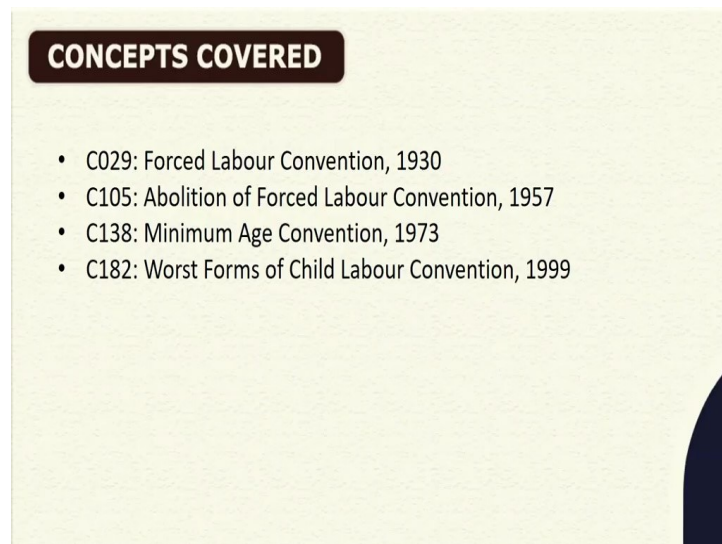


New Labour Codes of India
Professor K. D. Raju
Rajiv Gandhi School of Intellectual Property Law
Indian Institute of Technology, Kharagpur
Lecture 59

The Effective Abolition of Child Labour (C029; C105; C138 & C182)

Dear students, in the next two classes, we are going to discuss about the ILO conventions and which talk about core labour standard conventions and also supplementary conventions. So, why it is known as core labour standard conventions? So, ILO feels that these 8 core labour standard conventions are inalienable and every state must implement these core labour standard conventions at the domestic level for the best implementation in various areas.

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So, the four conventions which we have already discussed and this class we are again going to discuss four conventions in detail that is the Forced Labour Convention of 1930, the Abolition of Forced Labour Commission of 1957, the Minimum Wage Convention of 1973 and the Worst Forms of Child Labour Convention 1999. So, convention numbers 29 and 105 talked about forced labour and 138 talked about minimum wage and 182 talked about child labour.

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KEYWORDS

- Child labour
- Forced labour
- International Conventions
- ILO Labour Standards
- Minimum Age

- **Effective Abolition of Child Labour**



Source – Modern Slavery and Child Labour in the world; ilo.org

Source – Child labour and Forced labour in India; crackittoday.com

And, so, most of these themes are already covered under domestic laws. And today we are going to discuss the ILO Convention, which specifically deals with these topics.

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International Labour Standard on Child Labour

- Child Labour is a **violation of fundamental human rights** which brings psychological and physical damage to children, who employed in any industrial establishment
- Child Labour **perpetuates poverty across generations** by keeping the children of the poor out of school and hinder in child development
- The ILO report observed that the **elimination of child labour in transition and developing economies could generate economic benefits much greater than the costs**, which are mostly associated with investment in better schooling and social services.
- The fundamental ILO standards on child labour are the two legal pillars of global action to combat child labour.

And if you look into child labour and we know that child labour is one of the biggest problems faced by developing countries. An ILO says that the largest number of child labourers are in Asian countries and India is the highest among them. So, India is a developing country but the actual situation is that India is one of the countries with the highest number of child labourers. Why this is happened?

So, in this background, we are going to discuss about this international labour standard in child labour. So, ILO views child labour as a violation of fundamental human rights and it has psychological and physical damage to children ,poverty is considered as one of the main reasons for child labour. So, this child labour actually perpetuates poverty across generations and keeping the children poor and never sending them to school which hinders child development.

So, ILO believes that the elimination of child labour is the only solution for the development of economies which can generate economic benefits and develop a new generation of citizens and also ILO thinks that the elimination of child labour can be through better schooling and social services. So, the fundamental ILO standards on child labour, are the two legal pillars of global action to combat child labour.

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□ More than 160 million children across the world are still child la



These two conventions which we are going to talk about. So, 160 million children across the world are child labourers and the ILO data says 40 to 50 million are in India. So, even though these particular photographs may be from other poor countries and Indian situation is also no different.

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• C029: Forced Labour Convention, 1930, along with Protocol of 20

So, we can see these conventions as very human fundamental rights. So, this is the Forced Labour Convention, convention number 29, Forced Labour Convention 1930 and the protocol of 2014. So, 1930 is one of the first conventions, forced labour, elimination of forced labour conventions and the protocol which talks about elimination of forced labour.

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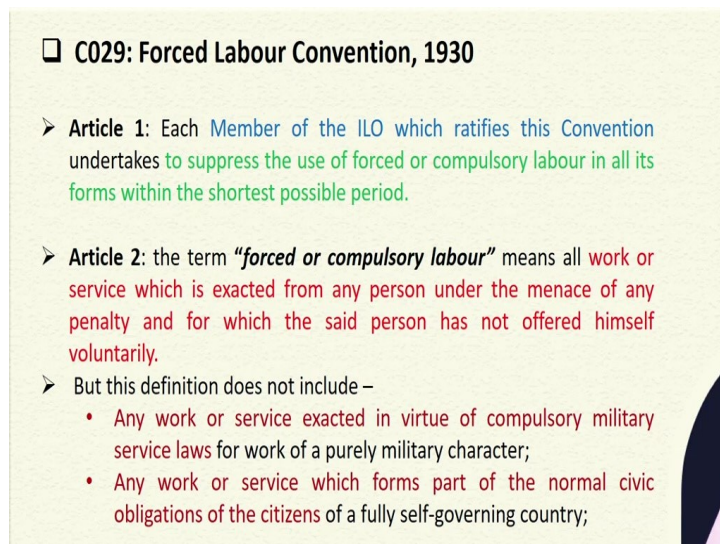


❑ C029: Forced Labour Convention, 1930

- Adopted on – 28th June, 1930
- Enforced on – 1st May, 1932
- Ratification – As on 2022, 180 States ratified it
- India has Ratified it

So, India already said that we have prohibited forced labour and we saw the domestic provisions. So, one of the highest numbers of ratifications of any labour law conventions 180 states have ratified including India. So, we can see that one of the highest numbers of ratifications and forced labour conventions are prohibited by most countries.

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❑ C029: Forced Labour Convention, 1930

- Article 1: Each Member of the ILO which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.
- Article 2: the term “forced or compulsory labour” means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.
- But this definition does not include –
 - Any work or service exacted in virtue of compulsory military service laws for work of a purely military character;
 - Any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

So, we will see some of the very important provisions of this particular convention. So, the provision says that the ILO members who are adopting this convention should suppress the use of force of compulsory labour in all its forms at all possible means and it also defines forced or compulsory labour.

It means all works or services, which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. It will come under forced labour. But it does not include services extracted in virtue of compulsory military services law, for work of a pure military character, any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country. So, basically, you can see that if somebody is working forcefully, then it will come under the definition of forced or compulsory labour.

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❑ **C029: Forced Labour Convention, 1930**

- Any work or service exacted from any person as a consequence of a conviction in a court of law, although, that work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;
- Any work or service exacted in cases of emergency, like, in the event of war or of a natural calamity, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

❑ **C029: Forced Labour Convention, 1930**

- Minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.
- **Article 25:** The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

And also, any services extracted from any person as a consequence of a conviction in a court of law, that is also will be considered as forced labour. Any work or service extract in case of emergency is also an exception. And people who are jailed, working that is also an

exemption. So, any service in case of emergency situations or natural calamities, cannot be considered as forced labour and communal services are exempted.

And ILO says that illegal extraction of force and compulsory labour shall be punishable under the penal code. And every country member countries should ensure that penalties should be imposed by law and adequate means it is strictly enforced. So, there must be a penal offence, it must be made a penal offence.

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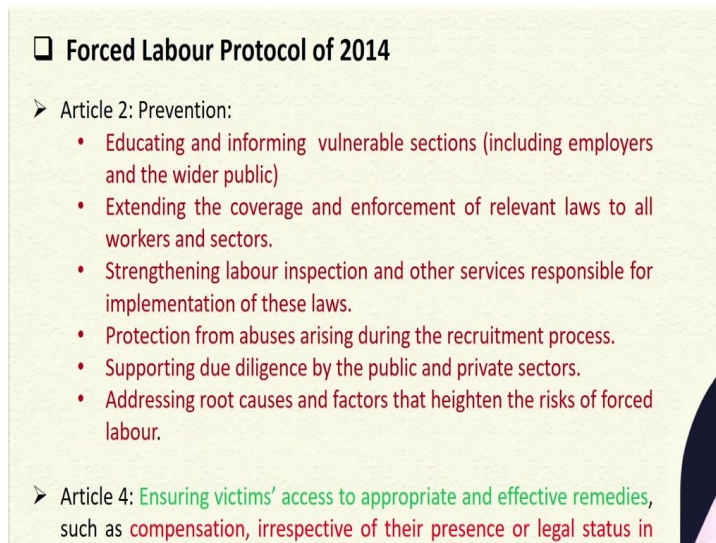


☐ **Forced Labour Protocol of 2014**

- It is a new **legally-binding instrument that requires States to take measures regarding prevention, protection and remedy in giving effect to the 1930 Convention's obligation to suppress forced labour.**
- The fundamental obligation of C029 is to suppress all forms of forced labour. It implies that **States must not only criminalize and prosecute forced labour, but also – as the new Protocol makes clear to take effective measures to prevent forced labour and provide victims with protection and access to remedies, including compensation.**
- **Article 1:** Measures taken under this Protocol must include **specific action against trafficking in persons for forced labour.**

And legally binding instruments are a fundamental obligation to suppress all forms of forced labour. And the protocol is to take effective measures to prevent forced labour and provide victims with protection and access to remedies including compensation. And the protocol includes specific actions against trafficking in persons for forced labour. And we know that this forced labour protocol of 2014 includes trafficking. And trafficking of women and children is considered to be another human rights violation in the countries like India, trafficking for various purposes also come under the definition of forced labour. So, the protocol included trafficking also.

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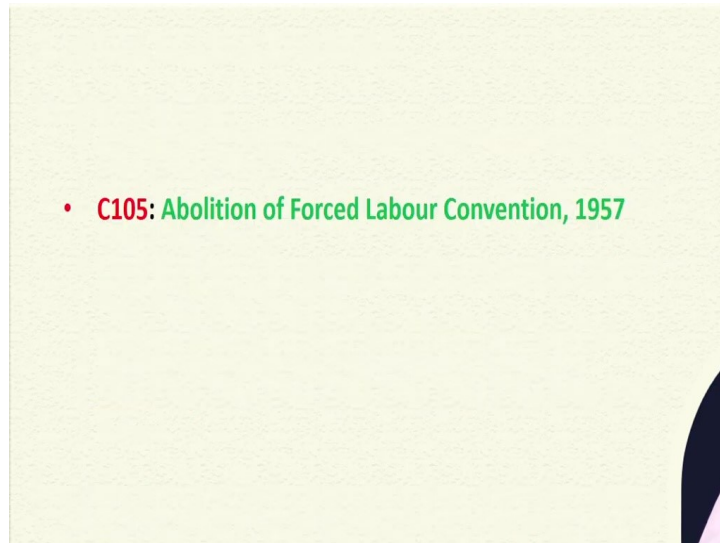
❑ Forced Labour Protocol of 2014

- Article 2: Prevention:
 - Educating and informing vulnerable sections (including employers and the wider public)
 - Extending the coverage and enforcement of relevant laws to all workers and sectors.
 - Strengthening labour inspection and other services responsible for implementation of these laws.
 - Protection from abuses arising during the recruitment process.
 - Supporting due diligence by the public and private sectors.
 - Addressing root causes and factors that heighten the risks of forced labour.
- Article 4: Ensuring victims' access to appropriate and effective remedies, such as compensation, irrespective of their presence or legal status in

And the protocol provision says that prevention and educating and informing vulnerable sections educate them. Extending the coverage and enforcement of relevant laws to all workers and sectors. Strengthening labour inspection and other services. Protection from abuses arising during the recruitment process. Supporting the due diligence by public and private sectors. Addressing root causes and factors that heighten the risk of forced labour.

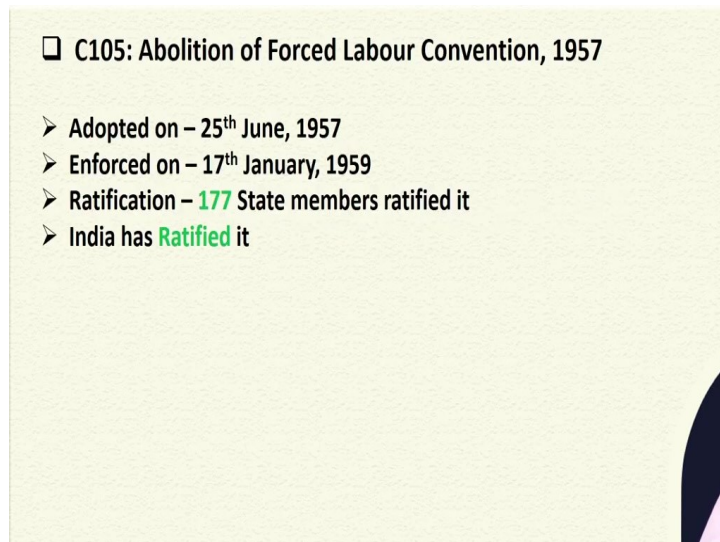
So, forced labour may be happening many due to social circumstances. Then ensuring victims have access to appropriate and effective remedies like compensation. So, irrespective of their legal status or a citizen or whether in the territory or outside, we know that this trafficking may happen from other countries as well to the country inside the country. So, they may be foreign citizens you do not know. So, irrespective of their origin, legal remedies should be available to them.

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So, we can see that forced labour is considered as one of the violations of basic human rights. So, we can see another convention, convention number 105, the Abolition of Forced Labour Convention.

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So, the 1930 convention and 1957 convention jointly, so, India ratified the conventions. So, India says that there are sufficient provisions included in the Indian constitution itself, in the directory policies for the Abolition of Forced Labour.

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❑ **C105: Abolition of Forced Labour Convention, 1957**

➤ **Article 1:** Each Member of the ILO that ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour:

- As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- As a method of mobilising and using labour for purposes of economic development;
- As a means of labour discipline;
- As a punishment for having participated in strikes;
- As a means of racial, social, national or religious discrimination.

So, this convention also says that every member country that adopts this convention should make sure that the forced convention or commercial labour should be eliminated. And so, commercial labour may happen as a means of political coercion or education or as a punishment for holding or expressing political views.

That means if somebody is ideologically opposed to the established political, social or economic system, mobilizing and using labour for purposes of economic development as a means of labour discipline, as a punishment for having participated in strikes. As a means of racial, social, national or regional discrimination. All these should be prohibited. So, whatever the reasons, forced labour should be abolished.

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❑ **C105: Abolition of Forced Labour Convention, 1957**

➤ **Article 2:** Each Member of the ILO undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in Article 1 of this Convention

➤ **Article 3:** The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

➤ **Article 8:** At it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference, the question of its revision in whole or in part

And each member of ILO should take effective measures to secure the immediate and complete abolition of forced labour and formal ratifications should be communicated to the Director General of ILO and the governing body of the ILO present to the General Conference, a report of the situation of every country with regard to the forced labour.

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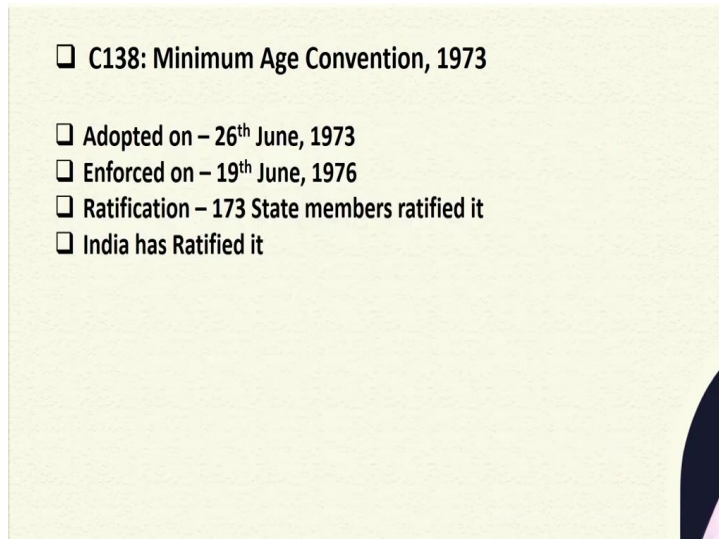
Now, we come to another very important area of the Minimum Age Convention, convention number 138 of 1973 because, in India also, there is confusion with regard to the minimum age for work. So, who is a child, who is an adolescent, who is an adult, still there is no clarity. Even the new codes are going to be implemented and all this code is already implemented. But in India there is confusion about the minimum age for work So, the question is whether we have adopted the ILO convention. The answer is no.

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So, here we can see the Minimum Age Convention. The Minimum Age Convention prescribes minimum age for work in convention number 138.

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So, regarding the Minimum Age Convention, India actually ratified it and 173 countries ratified it but we do not have the clarity still now. And this is a situation with regard to many countries, many developing countries and least developed countries.

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❑ **C138: Minimum Age Convention, 1973**

- **Article 1:** Each Member shall undertake to pursue a national policy designed to ensure the effective abolition 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
- **Article 2:** (1). Each Member shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and no one under that age shall be admitted to employment or work in any occupation.
- (3). The minimum age shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

So, the Minimum Age Convention, says that every country every member country has to pursue a national policy designed to ensure the effective abolition 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. At least to some extent, there is a clarity that a person who has not completed the age of 14 is considered to be a child in India. But, it differs from place to place.

According to the ILO, the minimum age is considered as 15. So, it says that the minimum age shall not be less than the age of completion of compulsory schooling and in any case shall not be less than 15 years. So, we say it is 14 years. So, schooling, so, the question is whether anybody is going to complete the schooling within 15 years or 14 years.

So, what is the minimum age for admission to employment? So, if somebody has not completed the age of 15, so, India has ratified it. So, I do not know why India has adopted 14, as the minimum age for admitting to employment, but 14 is not the age in all the employments in certain employment. So, 16 to 18 is allowed only in certain employments with certain restrictions.

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❑ **C138: Minimum Age Convention, 1973**

- (4). Member whose economy and educational facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, **initially specify a minimum age of 14 years.**
- (5). Each Member which has **specified a minimum age of 14 years** in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention, a statement--
 - that its reason for doing so subsists; or
 - that it renounces its right to avail itself of the provisions in question as from a stated date.
- **Article 3:** The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out, **is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.**

And also, the Minimum Wage Convention says that the members whose economy and educational facilities are insufficiently developed after consultation with the organizations of employees and workers concerned initially specify a minimum age of 14. So, again the question the countries like India is whether our educational facilities are insufficiently developed, whether our country does not have a sufficient number of schools for educating all the children below the age of 15. And convention number 138 again says that each member which has specified a minimum age of 14 years in furtherance of these particular provisions, shall include in its report with regard to the reason for doing so subsist the reason for doing so.

And it renounces its right to avail itself of the provisions in question as from a stated date and the minimum age for admission to any type of employment. And the state should say that whether that is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years. So, ultimately, the minimum wage conventions of ILO prescribe 18 years for work. So, there is leverage from 15 to 18 or 14 to 18 in certain cases.

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❑ **C138: Minimum Age Convention, 1973**

➤ **Article 6:** This Convention shall not be applicable to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organizations of employers and workers concerned, where such exist, and is an integral part of

- a course of education or training for which a school or training institution is primarily responsible;
- a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or
- a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

So, article 6 says that this convention shall not be applicable to work done by children and young persons in schools for general, vocational or technical education or in other training institutions to work done by persons at least 14 years of age in undertakings. So, as a part of education, this is not considered to be as compulsory work which means, the course of education, training and the education institutions are primarily responsible for it. So, the training programs cannot be considered as forced work. So, this age is not applicable. The minimum age is not applicable with regard to training institutions or schools.

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❑ **C138: Minimum Age Convention, 1973**

➤ **Article 7:** National laws or regulations may permit the employment or to work to the persons of the age between 13 to 15 years, on light work which shall:

- Not likely to be harmful to their health or development; and
- 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.

➤ **Article 9:** National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or

And also, we can see that the relevance of national laws and regulations may permit employment or work to persons of age between 13 to 15 on light work, which shall not likely

to be harmful to their health or development. It is very interesting to note that article, condition number 138 permits children between the age of 13 to 15 permitted to do light work. So, it says that such kind of work shall not harmful to their health and development. No such as to prejudice their attendance at school. Their participation in vocational training, and orientation programs.

So, I am not able to understand if a child is allowed to work from the age of 13 and how he will go to school. And also, it says that national laws or regulations, or the competent authorities shall prescribe the registers documents shall be available to the employer, the names, ages and date of birth and the persons he employs.

So, the actual fact is that if the so-called employees, those who employ child labour never keep any reports. When we were discussing about the national law, we saw the various industries like brick kilns, carpet industry or the so-called industries in Shiva Kashi. So, whether it is a match industry or it is a crackers industry and other industries, the employee never keep records.

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- **C182: Worst Forms of Child Labour Convention, 1999**

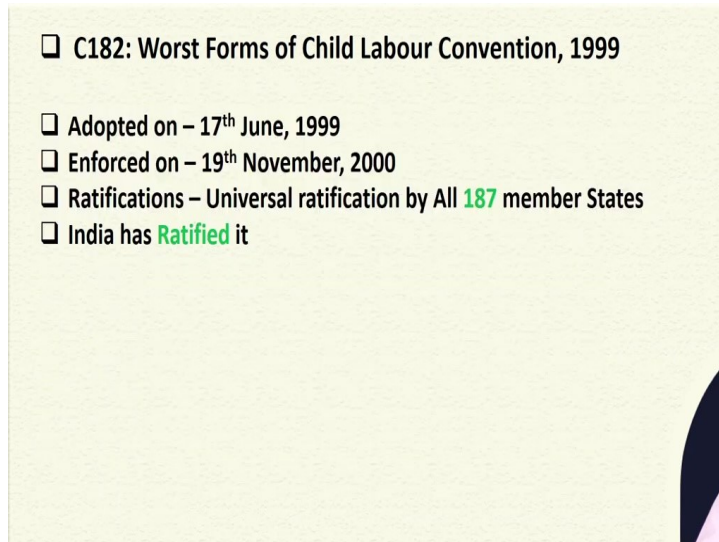


All children now have legal protection against the worst forms of child labour.

Universal ratification of the ILO Convention on the Worst Forms of Child Labour (C182).



Source – ilo.org



And another convention is, again, the Worst Forms of Child Labour Convention, convention number 182. So, the rights of the child, the Convention on the Rights of the Child, CRC, very clearly provides about the rights of the child. So, the Worst Forms of Child Labour Convention 1999. So, we will see the provisions, again India ratified it. And it is one of the highest ratifications by 187 countries.

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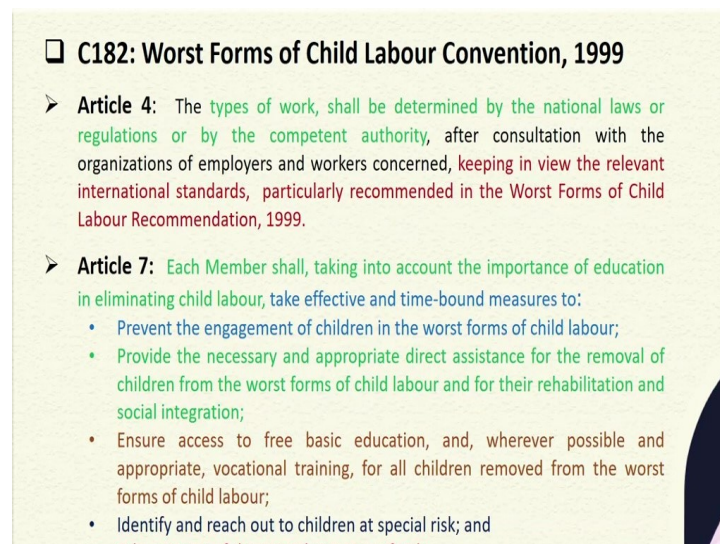


The worst form of child labour. So, India has ratified almost all these conventions, but the highest number of child labourers are in India. So, the ILO convention says, each member’s immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. So, again, the questions are what are the policies

adopted by India to eliminate child labour? Yes, we have passed a Compulsory Education Act, but whether all the children are going to school.

So, the worst form of child labour includes all forms of slavery or practices similar to slavery, which includes the sale of children, trafficking of children, debt bondage and serfdom, forced and compulsory labour, and forced recruitment to the army because we know that in some of the least developed countries, some of the conflict areas and child soldiers are a reality. Procuring, or offering a child for illicit activities, especially for the production and trafficking of trucks is prohibited. And any work which is going to affect the health of children, safety and morals of children is to be tamed as the worst form of child labour.

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❑ **C182: Worst Forms of Child Labour Convention, 1999**

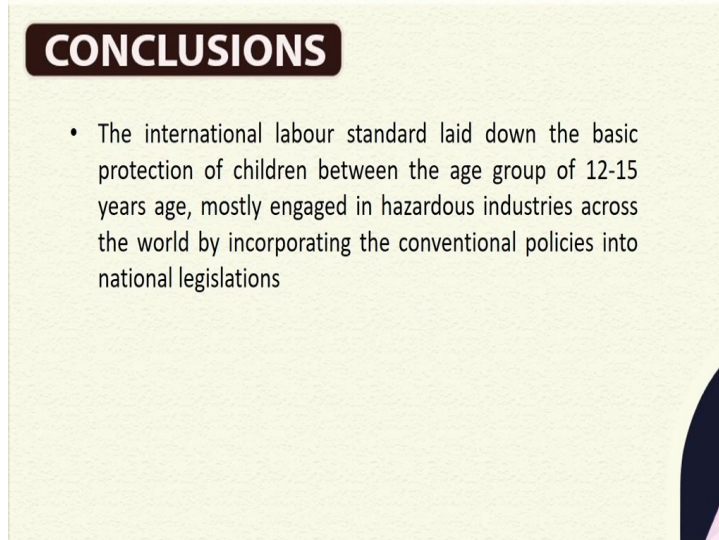
- **Article 4:** The types of work, shall be determined by the national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, keeping in view the relevant international standards, particularly recommended in the Worst Forms of Child Labour Recommendation, 1999.
- **Article 7:** Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:
 - Prevent the engagement of children in the worst forms of child labour;
 - Provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
 - Ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
 - Identify and reach out to children at special risk; and

The type of work must be included in the national laws, the worst forms of child labour, and should be prohibited. And also, appropriate standards are to be provided by the national laws especially when the recommendations in the worst forms of child labour, recommendation 1989. And each member has to emphasise the education of children, for eliminating child labour in a time-bound manner. So, the engagement of children in the worst form of child labour should be eliminated in each and every country.

And providing appropriate assistance to child labour and rehabilitation of child labour is an integral part of this particular policy. And every country must ensure that free access to education and vocational training for all children removed from child labour. So, the children must get proper education and special risk attached to the elimination and especially the risk

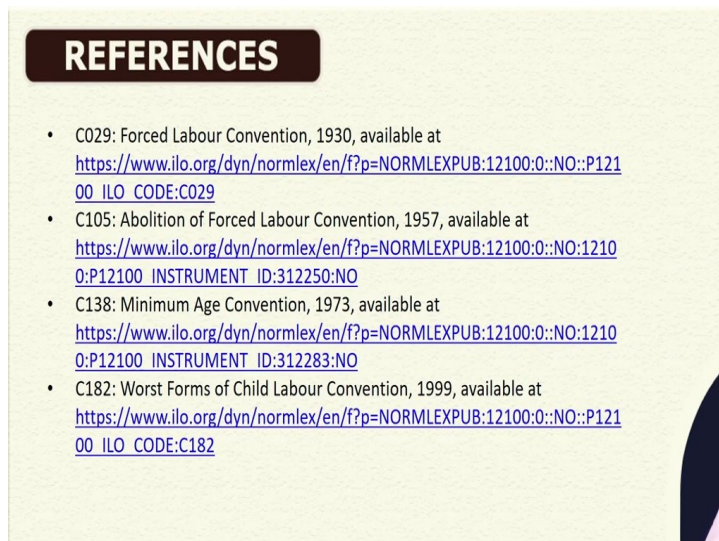
attached to the elimination or risk attached with the girls, their situation should be taken into account by each member country when they are enacting these legislations.

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CONCLUSIONS

- The international labour standard laid down the basic protection of children between the age group of 12-15 years age, mostly engaged in hazardous industries across the world by incorporating the conventional policies into national legislations



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- C138: Minimum Age Convention, 1973, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312283:NO
- C182: Worst Forms of Child Labour Convention, 1999, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182

So, these ILO conventions contribute to the ILO conventions mandates for every country to eliminate child labour and minimum age. So, the minimum provisions lead to the definition of the child, so, who can be an employee, minimum age of work and elimination of child labour and children should not be employed in hazardous industries across the world. Every country must have a policy for eliminating the worst forms of child labour. Every country must have policies for free and compulsory education for children.

So, these conventions are the highest number of ratifications from the member countries, but child labour is not decreasing, including India. So, these conventions have to be implemented

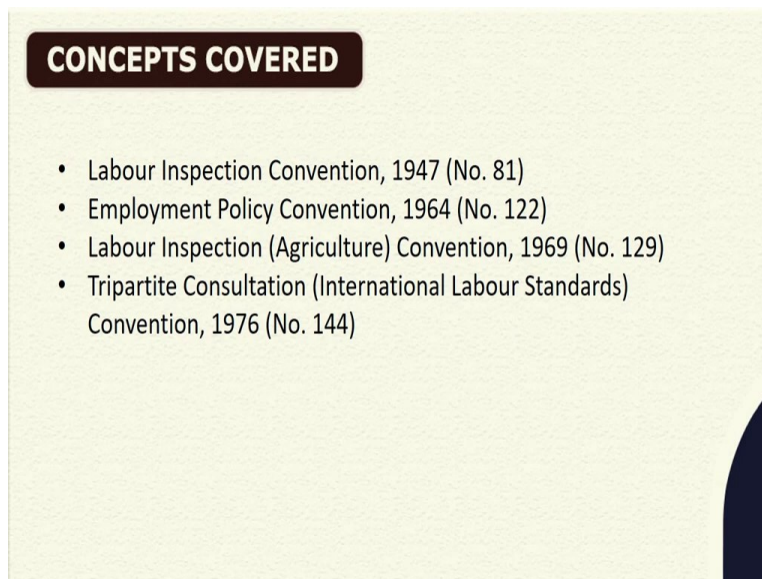
in all member countries, including India, compulsory for the betterment of children and for raising a new generation. Thank you.

New Labour Codes of India
Professor K D RAJU
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Indian Institute of Technology, Kharagpur
Lecture: 60

The Governance Conventions of ILO Labour Standards

Dear students the last class of this course is about 4 additional conventions developed by the ILO other than the 8 Core Labour Standard Conventions. These conventions are known as the governance conventions of ILO. So, 8 core level standard conventions we talked about in the previous classes.

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CONCEPTS COVERED

- Labour Inspection Convention, 1947 (No. 81)
- Employment Policy Convention, 1964 (No. 122)
- Labour Inspection (Agriculture) Convention, 1969 (No. 129)
- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

These 4 conventions include the Labour Inspection Convention of 1947. So, this is one of the old conventions, Employment Policy Convention 1964, the Labour Inspection (Agriculture) Convention 1969 and the Tripartite Consultation (International Labour Standards) Convention 1976. These 4 conventions also play a crucial role in the implementation of labour policies at the domestic level, because implementation and inspection is an integral part of the implementation of any policy in any country.

That is why the ILO come out with the Labour Inspection Convention, and then Employment Policy, every country must have an Employment Policy and Labour Inspection (Agriculture) Convention, because most of the countries' largest contributor to the GDP is the agriculture sector. But there are no labour standards for the agriculture sector. So, the ILO come out with a

Labour Inspection (Agriculture) Convention in 1969. And then finally, all ILO conventions prescribe that tripartite bodies are the pillars of labour law in any nation. That is why they come out with the Tripartite Consultation, International Labour Standards Convention 1976. So, we will see the provisions of this convention.

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KEYWORDS

- Labour Inspection
- Tripartite Consultations
- Employment Policy
- International Labour Standards
- Governance Convention

□ Introduction

- The ILO Governing body has framed 4 Conventions, apart from the 8 Fundamental Conventions of International Labour Standards, which is called as the Governance Convention or Priority Convention
- These Conventions work as an instrument for encouraging member States to ratify them because of their importance for functioning international labour standards system