

Legal Control of Child Labour in Myanmar

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Abstract

Globally, All States had recognized that “Child” under 14 years of age cannot work for their earning. Due to the lower earning and poverty, child is vulnerable person cannot able to enjoy their childhood life. In addition, child becomes a person who works him or herself for living. Child Labour is one of the severe problems faced by developed and developing countries. This paper intends to suggest for taking necessary measures within the domestic legal frame work. These measures are related to benefits of Child such as basic health, nutrition, educational opportunity. To struggle for elimination of Child Labour, Myanmar has no specific law to address about Child Labour. However, the child right law and several existing labour law concerns Child Labour in Myanmar, there are several International Conventions attributed to the rights of Child Labour under the auspices of International Labour Organization. This research paper evaluates the international norms regarding Child Labour and its issue. By analyzing this research, it is necessary for us to enact new laws and implement legal controls. Expected findings highlight the social- economic issues and seek for responsibilities to coup Child Labour in a society. The research paper informed the implementation process of the issues of Child Labour as whistleblowing.

Keywords: Child Labour, international, convention, legal control.

Introduction

By reference to the United Nations Children’s Fund (UNICEF) population data,⁴ 2023, there are population under age 18 over sixteen million children in Myanmar. Under the statistic International Labour Organization over one million children in Myanmar between age 15-17 years are Child Labour. Over half of them involved in hazardous work that directly endangers their health, safety, and moral development, which involves the handling or transport of heavy loads, exposure to hazardous substances and so on. Under the Child Rights Law Section 2 (a) states that, no Child under 14 years is legally permitted to work. The most critical disadvantage for Child Labour is dropping out of school early. As a result, it becomes to be loss of chance to get well paid job due to the lack of knowledge and skill in the future of their lives. The Youth and Child’s development sector are important in determining the future of a country and are valuable resources for the country. This research finds out the cause and roots of Child Labour issues and why it does not able to coup this disguised situation. This research addresses Child Labour issue with different contexts.

The International Standards for Protection of Child Labour

Child Labour remains a persistent problem in the world today. The latest global estimates indicate that accounting for almost 1 in 10 of all children worldwide. Child Labour was in hazardous work that directly endangers their health, safety and moral development.⁵

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⁴ <https://population.un.org/WPP/>

⁵ Child Labour Global Estimates 2020, Trends and the road forward, International Labour Organization

Children have always contributed to the economic upkeep of their families through farm labour and handicrafts. However, the growth of manufacturing and farm mechanization during the Industrial Revolution in Europe and the United States in the 18th and 19th centuries led to many children working under dangerous conditions in factories and farms. This in turn prompted Children Labour Laws that not only regulated Child Labour conditions, but also mandated education. Here are some highlights of Child Labour history: The Minimum Age Convention (No.138) was adopted in 1973 and became effective in June 1976, ratified by 172 countries, sets the minimum age for employment but allows some exceptions. The United Nation enacts the Convention on the Rights of the Child (1989) to guarantee protection of children's rights to grow and thrive.⁶

Myanmar ratified the Convention on the Rights of the Child in 1991, and enacted the Child Rights Law in 1993 and the Union Parliament passed amendments to the Child Right Law in July 2019. According to the United Nations Convention on the Right of the Child, Article 32 states that, Every Child has to be protected from any work that is dangerous, that interferes with their education or that is harmful to their health. Governments must set a minimum working age and make sure working conditions are safe and appropriate.⁷

Myanmar has ratified the United Nations Convention on the Rights of the Child, which includes four core principles non-discrimination, devotion to the best interests of the child, the right to life, survival and development and respect for the view of the child. Myanmar ratified International Labour Organization No. (182), The Worst Forms of Child Labour Convention (1999), ratified by 186 countries, requires ending practices like slavery, child trafficking, debt bondage forced labour in armed conflict, prostitution, pornography, drug trafficking and other illicit activities. The International Programme on the Elimination of Child Labour (IPEC) 1992 is founded to promote the global elimination of Child Labour and to support countries in their efforts.⁸

In Myanmar, there is Myanmar Programme on the Elimination of Child Labour (My-PEC) Project. Objectives of My-PEC is (1) Expanded knowledge base on child labour in Myanmar, (2) Increased awareness and knowledge about child labour, (3) Improved legal and institutional environment contributing to the elimination of child labour, (4) Improved capacity of national and local stakeholders to coordinate, network and advocate for the elimination of child labour, (5) Reduced child labour in pilot target areas. It is envisaged that the project will be able to contribute to reducing child labour through a multi-stakeholder response informed by comprehensive and updated knowledge base.⁹

Furthermore United Nations Convention on the Right of the Child, Article 36, states that, the state should protect children against all other forms of exploitation.¹⁰

Within this protected realm of childhood, International Labour Organization Convention No. 138 marks out minimum age for different types of employment:

- Age 15 for ordinary work
- Age 18 for hazardous work
- Age 13 got light work¹¹

⁶ <https://www.wvi.org/stories/child-protection/child-labour-what-you-need-know>

⁷ Ibid

⁸ <https://www.wvi.org/stories/child-protection/child-labour-what-you-need-know>

⁹ https://www.ilo.org/ipec/projects/global/WCMS_356062/Lang--en/index.htm

¹⁰ The United Nations Convention on the Rights of Child, Article 32 and Article 36, 1989

¹¹ Children in hazardous work, International Programme on the Elimination of Child Labour (IPEC) , First published 2011, p-3

Myanmar's current Laws and policies involved with Child Labour have not yet compliance with international labour standards. International policies from International Labour Organization about minimum age requirement, the most hazardous forms of Child Labour, and domestic work regulations are not managed in Myanmar. Domestic Laws attempt to implement international standards but are not adequately implemented.¹²

By signing the Convention on the Rights of the Child, Myanmar has recognized to protect Child Labour. However, issues of the Child Labour are still remained.

Age of Child and Worst Forms of Child Labour

Determining with labour depend on the child age. To be assumed as Child Labour, the age of child must be observed thoroughly from some domestic legislation.

According to Section 2(a) of the Law Amending the Factories Act, 1951, "Child" means a person who has not completed his fourteenth year.¹³

Under Section 2(b) of the Amending the Factories Act, 1951, "Adolescent" means a person who has not completed his Sixteenth year but has not completed his eighteenth year.¹⁴

Section 2(c) of the Law Amending the Factories Act, 1951 States that, "Young person" means a person who is either a child or an adolescent.¹⁵

According to the United Nations Convention on the Right of the Child, Article (1) "Child" every human being below the age of eighteen years.¹⁶

"The minimum age" According to the Child Rights Law, 2019, no child under 14 years is legally permitted to work. An exception is also provided for the participation of children in artistic performance.¹⁷ Hazardous work is also prohibited for anyone under 18-years old.¹⁸

'Working Children', in the family farms or family enterprises are considered to be as non-harmless. "Light Work" According to International Labour Organization No.138 on the Minimum Working Age, 1973, National Laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is-

- (a) not likely to be harmful to their health or development; and
- (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.¹⁹

According to the United Nations Convention on the Rights of the Child, Article 32, "Child Labour" Every Child has the right to be protected from any work that is dangerous, that

¹² Children in hazardous work, International Programme on the Elimination of Child Labour (IPEC) , First published 2011, p-3

¹³ Section 2(a), The Factories Act, 2016

¹⁴ Section 2(b), Ibid

¹⁵ Section 2(c), Ibid

¹⁶ The United Nations Convention on the Rights of Child, Article 1, 1989

¹⁷ Section 48 (b), The Child Rights Law, 2019, The Pyidaungsu Hluttaw Law No.22/2019 dated 23 July 2019

¹⁸ <https://www.ilo.org/yangon/areas/childlabour/lang-en/index.htm>

¹⁹ International Labour Organization Convention No.138 on the Minimum Working Age.1973

interferes with their education or that is harmful to their health, Governments must set a minimum working age and make sure working conditions are safe and appropriate.²⁰

“Child Labour” physical work that causes damage to a child’s physical and mental development. It “deprives children of their childhood, their potential and their dignity.” International Labour Organization states that “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.”²¹

The term “worst forms of Child Labour” Worst Forms of Child Labour Convention, 1999 (No.182) Article 3, comprises

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.²²

These act worst forms of Child Labour have to protect their government according to No.138 International Labour Organization.

Article (1) of the International Labour Organization Convention, No.138, it is defined that each member for which this convention is in force undertakes to pursue a national policy designed to ensure the effective abolitions of Child Labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.²³

“Hazardous work” means any work which places a child at risk to suffer physical or mental injury.²⁴

Child Labour is involved in following forms of work.

In agriculture, performing heavy work and exposed to many hazards associated with the introduction of modern machinery and chemicals. Agriculture- Farming, including rubber, rice, sugarcane and so on.²⁵

In industry, doing dangerous work such as fishing, forestry, quarrying and mining including for jade and rubies manufacturing, food processes construction and carrying stones, producing garments, glassmaking, construction and carpet weaving.²⁶

Services, Domestic work working in teashops and restaurants, newspaper and journal vending collecting garbage and recyclables, working in transportation and motor repair shops.

²⁰ The United Nations Convention on the Rights of Child, Article 32,1989

²¹ Child Labour in Myanmar, Alyssa Augustus, March 2022, p-2

²² International Labour Organization Convention No.182 on the Worst Forms of Child Labour, 1999

²³ Article 1, International Labour Organization Convention on Minimum Age, No.138

²⁴ <https://www.Lawinsider.com/dictionalay/hazardous-work>

²⁵ Ministry of labour, Immigration and Population (MOLIP), ‘Report on Child Labour in Myanmar, 2015, Published by MOLIP, 2016, p-5

²⁶ Ibid

In domestic service, carrying out arduous work under conditions of isolation, working excessively long hours and being subjected to physical and sexual abuse.²⁷

In categorical worst Forms of Child Labour, Forced Labour in agriculture, forced labour in construction and manufacturing, forced labour in domestic work, teashops, and begging, commercial sexual exploitation, sometimes as a result of human trafficking forced recruitment of children by state and non-state armed groups for use in armed conflict.²⁸

At home, looking after younger siblings or helping in family farms or businesses, to the extent that this becomes their main and only activity. In outright slavery or in labour arrangements that is tantamount to it, such as bonded labour and child prostitution.²⁹

Causes and Situations of Child Labour in Myanmar

Poverty is a determining factor of Child Labour. Poor families send their children to work, because they don't have enough income. Lack of quality education limits the chances of the child worker to escape from the cycle of poverty. Educational gaps impact on Child Labour as they move into adulthood as low levels of literacy and vocational qualifications deprive them of decent work opportunities not allowing them to get out from poverty.³⁰

Children desire to work at a young age to support the family and uphold traditional family structures. According to a study by International Labour Organization, 77% of Child Labour in Myanmar reported that they made the decision to work. Children report initial feelings of excitement and pride when they begin working. They are proud to be contributing to the family and economy. According to interviews with Child Labour in Yangon, moving away for work into large cities in Myanmar can be seen as an "integral part of growing up and living life. Myanmar culture encourages children to uphold their responsibility to their family and working to financially support them is part of that responsibility."³¹

Usually, families in Myanmar rely on children moving to more populated cities to generate income for their families. In recent years, thousands of children have been sent to Mandalay and Yangon, the largest cities in Myanmar, to live away from their families and seek work opportunities. Myanmar's two largest cities offer a variety of work environments where minors are accepted, such as tea shops, restaurants, car service garages, small and medium-sized factories, and small industries. For the Child to transition smoothly into the labour force, families turn to brokers to find their child a job.³²

Forced Labour is often working in an attempt to pay off an incurred or sometimes even inherited debt. Employers or recruiters make it difficult for workers to escape from the debt, by underestimating the value of the work performed or inflating interest rates or charges for food and accommodation. The debt can arise from wage advances, loans to cover recruitment or transport costs or daily living or emergency expenses, such as medical costs. Debts can be compounded as a result of manipulation of accounts, especially when workers are illiterate. Debt bondage may also arise when children are recruited in exchange for a loan given to their parents or relatives.³³

²⁷ Ibid

²⁸ Ministry of labour, Immigration and Population (MOLIP), 'Report on Child Labour in Myanmar, 2015, Published by MOLIP, 2016, p-5

²⁹ Ibid

³⁰ https://www.ilo.org/yangon/areas/childlabour/WCMS_374210/lang--en/index.htm

³¹ <https://ballardbrief.byu.edu/issue-briefs/child-labour-in-myanmar>

³² <https://ballardbrief.byu.edu/issue-briefs/child-labour-in-myanmar>

³³ <https://www.ilo.org/yangon/areas/childlabour/lang-en/index.htm>

Debt bondage or bonded labour reflects an imbalance in power between the worker-debtor and the employer-creditor. It has the effect of binding the worker to the employer for an unspecified period of time, anything from a single season, to years, or even successive generations. It bears no resemblance to taking a “normal” loan from a bank or other independent lender, for repayment mutually agreed and acceptable terms.³⁴

The Children most at risk for becoming involved in Child Labour live in Myanmar’s poor, rural communities. A census conducted by International Labour Organization shows that 79.5% of children from rural areas participate in work, while 20.5% of children from urban areas work. Due to the economic status of the country, one in five households rely on small incomes from agricultural work and must find other ways to generate revenue. High poverty rates in Myanmar also contribute to Child Labour because many families do not earn enough money to provide for their basic needs and rely on children to generate additional income.³⁵

Challenges to enforcement are also expressed when inspectors are called to investigate a work environment. Although the Child Rights Law of 2019 guarantees that every Child born in Myanmar will be registered at birth, in 2015 it was estimated that 21% of the country does not contain a birth certificate. Without a legal birth certificate, identifying a worker’s age is very challenging and discourages inspectors from investigating these issues. Negligence to enforce Child Labour Laws only incentivizes employers to continue hiring minors.³⁶

A person who has no birth certificate and no registry card may be the potential victims of Child Labour. For instance, he or she has no evidence of age. Some greedy and selfish broker can effortlessly deceive this Child Labour because of the weakness of no weakness of a certificate. This is the serious factor for Child Labour as exiting issue in Myanmar.

The Minimum Age Convention No.138 requires countries to set a minimum age aligned with the end of compulsory education and under which no one shall be admitted to work in any occupation except light work and artistic performances. It also prohibits hazardous activities for anyone under 18 years old. In Myanmar, the minimum working age is 14 years old, as Child Rights Law (2019).³⁷

Employers and workers in Myanmar are not fully aware of the national and international labour regulations. Although the Law states that there will be consequences to employers who break this Law, such as six months in prison and fines, the government fails to implement these penalties. Enforcing this Law is difficult to do when the participants (children) are not informed of such Laws Lack of accessibility to Labour Laws cause both employee and employer to be unaware of violations. Even Township Officials may not fully understand Labour Laws because of the lack of involvement from the government and fragmentation of legislations. Labour Laws are not properly accessible and there is an equal understanding to the Laws from employers and workers to prevent misinterpretations. Furthermore, if a Law is knowingly broken in Myanmar, little is done to enforce consequences. The Workers recognize that although there have been reforms to the legislative framework enforcement is yet to be integrated.³⁸

Poverty is the primary reason children are sent to work. Child Labour keeps kids from getting the education they need to break the cycle of poverty.

³⁴ <https://www.ilo.org/yangon/areas/childlabour/lang-en/index.htm>

³⁵ <https://ballardbrief.byu.edu/issue-briefs/child-labour-in-myanmar>

³⁶ Child Labour in Myanmar, Alyssa Augustus, March 2022, p-12

³⁷ https://www.ilo.org/yangon/press/WCMS_747651/lang--en/index.htm

³⁸ Child Labour in Myanmar, Alyssa Augustus, March 2022, p-12

The Rights of Working Child and The Ways of Pledging of child to Work under Enacted Law in Myanmar

Section 359, Republic of The Union of Myanmar 2008 Constitution prohibits forced labour except hard labour as a punishment for crime duly convicted and duties assigned by the Union in accord with the Law in the interest of the public.³⁹

The main legislation covering Child Labour are: Child Rights Law (2019), Factories Act (1951) amended in 2016, Shops and Establishments Law (2016), Leave and Holidays Act (1951) amended in 2016, Payment of Wages Law (2016), Oilfield (Labour and Welfare) Act (1951). Section 24, Child Rights Law 2019 states that, Age Restriction: The Child Rights Law states that children have the right to engage voluntarily in work allowed by Law, including the special rights provided in respect of hours of employment, rest and leisure.⁴⁰

However, under the Section 13 of the Shops and Establishment Law (2016), no one under 14 years old may be employed and all workers under 18 years old may only work if a certificate of fitness for work is granted by a certifying surgeon, medical practitioner and if the certificate is kept in the custody of the manager of the factory, young workers must have a fitness certificate for work while working and employers must keep a register of all young workers in the enterprise.⁴¹

According to the Factories Act, 2016, Section 75, No child who has not completed his thirteen year shall be required or allowed to work in any factory

According to the Factories Act, 2016, Section 77,

(1) A certifying surgeon, shall on the application of any young person, or his parent or guardian, or the manager of the factory who desire to employ him, examine such person to ascertain his fitness for work in a factory.

(2) The certifying surgeon, after such examination, may grant to such young person, or renew in the prescribed form –

(a) certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his thirteen year, that he has attained the prescribed physical standards and that he is fit for such work;

(b) a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his fifteen year, and is fit for a full day's work in a Factory; Provided that if the certifying surgeon has not had personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he shall grant or renew such certificate

Under the Factories Act, Section 77 sub-section (1), only after he has examined such place.

According to the Factories Act, 1951, (Amended in 2016), Section 79(1), No child shall be employed or permitted to work in any factory-

(a) for more than four hours in any day; and

(b) between the hours of 6 p.m and 6 a.m

³⁹ The Constitution of the Republic of the Union of Myanmar, 2008, The Union of Myanmar commission for Holding the Referendum Announcement No.10/2008

⁴⁰ Section 24, Child Rights Law, 2019

⁴¹ Section 13 and 14, The Shops and Establishments Law, 2016

(3) The period of work of all children shall be limited to two shifts which shall not overlap and both of shift shall not exceed five hours inclusive of intervals if any. Each child shall employed in only one of the relays which shall not, except with the consent of the Chief Inspector, be changed more than once in a month.

(4) The provision of section 60 shall apply also to child workers and no exemption from these provisions shall be granted in respect of any child.

(5) No child shall be required or allowed to work in any factory on any day on which he has already been worked in another factory.⁴²

In shops and establishments, working hours for children between 14 and 16 years old shall be no more than four hours. They are not allowed to work during 6 p.m. and 6 a.m. They shall not work overtime.⁴³

Workers under 18 years old may not use dangerous machinery unless they have received sufficient training or are supervised by experts. They may not fit, carry or more any load, heavy enough to cause injury. Among the person between 16 and 18 years old, those who have completed the relevant vocational trainings, who know and abide by the directives relating to the occupational safety and health and those who are certified by medical practitioner, shall be allowed to work in the trades which are safe and which do not affect the development and moral of such person. Workers under 18 years old should not be required or allowed to perform the prescribed dangerous work or in dangerous work place.⁴⁴

According to the Section 82 of the law Amending the Factories Act, 1951 in 2016 states that no child shall be employed otherwise than in accordance with the notice or notices of period of work for children displayed and the entries made in advance against his name in the register of Child Workers.⁴⁵

Under Section 10 (e) of the Payment of Wages law, 2016 states that prohibitions on Working by Children: Wages of children shall not be deducted just like adult workers, except for the unauthorized absence from work. Additionally, wages of children under 16 years shall not be deducted as fines.⁴⁶

This research includes the analysis of social and legal matters from cases domestic and international legislation related to Child Labour.

Cases Study on Worst Forms of Child Labour in Myanmar

The following cases are some popular cases about Child Labour.

A Chinese couple operating a bread business in Dagon Port Township has been arrested for torture the Child Labour and the business has been closed. That the factory is a legal business but the workers are under age children. Although the business license is an official license, it is not in line with labour regulations. There are many children under the age of 16. The business was closed because the specifications were not met. According to the child who ran away from the factory, the employer tortured and sexually abused the child labour who worked at the factory.⁴⁷

⁴² Section 75, The Factories Act, 1951 (Amended in 2016) Law

⁴³ Section 12 and 13, The Shops and Establishments Law, 2016

⁴⁴ Section 14 (d) and (e), Ibid

⁴⁵ Section 75, The Factories Act, 1951, 1951 (Amended in 2016 Law)

⁴⁶ Section 10 (e), The Payment of Wages Law (2016)

⁴⁷ <https://www.duwun.com.mm/article/p-id44753>

On December 15, 2016, Yangon West District Court imposed punishments respectively for the torture of two teenager girls who worked at Inwa sewing shop on Road 40, Kyauktada Township, and Yangon Region. Four family member were sentenced under four section, including sections of the Child Protection Act, Human Trafficking, Conspiracy and Abetting Grievous Hurt. According to human rights activists, this kind of abuse of minor children is happening every day in Myanmar. However, only a handful of criminals come before the Law, In order to reduce these kinds of problems, people need to be raise awareness and knowledge. A human rights activist suggests that we need to have a Labour Law that recognizes domestic workers. Do not have anything to do with their rights, such as the landlord having to comply with them, and there are no specific working hours.⁴⁸

Therefore, it is necessary implement legal control and the rules that must be respected between the employer and the employee.

In 2022, A girl under the age of 15- year-old who live in Myingyan District, worked in the sewing factory. The male employer, accused sexually assault that girl child worker. The male employer was sentenced to 20 years imprisonment according to section 376 of the Penal Code at the Myingyan District Court and 2 years imprisonment under section 363 at the Penal Code at the Myingyan Township Court imposed various punishments. In fact, this severe punishment intend to the offense, the rape of minors. It is evidenced that the unlucky child female labour may encounter this disgusted experience. Undoubtedly, it is necessary to enact urgently new Law for stronger protection of Child Labour.⁴⁹

In 2020, the popular case which is related to Child Labour. The house maid under the age of 15-year-old was tortured her body physically and also the victim of sexually assault by actor namely Min Yar Zar conspiracy of his wife and his driver.

Therefore, actor Min Yar Zar was charged under section 376 of the Penal Code by the Eastern District Court for his misbehavior and was sentenced 20 years imprisonment for rape.

In addition, He, his wife and his driver were sentenced respectively for grievous torture at North Okkalapa Township Court.⁵⁰

It is clearly acknowledge that the Child Labour abuse often accrued in social daily life in Myanmar.

Four cases mentioned above, it is evidenced the Child Labour turn out to be victims for being tortured and sexual harassment base on their vulnerable situation.

Research Methodology

This study uses the secondary research method only. It is based on literature review on report respective International Conventions, Scholars, Articles and Court - Cases - Study.

Findings and Recommendation

This research paper evidenced that increasing of Child Labour due to poverty and lack of knowledge of their parents. Often, Actual Criminal escapes from abusing Child Labour because Children who are forced to serve as Child Labour have no birth certificate or have false birth certificate. By providing, the minimum age of employable child in Section 48(b),

⁴⁸ Myanmarcelebrity (MC) with a interview Lawyer related to the Child Labour.

⁴⁹ This case is from the interview with expert of 15.10.2023.

⁵⁰ <https://www.myanmarcelebrity.com>

Child Right Law Myanmar, Children have been protected as Child Labour. And then some of the Child have no birth certificate and some use false birth certificate are found as workers to earning income for their survival.

Conclusion

Myanmar like other countries cannot able to avoid above this situation. And there is no specific law for child labour in Myanmar. The Republic of the Union of Myanmar 2008 Constitution, Section 24 states that the union shall enact necessary laws to protect the rights of workers. This research suggests providing effective national policies and administrative mechanisms which can control about the Child Labour issue. Law and Legal system need to be improved and strengthened to protect the rights and welfare of child workers.

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