirability of exempting the provisions of this Act for the occupation it proposes to exempt.*

With these changes, we believe that the proposed amendments will fully serve the purpose for which they have been enacted and bring India's child labour laws in line with the best practices in the world.

## ANNEXURE:

## Chart outlining Compliance as per the text of the amendment Bill

S. No.	Conventions	Minimum Age + RTE	Household work exception	Hazardous activities + Conditions of work for adolescents	Rescue and Rehabilitation
1.	International Covenant on Civil and Political Rights (ICCPR)	Not applicable	Article 8 not complied with on account of bonded labour and slavery in household work.	Article 24 (1) not complied with as measures of protection required for persons below 18, are not dealt with expressly under the Bill and therefore may not be in compliance with the internationally applicable standards.	Complied
2.	International Covenant on Economic, Social and Cultural Rights (ICESCR)	Complied	Not applicable	Article 10(3) not complied with as measures of protection required for protection of children from economic exploitation have not been provided for under the Bill.	Complied
3.	Convention on the Rights of the Child (CRC)	Complied	Article 32(1), 32(2) & 36, which require State parties to take measures to protect the child from economic exploitation of any kind, not fully complied with under the act since household or	Article 32(2)(b) which requires State parties to regulate the conditions of work for children, not fully complied with under the Bill.	Complied

			domestic work has not been taken into account adequately.		
4.	Minimum Age (Industry) Convention, 1919 (No. 5)	Complied	Not applicable	Not applicable	Not applicable
5.	Night Work of Young Persons (Industry) Convention, 1919 (No. 6)	Complied	Not applicable	Not applicable	Not applicable
6.	Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)	Complied	Not applicable	Not applicable	Not applicable
7.	Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	Complied	Not applicable	Not applicable	Not applicable
8.	Forced Labour Convention, 1930 (No. 29)	Complied	Not applicable	Not applicable	Not applicable
9.	Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)	Complied	Not applicable	Complied	Not applicable
10.	Minimum Age (Underground Work) Convention,	Complied	Not applicable	Complied	Not applicable

	1965 (No. 123)				
11.	Minimum Age Convention, 1973 (No. 138)	Complied	Not applicable	Article 3(3), 6, 7(3), 8(2), require standardized conditions of employment for adolescents which promote their growth and welfare. However none of these provisions have been complied with under the Bill.	Not applicable
12.	Worst Forms of Child Labour Convention, 1999 (No. 182)	Complied	Article 3(a) and 3(b) not complied with given that slavery and practices similar to slavery, such as debt bondage and serfdom etc., which in many instances are committed in the domestic environment are not essentially included under the Bill	Not applicable	Complied