



GoodWeave International Forced, Bonded and Child Labour Remediation Policy

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GLOSSARY OF TERMS

This glossary of terms provides generic explanations of each term. Please refer to your respective country law and regulation for more details. Country specifics are provided in the document where relevant as well as in the appendices.

Bonded Labour: Also called “debt bondage,” bonded labour is the practice of requiring someone to work to pay off a loan when the value of the work greatly exceeds the value of the original loan. It is a status or condition that arises from a pledge by a debtor of his/her personal services or of those of a person under his/her control as security for a debt, when the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined. This leads to exploitation of labour in excess of the debt where workers are not free to leave employment till the debt is liquidated.

Child: Any person below the age of 18.

Child labour: GoodWeave defines child labour as “any work or economic activity carried out by a person below the age of 18 years that is likely to harm their safety, health, morals and well being, and/ or hinder their education, development and future livelihood. It would include any work that would interfere with their education, their attendance at school, their participation in vocational or training programs approved by the competent authority, or their capacity to benefit from the instruction received. This shall also include any system of employing a child to provide labour or service by a child to any person, for any payment or benefit to the child, or any other person exercising control over the said child.”¹

Forced labour: All work or service that is extracted from any person under the menace of any penalty for which said person has not offered himself/herself voluntarily.

Guardians: Parents or other legal representative of a child as defined by the legal statutes of each country of operation.

Rehabilitation and social reintegration: Rehabilitation shall mean the process of providing all necessary care and assistance to a rescued or withdrawn child or adolescent and shall include medical, psychological, social, educational and economic assistance for her or his education, training and protection. Rehabilitation and social reintegration includes the processes aimed at successfully mainstreaming a child back into society. The term “rehabilitation” may also include, but is not limited to, the economic

¹ Note that not all situations involving children found working are considered “child labour” under this definition (for example, children above specified minimum ages may help their parents at home outside of schooling hours). The GoodWeave standards and guidance documents outline in greater detail what is and is not considered to be child labour taking into account national laws.

rehabilitation of the family and educational rehabilitation of the child with an objective to improve the overall quality of life of children rescued or withdrawn from child labour.

Rescue operations: This includes all activities associated with organizing inspections, for identification, establishment, and withdrawal of trafficked, forced, bonded and/or child labour engaged in carpet production. The term ‘rescue’ also includes any legal process of removing or withdrawing a trafficked or bonded child or an adolescent labourer from any system of child labour in the process of carpet production or sale, with the aim of securing the rehabilitation and social reintegration of the rescued child. The term ‘rescue operation’ includes both the rescue of an individual or several children/adults.

Rescued child: Any trafficked or bonded child that has been removed or withdrawn from child labour, including through any legal process, is referred to as a “rescued child.” As used in this policy, this is a narrower category than those found under the broader heading “withdrawn from child labour”.

Trafficking: Trafficking is the act of procurement, recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or authority, including the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purpose of labour exploitation of an adult or child.² This includes children who leave their homes to work as child labourers with relatives (other than parents or primary legal guardians), contractors, or agents in a different/far off geographical location. For a child to be considered trafficked, it is only necessary to show an “action” such as recruitment, buying and selling, for the specific “purpose” of exploitation – i.e. trafficking will exist where the child was subject to some act such as recruitment or transportation the purpose of which is the exploitation of that child. It is unnecessary to show that force, deception or any other means were used.

Withdrawn child: Any child that is identified as a child labourer, who as a result of the intervention is no longer engaged in child labour (regardless of whether he/she is removed from the physical location) is referred to as “withdrawn from child labour.” This includes children who have been working in a local production facility (within close proximity to their own home) and were sent home to their families and enrolled in full-time school. It also includes children who are now attending school while working part time to help parents at home, provided they meet the minimum age requirement for home work and do not do work that is hazardous or too physically or mentally demanding.³

² This follows the Protocol to the United Nation Convention on Transnational Organized Crime (2001).

³ In common usage such children may often also be referred to interchangeably as “rescued children”; however, in order to avoid confusion where the term “rescue” has specific meaning in the legal context of the countries where GoodWeave works, for the purposes of this policy the above definitions and distinction between children “rescued” and “withdrawn” shall apply.

Section 1 – Introduction

1.1 GoodWeave’s Mission and Experience

GoodWeave’s mission is to stop child labour in the carpet industry and to replicate its market-based approach in other sectors. GoodWeave fulfils its mission by creating market demand for certified child-labour-free rugs, monitoring supply chains, rescuing and withdrawing children from child labour, providing them with educational opportunities, and providing critical services for weaving families.

GoodWeave has carried out rehabilitation work in India and Nepal since 1995 and 1996 respectively and in Afghanistan since 2012. This policy ensures a formal and consistent approach to the rehabilitation of children by documenting GoodWeave’s approach, its guiding principles, and aligning operations with international best practice. This policy also addresses remediation of trafficked, forced and bonded labour, which applies to vulnerable adults as well as children.

GoodWeave’s experience has shown that a variety of factors contribute to children being sent to work in rug factories or forced into labour at home, often as trafficked or bonded labourers; these factors include, but are not limited to:

- Lack of social norms giving primacy to children and their well-being;
- Lack of educational opportunities for rural children combined with extreme poverty and family breakdown;
- Lack of commitment in support of child rights and especially their right to education among policy makers;
- Lack of social infrastructure to deal with orphaned and vulnerable children;
- Children’s vulnerability to exploitation in the context of economic incentives for use of the cheapest form of labour;
- Trafficking through inducement and deception.

Children found working by GoodWeave inspectors⁴ are offered rehabilitation and related support, such as clothing, food and shelter, and are provided with educational opportunities.

This policy is designed to be consistent with and complement GoodWeave’s Child Protection Policy. It is based on GoodWeave’s experience as well as the international conventions described in Section 2 and the national legislation and regulations in the countries where GoodWeave works. This policy is regularly reviewed and updated as necessary on the basis of a comprehensive legal review and consultation with GoodWeave’s Child Protection Committee.

⁴ In this policy the term “GoodWeave inspector” is used synonymously with “GoodWeave auditor,” as GoodWeave assessments include aspects of inspections (interviews and physical assessment of the worksite) as well as audits (reviewing documentation and records).

1.2 Application of this Policy

This policy applies in all countries where GoodWeave carries out rescue, withdrawal and rehabilitation. It applies to GoodWeave International (GWI) and its national programs and affiliates as well as any other local organizations that carry out programs on behalf of GWI.

Each GoodWeave program and affiliate is responsible for enforcement of this policy in its respective country/region. GWI will monitor implementation to ensure that the requirements of the policy are being met. If deemed necessary, GWI may develop protocols for conducting audits specific to each country and its institutional policy and legal framework in consultation with its NGO partners, through GoodWeave personnel or through independent external organizations.

1.3 Date Effective

This version of the policy entered into effect on 1 January 2016.

1.4 Review

This policy will be reviewed by the GWI Child Protection Committee with input from the GWI Executive Leadership Team and the approval of the GWI Executive Board at least every three years.

The country specific references and legal guidelines listed in Appendix 1 will be reviewed and updated any time GoodWeave establishes operations in a new country/region, as well as when changes to national legislation and regulations in existing countries affect GoodWeave's operations.

1.5 References

GWI Child Protection Policy
GWI Bonded Labour Guidelines
Operational Procedures for Child Labour Rescue, Withdrawal and Rehabilitation

Section 2 – Guiding Principles

The problem of child labour is interrelated with broader human rights concerns, particularly forced, bonded labour and trafficking, which affect children as well as adults. GoodWeave addresses these issues within a rights-based framework following the UN Convention on the Rights of the Child (UNCRC) and the conventions of the International Labour Organization (ILO). These conventions represent an expression of commitment by the international community including governments, employers' and workers organizations around the world to uphold basic human values that are vital to social and economic life. Within this framework, trafficking, forced labour and debt bondage of children and adults are universally recognized as forms of modern-day slavery and are strictly prohibited. When GoodWeave or its partners encounter any such prohibited practices within a supply chain, whether affecting children or adults, each stage of remediation outlined within this Policy shall be guided by these rights-based principles.

2.1 International Conventions and Policy Framework

Various international instruments including the Universal Declaration of Human Rights, 1948, in Article 4, Article 11, and Article 26 prohibit slave trade and protect the rights of children, especially the right to education. Further, the UNCRC in Article 28 (1)(A), Article 32 and Article 37 endeavours to eliminate child labour and protect child rights.

ILO Conventions 29 and 105 abolish forced labour, which includes bonded labour of adults and children. These Conventions have been ratified by nearly every country in the world including India and Nepal. Afghanistan has ratified ILO Convention 105 but not Convention 29. Additionally, the Protocol to ILO Convention 29 adopted by the ILO in 2014 (yet to be ratified) explicitly states the link between forced labour and trafficking.

ILO Convention 138 specifically deals with the minimum age of the employment of a child (14 years for developing nations, 15 years for developed nations and 18 years for any employment likely to jeopardize the safety, health and morals of the child) under Article 2(3), Article 2(4) and Article 3. ILO Convention 182 on Worst Forms of Child Labour prohibits child labour in its worst forms in Article 3 as under:

1. All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
2. The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

3. The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
4. Work, which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

This Convention is the fastest ratified convention in the world and has been ratified by 180 countries (out of 185 members of the ILO) as of January 2016.

The Protocol to the United Nation Convention on Transnational Organized Crime (2001), prohibits “trafficking in human beings” and endeavors to specifically protect children by stipulating that *“the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means...”* such as *“threat or use of force or other forms of coercion”*, etc. till the age of 18 years under Article 3 of the Convention.

2.2 Rights of the Child

Children and young people have the same basic general human rights as adults and also specific rights that recognise their special needs. Each and every stage of safe remediation, rescue, withdrawal and rehabilitation of child labourers outlined within this Policy will be guided by the principles of the UNCRC and other instruments of the United Nations agencies, ILO and other international and national child rights organisations.

There are four broad categories of rights found in the CRC, which provide the basis for GoodWeave’s approach to rescue, withdrawal and rehabilitation:

- A. Guiding principles: Non-discrimination; adherence to the best interests of the child; the right to life, survival and development; and the right to participate. These represent the underlying requirements for any and all rights to be realized.
 - **Non-discrimination**: The child will be protected and all her/ his rights guaranteed without any discrimination based on her/ his nationality, race, gender, religion, or any other protected characteristics (Art.2 UNCRC).
 - **Best Interests of the Child**: “Best interests of the child” is the primary consideration in determining short and long-term solutions for the child. Throughout the withdrawal, rescue, rehabilitation and repatriation work the best interests of the child will have to be ensured (Art. 3 UNCRC). In determining the best interests of the child, it is necessary to explain the different available options to the child emphasizing which of the options are possible (see right to information) and to allow the child to express his/her opinion and participate in decision making in all matters affecting the child (see right to participation) to ensure that the chosen option does not put the child in any danger or exploitation and that the option brings

about a positive change in the life of the child in terms of better protection, access to financial means, and building agency (see right to protection).

- B. Survival and development rights: These are rights to the resources, skills and contributions necessary for the survival and full development of the child. They include rights to adequate food, shelter, clean water, formal education, primary health care, leisure and recreation, cultural activities and information about their rights. These rights require not only the existence of the means to fulfil the rights but also access to them.
- **Repatriation and reunification with family**: In this context repatriation refers to the process of reuniting the child with the family, after rescue or withdrawal (Art. 10 UNCRC).
 - **Rapid Reintegration with Family**: The stakeholders involved in the repatriation and reintegration of the child will ensure that all processes are expedited and there are no unnecessary delays in implementing the reintegration plan. The child should be reintegrated as quickly as possible.
 - **The Institution as the Last Resort**: In cases where it is not in the best interests of the child to be reunited with his/her family (established through family risk assessments that the family environment is vulnerable and poses a risk to the child of being returned into child labour) other family-based alternatives such as foster care or kinship will be explored. In a situation while the child is waiting in an institution for his/her return, necessary efforts to minimise length of stay in the institution and speed up the safe repatriation will be made by all concerned. Additionally, the said institution/organisation/transit home will ensure that the child's rights are protected and he/she has access to entitlements and services for his/her protection and development (Art 9 UNCRC).
 - **Rights to Provision**: These are the rights to the resources, skills and services, which are the inputs necessary to ensure children's survival and development to their full potential (e.g. healthcare UNCRC Article 24).
- C. Protection rights: These rights include protection from all forms of child abuse, neglect, exploitation and cruelty.
- **Right to Protection**: The child will be protected according to his/her specific rights and needs throughout the repatriation process. The child shall be provided with necessary protection and assistance and ensure his/her safety (Art. 19 UNCRC).
- D. Participation rights: Children are entitled to the freedom to express opinions and to have a say in matters affecting their social, economic, religious, cultural and political life. Participation rights include the right to express opinions and be heard, the right to information and freedom of association. Engaging these rights as they mature helps children bring about the realization of all their rights and prepares them for an active role in society.

- **Right to Participation:** A child capable of forming his or her views has the right to express those views in all matters affecting his/her future including the legal process and the determination and implementation of a durable solution, particularly in matters relating to the child's return to his/her country/place of origin. The child's views will be sought and respected and given due weight based on his/her age and maturity (Art. 12 UNCRC).
- **Right to Information:** To allow for a well-informed expression of views and wishes, it is imperative that the child is provided with all relevant information concerning his/her situation, protection mechanisms, entitlements, and services available including means of communication, return to the family/repatriation and the situation in their native place/ state/ country of origin. Such information must be provided in a manner that is appropriate to the maturity and level of understanding of each child. Wherever necessary, interpreters should be made available at all stages of the procedure, arrangements made to answer any questions or clear doubts that the child may have (Art. 17 UNCRC).
- **Right to Privacy and Confidentiality:** Information about a child that could endanger the child or the child's family members shall not be disclosed in any case that may jeopardize the child's safety or well-being (Art. 16 UNCRC). All measures should be taken to protect the privacy and identity of children at all stages of operation from identification to withdrawal or rescue to repatriation and rehabilitation, to ensure their safety and security and that of their families.

Section 3 – GoodWeave’s Approach to Remediation

GoodWeave takes a rights-based approach to its remediation programs. As an organization focused on eradicating child labour, GoodWeave has extensive experience in responding to situations involving trafficking, forced and bonded labour of children in supply chains, and is also increasingly focused on addressing these issues affecting adults.

Child labourers are provided with home-based, community-based and/or centre-based rehabilitation as appropriate to the situation, in line with guidelines provided by GoodWeave and in consultation with the child and his/her family. GoodWeave also works to create the conditions for long-term, sustainable solutions to prevent child labour, which includes building social norms in the communities against child labour and promoting rights and better working conditions for adults. GoodWeave’s expanded standard reflects this holistic approach to addressing child labour in order to ensure that parents have access to decent work, are not trapped in continuous cycles of debt bondage and can afford to send their children to school.

In this context various stakeholders from the local to the global level play a significant role:

- NGOs should build awareness among workers and families in the communities and build the capacities of these communities to exercise pressure on employers and the government to uphold and protect the rights of workers and children.
- Industries should adopt policies with zero tolerance for forced labour, bonded labour and child labour and create or support programs for children and vulnerable adults as part of their corporate social responsibility policies.
- Governments should enact strict laws on forced labour, bonded labour and child labour, develop child rehabilitation policies and schemes for providing education to all children, and work to ensure the full implementation of these policies.

In addition to withdrawal, rescue and rehabilitation of child labourers from carpet production facilities, GoodWeave also works to address the root causes of child labour through community or area-based approaches. This approach brings children into mainstream education and promotes improvements in the quality of education available to children in weaving communities.

3.1 Situations Requiring Remediation

The GoodWeave Standard outlines criteria against which forced labour, bonded labour and child labour are identified. The following guidelines should be followed when determining the appropriate steps for remediation:

- a) Presumption of Age – Where the age of a person is uncertain and there are reasons to believe that the individual is a child, in that case the said person

will be treated as a child while procedures for assessing the person's age through other means are pursued.

- b) Child Labour – When a child's age has been verified and it is a confirmed case of child labour as per the GoodWeave Standard and relevant guidelines (e.g. homework guidelines), the processes described in 3.2-3.4 are followed beginning with identification of the type of child labour, taking into consideration whether the child is trafficked and/or bonded.
- c) Adult Forced or Bonded Labour – In cases involving forced or bonded labour of adults, the necessary remediation actions shall be proportionate to the nature of the situation. If it is a suspected case (e.g. risk factors such as high debt burden are present but it is not clear whether the workers fall into the category of forced/bonded labour), then the employer is responsible for taking preventative measures to remove the risk of forced/bonded labour. In confirmed cases (e.g. identity papers are confiscated or workers are threatened with penalties), the employer is also responsible for completing corrective actions.⁵ However, in cases where the evidence indicates that the employer is not willing or capable of taking the necessary corrective actions, GoodWeave will identify and work with the local legal authorities or partner organization specialized in protection of adult victims to develop a suitable remediation plan. The preventative/corrective actions must be proposed to and approved by the GWI Certification Committee.
- d) Trafficked labour – When child trafficking victims are identified, the protections and procedures described in 3.2-3.4 apply. If an adult trafficking victim is identified, GoodWeave works with the local legal authorities or partner organization specialized in protection and repatriation of adult trafficking victims to provide remediation services. Trafficking may involve either international or domestic cases.

3.2 Children at Greatest Risk of Working

GoodWeave's experience has shown that children are likely to work or are vulnerable to start working in the following situations:

1. Children forced to work as bonded labourers to pay off the debts of their parents.
2. Children compelled to leave their homes as trafficked child labour to work with distant relatives or agents or others.
3. Children of adult weavers who do not regularly attend school and/or who live at the factory site.
4. Children of migrant adult workers who do not attend local schools and often end up working alongside parents or elder siblings.
5. Carpet workers' children who are compelled to weave carpets with family members at home.

⁵ GoodWeave maintains and regularly updates guidelines that describe in more detail the types of practices leading to forced/bonded labour and corresponding preventative/corrective action.

In cases 1 and 2 above, GoodWeave removes children from the work environment and follows the rehabilitation steps set out below.

In cases 3 and 4 above, GoodWeave aims to prevent children becoming child workers through inspection and monitoring, awareness raising, adult literacy programs, sponsored child education and provision of pre-school childcare. GoodWeave also works with factory owners to ensure children are not allowed to enter the workplace.

In case 5, GoodWeave carries out periodic checks to ensure that children (up to the age of 14 years or the end of compulsory schooling, if higher) attend school regularly and that any part-time work performed at home is in line with the GoodWeave Standard and national/international laws and conventions, and that the child is not exploited.

3.3 Legal Analysis of Child Labour and the Situation of Employment

As described in section 3.2, a child may be working in a range of different circumstances, which can be divided into two main categories from a legal analysis: i) Living and staying at home and working for parents; and ii) Recruited to work for an employer. These are further elaborated below:

- i) In case of a child **living and staying at home and working for parents**, which will be established during the interview of a child by the GoodWeave inspectors (explained in GoodWeave operating procedures), the parents/guardians of the child are informed about the value of education and counselled to ensure that the child is withdrawn from work, in accordance with GoodWeave's guidelines for home-based workers, and enrolled in mainstream formal education.

In a situation where the child's parents/ guardians are not in a position to keep the child and ensure her/ his education, follow up of the child is done and the child may be brought to the GoodWeave rehabilitation centre for further care and education, with the explicit written permission of parents/guardians.

- ii) In India and Nepal, many of the children found working in the carpet industry are recruited to work for an employer in home-based subcontracted units (not alongside parents in their own home) or in factories. This work by its very nature is prohibited.⁶ However, many of the children working in carpet weaving are brought from other districts and states under an enticement and lure of excellent pay, better living and working conditions or the opportunity for their children to learn a skill and knowledge of a trade. The people bringing them do so with the intention of exploiting them for monetary favours and other monetary gains, and these children are thus

⁶ In India this is prohibited under the Child Labour (Prohibition and Regulation) Act, 1986, Section 3 - Schedule, Part B (2). See Appendix 1 for a comprehensive analysis of relevant legal statutes in India, Nepal and Afghanistan.

victims of trafficking as per national and international norms and guidelines. These children work for little or no pay, are not allowed to go home and are often subjected to verbal, physical and sometimes sexual abuse.

In addition to the conditions of employment of children (see Appendix 1 for a list of country-specific legal provisions related to the various situations), a working child is also in need of care and protection to be provided as such by the government. The child victim of trafficking may also be a victim of other offenses such as assault, physical or sexual abuse, criminal intimidation, and criminal conspiracy amongst others.

3.4 Procedures for Child Rescue, Withdrawal and Rehabilitation

All individuals and organizational partners directly or indirectly involved with child rescue, withdrawal and rehabilitation work must completely adhere to GWI's Child Protection Policy and operating procedures. The specific roles and responsibilities of involved personnel, including inspectors who are responsible for visiting production sites and identifying cases of child labour, are outlined in GoodWeave's operating procedures. The Child Protection Committee shall review and provide input on these operating procedures on a regular basis, at least annually.

When child labour is found during any of GoodWeave's inspections in any country, the respective GoodWeave affiliate or country program office is responsible for carrying out rescue/withdrawal and rehabilitation of that child in collaboration with local authorities. Inspectors and other personnel on site are responsible to ensure the immediate care and protection of the child. Appropriate measures are taken to remove such children from work, to return them to their respective families where possible and encourage them to go to school. The following summarizes the steps involved:

1. Removal of children from the work place (as appropriate to the situation, see 3.2);
2. Counselling and care;
3. Advocacy of child rights;
4. Education;
5. Rehabilitation into community/family;
6. Ongoing support;
7. Follow up and tracking; and
8. Prevention through awareness raising and community-based interventions

When removing a child from a working environment, the safety and welfare of the child should always come first. No child should be put at greater risk by any action that may be taken.

When a trafficked or bonded child is identified and removed from a working environment, GoodWeave's first priority is to notify the concerned legal authorities as per the relevant legal requirements and GoodWeave's procedures, and reunite the child with his/her parents. If that is not possible, then GoodWeave will ensure the child is provided interim care at a transit or rehabilitation centre in order to

provide counselling, health checks, food, clothing, recreation and other necessary care, and to trace family members and secure government compensation if available and feasible.

3.5 Implementation

The GWI Executive Leadership Team has overall responsibility to ensure that this policy is implemented. GoodWeave affiliates and country programs monitor its implementation in each respective country and ensure that all GoodWeave personnel and implementing partners adhere to the provisions of this policy and related operating procedures. The national country offices also:

- Maintain appropriate arrangements to ensure full remediation services are provided to children as well as adults covered under this remediation policy (this may include identifying and establishing partnerships with organizations with specific expertise wherever necessary, e.g. those dealing with international trafficking); and
- Ensure that implementation of this policy is in line with national and local laws and regulations.

The GoodWeave country director or Child Protection Designate (see GWI Child Protection Policy) shall report periodically to the Child Protection Committee on the status of implementation of this policy and any challenges or issues that have been identified in each country.

Appendix 1: Country-Specific Legal Framework and Guidelines

AFGHANISTAN

In Afghanistan, the Constitution and the Juvenile Code provides for protection of all children under various fundamental rights. Article 43 provides that education is the right of all Afghan citizens. Article 49 prohibits forced labour of children.

Further, the Juvenile Code Article 1 provides as its basis that children in need of care and protection shall have their rights safeguarded during investigation and trial.

Substantive laws include:

- Afghanistan's Juvenile Code, 2005
This code deals mostly with the criminal procedure of dealing with juveniles in the Afghan Courts.
- Afghanistan's Labour Code, 1999
The Labour Code denotes an Article as it relates to children who can legally work. Per Article 122 it states that children cannot work overtime hours (beyond established legal working hours for young workers above legal working age).
- Afghanistan's Penal Code, 1976
The Penal Code spells out the criminal offenses in Afghanistan. This code deals with both juvenile and adult offenses as well as their punishments.
- Civil Law of the Republic of Afghanistan, 1977
The Civil Law was enacted in 1977 and as it relates to children gives the legal rights that they have with placement, employment, property, etc.

In addition to the aforementioned substantive laws, Afghanistan is a signatory to the UN Convention on the Rights of the Child which, as per Article 28(1)a makes education compulsory and available to all. This standard, under Article 32 (1), recognizes 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.

INDIA

In India, the Constitution provides for protection of all children under various fundamental rights especially Article 21 (A) provides the provision “for the right of children to free and compulsory education”. Article 23 prohibits “traffic in human being ‘*begar*’ and other similar forms of forced labour”, and Article 24 provides for the “prohibition of employment of children in hazardous employment”. Further, the Directive Principles of State Policy under Article 39(e) and (f) and Article 45 also provide the guideline for the State to protect the right of the children.

Substantive laws include:

- The Indian Penal Code, 1860
- The Bonded Labour System (Abolition) Act, 1976
- Juvenile Justice (Care and Protection) Act, 2000
- Child Labour (Prohibition and Regulation) Act, 1986

Various other laws prohibit child labour in its various forms and manifestations. The Right of Children to Free and Compulsory Education Act, 2009, aims to provide free and compulsory education to all children up to the age of elementary education further prohibits child labour by providing education to all children.

Legal Provisions Involved in Child Labour Situations in India

The following lists the relevant statutes and offenses (provision) for various classifications of situation of the child.

1. Children are lied to and enticed to be brought for work.
 - Indian Penal Code 1860
 - Trafficking for slavery
 - Cheating
 - Abduction:
 - Abduction for wrongful confinement
 - Abduction for slavery
 - Kidnapping through enticement
 - Juvenile Justice (Care and Protection of Children) Act, 2000
 - Procurement of a child for hazardous employment
2. By paying money to the parents as consideration or as advance,
 - Indian Penal Code, 1860 – Habitual dealing in slaves
 - The Bonded Labour System (Abolition) Act, 1976 – Punishment for advancement for bonded labour
3. Giving away the procured (trafficked child) to the employer for monetary consideration for the purpose of employment.
 - * In most circumstances the person for monetary consideration for the purpose of employment
 - Indian Penal Code, 1860
4. Employing the child
 - Child Labour (Prohibition and Regulation) Act, 1986 – Employing the child in the carpet loom
 - Juvenile Justice (Care and Protection) Act, 2000 – Procuring child/juvenile for hazardous employment

- 4.a. Not allowing the child to move freely, return home as per his/her will
 - Indian Penal Code, 1860
- 4.b. Not paying wages or paying less than the minimum wage
 - The Bonded Labour System (Abolition) Act, 1860

Guidelines for Rehabilitation of the Rescued Child in India

Rehabilitation of a rescued child or a bonded labour is a constitutional guarantee upheld by the Supreme Court of India in *Neerja Chaudhary vs. State of Madhya Pradesh* (1984, 3 SCC, 243). The Apex Court laid down that “it is the plainest requirement of Article 21 and 23 of the Constitution that bonded labour must be indentified and released, and on release must be suitable rehabilitated.”

Generally the ways of statutory rehabilitation of a rescued child labour are:

- Immediate protection and care at children’s home as per the Juvenile Justice (Care and Protection of Children) Act, 2000, right after rescue.
- Social, economic and educational rehabilitation through the judgment of Supreme Court in *M.C. Mehta vs. State of Tamil Nadu* (1997, 3SCC, 699) and Rs. 20,000 recovered from the employer as a fine there under.
- Statutory rehabilitation package under the Centrally Sponsored Scheme for Rehabilitation of Bonded Labourers, entitling the child for Rs. 20,000 and other social welfare schemes, for socio- economic rehabilitation.

NEPAL

Constitution of Nepal (2015)

Enshrines the principles of equality and justice to every citizen without any discrimination on the basis of race, caste, sex, religion, etc. and safeguards the human rights of all citizens. Under Article 39 , it delineates the rights of the child:

Right of children:

- (1) Each child shall have the right to his/her identity with the family name, and birth registration.
- (2) Every child shall have the right to education, health care nurturing, appropriate upbringing, sports, recreation and overall personality development from family and the State.
- (3) Every child shall have the right to formative child development, and child participation.
- (4) No child shall be employed in factories, mines, or in any other hazardous works.
- (5) No child shall be subjected to child marriage, illegal trafficking, kidnapping, or being held hostage.
- (6) No child shall be subjected to recruitment or any kind of use in the army, police or armed groups, neglected, or used immorally, or abused physically, mentally, or sexually, or exploited through any other means, in the name of religious or cultural practices.
- (7) No child shall be subjected to physical, mental, or any other forms of torture at home, in school, or in any other places or situations.
- (8) Every child shall have the right to child friendly justice.
- (9) Children who are helpless, orphaned, physically impaired, victims of conflict and vulnerable, shall have the right to special protection and facilities from the State.
- (10) Any act contrary to Clause (4), (5), (6) and (7) shall be punishable by law, and children who have suffered from such an act shall have the right to be compensated by the perpetrator as provided for in law.

Under Article 51, it forbids child labour and any forms of labour exploitation, requiring the State to pursue (inter alia) the following policies regarding labour and employment: Guaranteeing social security by ensuring the basic rights of all labourers in accordance with the concept of dignity of labour (2); Ending child labour and all forms of labour exploitation (3); Regulating and managing foreign employment in order to make this sector exploitation free, safe and well-managed to guarantee labourers' right and employment (5).

Similarly in the policies regarding social justice and inclusion it ensures the fulfillment of best interest of children. This includes: Paying primary attention to the utmost interest of children (5); Rehabilitation of kamaiya (bonded labourers), kamlari, haruwa, charuwa, haliya, the landless and the squatters by identifying them, and making arrangements of housing, or providing small plot of land or house, employment, or arable land for their livelihoods (6); Providing appropriate opportunities to youths for their contribution to the all-round-development of the State by increasing their participation in it, through the creation of an atmosphere for them to use their political, economic, social and cultural rights, and also by providing special opportunities in educational, health and employment sector

through their personality development for their empowerment and all-round-development (7).

Muluki Ain (General Code), 1963

Contains provisions against inter-state and domestic trafficking. Chapter 11 decrees prison sentences of 20 years for international trafficking and 10 years imprisonment for attempted sale, plus fines equivalent to the amount of transaction.

The Muluki Ain, as amended in 1986 stipulates punishments for the purchaser and the seller of women and children, holding both equally liable. The Act has extraterritorial jurisdiction, with equal penalties for offences committed within or outside Nepal. The law facilitates complaints of human trafficking by anybody to any police force, with whatever evidence available. When a woman is taken outside Nepal by anybody other than a close relative for sale or compulsion into prostitution, the burden of proof to disprove the charge rests on the accused. This is a victim friendly provision. The new bill proposed in the year 2000 includes other victim-friendly procedures such as specific rehabilitative efforts, rehabilitation centres, etc.

The Children’s Act of 1992

Contains provisions to prevent the use of any child in an immoral profession as also other forms of sexual exploitation, use of a child for begging, sale of girl children as religious offerings to temple deities, or for child labour. Section 20 (1), empowers NGOs to initiate cases in favour of children in the district courts.

The Child Labour (Prohibition and Regulation) Act of 2000

Prohibits the employment of children under 14 years of age and lists hazardous industries in which children less than 16 years of age are banned from working.

The Bonded Labour Prohibition Act of 2002

Prohibits bonded labour, frees bonded labourers and extinguishes debt flowing from such arrangements, as well as sets penalties for anyone who employs bonded labourers in violation of the Act.

The Human Trafficking Control Act, 2007

Has a wider definition of trafficking than the one under Human Trafficking (Control) Act of 1986, and includes buying a human being for any reason, enslaving a human being for bonded labour, kidnapping children and all other forms of exploitation not covered in the 1963 Muluki Ain. Victim protection and compensation measures are also included.

Indo Nepal Friendship Treaty (1950)

The Governments of India and Nepal agreed to grant, on a reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature. According to the Treaty citizens of each country can cross the border without any interrogation or record-keeping.