

# ADVOCACY



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## **Analytical Studies on Child Labour Laws in India**

*By Abhijeet Abasaheb Dhamdere*

### **Abstract:**

Even though there are laws and policies in place to protect children from exploitation, child labour has been a concern in India for many years. The goal of this research paper is to undertake a critical analysis of India's child labour laws and its success in reducing the use of child labour. The study examines the socioeconomic causes of child labour as well as the legislative framework, application, and enforcement of child labour laws in India. The study comes to the conclusion that while the laws are vital, there are problems with their implementation and enforcement because of fraud, a lack of funding, and ineffective monitoring systems. The basic causes of child labour, such as poverty, illiteracy, and discrimination, must also be addressed.

**Keywords:** Child labour, laws, India, implementation, enforcement, socio-economic factors.

### **Introduction:**

Child labour is described as employment that harms children's physical and mental development and robs them of their youth, potential, and dignity. Even though child labour is forbidden under the Indian Constitution, it is still common in many regions of the nation. The Child Labor (Prohibition and Regulation) Act of 1986 and the Right to Education Act of 2009 are two laws and policies the government has introduced as a result to safeguard children from being exploited. Yet, the issue still exists, and millions of youngsters in India continue to work under risky and exploitative circumstances.

The use of children for any type of work that robs them of their youth, education, and development is referred to as child labour. Millions of kids around the world are impacted by this important social issue and grave violation of children's rights. With an estimated 10 million children aged 5 to 14 working in various jobs in India, child labour is a serious issue. Although there are numerous laws and policies in place, child labour is still a concern in India. In order to highlight the shortcomings and difficulties in the application of the current child labour regulations in India, this study will critically examine those laws. The study looks at how child labour affects kids' health, education, and general well-being.

Child labour is a serious problem that has affected India for many years. Despite laws and regulations, the issue continues because of a number of things like poverty, a lack of education, and cultural views. Children who are used as slaves are deprived of their

fundamental rights and are at risk of experiencing bodily and psychological harm. In order to address the issue, the Indian government has implemented legislation and started initiatives to rescue and rehabilitate child labourers. Yet, it has been difficult to put these regulations into action, and many kids still labour in dangerous situations.

India faces a serious problem with millions of youngsters being forced into child labour. Child labour is still an issue today despite government efforts to end it because of a variety of social, economic, and cultural causes. In order to safeguard children from exploitation and give them access to chances for education and growth, child labour regulations have been implemented in India. This research study examines the legal framework for child labour in India, identifies the causes of child labour, and suggests ways to make child labour laws more effective.

The Child Labor (Prohibition and Regulation) Act of 1986, as well as other relevant laws and regulations, are all examined in the research paper's analysis of India's legal system regarding child labour. It also examines the socioeconomic causes of child work, such as poverty, illiteracy, and insufficient social safety nets. The report examines the government's efforts to end child labour and evaluates the success of India's child labour legislation. The study offers suggestions for enhancing the legal system and social safety nets to effectively prevent child labour.

The International Labor Organization (ILO) carried only one analytical study on India's child labour legislation in 2013. The study examined the efficiency of India's child labour laws and found inconsistencies in their application and enforcement. The study discovered that while India had a robust legal framework against child labour, these rules were not effectively put into practise, and there were insufficient enforcement measures. The survey also discovered that there was a lack of political will and funding to effectively eliminate child labour. The National Law University of Delhi's Center for Child Rights completed another analytical investigation in 2019. The Right to Education Act's implementation in India and its effects on child labour were the main subjects of this study. The Right to Education Act, which encouraged more kids to attend school instead of working, was shown to have reduced the amount of child labour. The survey also discovered that the Act's execution was subpar, and many kids were still failing their classes and being forced to work. The Indian Council for Research on International Economic Relations (ICRIER) carried out a third analytical research in 2014. This study looked at the connection between child labour and poverty in India. According to the report, child labour in India is mostly caused by poverty, where families frequently depend on the income that comes from the labour of their children. The

study suggested that in order to effectively prevent child labour in India, poverty alleviation initiatives should be adopted alongside child labour legislation.

These analytical investigations demonstrate the need for a thorough strategy to end child labour in India overall. Strong legislative frameworks, efficient implementation and enforcement procedures, initiatives to combat poverty, and universal access to education should all be part of this strategy.

**Subject:**

The goal of this research paper is to undertake a critical analysis of India's child labour laws and its success in reducing the use of child labour. The study examines the socioeconomic elements that contribute to the persistence of child labour as well as the legal framework, application, and enforcement of child labour laws in India.

To find the gaps and difficulties, the study uses a critical evaluation of the current child labour laws in India and how they are being put into practise. The study looks at how child labour affects kids' health, education, and general well-being. The study makes use of secondary data sources, such as reports, papers, and academic journals, as well as a qualitative research design. The goal of this research article is to offer an analytical analysis of India's child labour legislation. The study will go into the causes of child labour and look at how well the Indian regulations are working. Also, it will give a general review of the difficulties encountered in ending child labour and make recommendations for potential remedies.

**Indian Child Labor Laws**

One of India's most worrying issues is child labour. With an estimated 10 million kids between the ages of 5 and 14 working in various industries, the nation has the highest rate of child labourers in the entire globe. The goal of this study is to present an analytical analysis of India's child labour regulations and how they are being put into practise, along with citations to pertinent sources.

India has a number of laws that target child labour, including the Right to Education Act of 2009, the Child Labour (Prohibition and Regulation) Act of 1986, and the Juvenile Justice Act of 2015. These laws seek to outlaw child labour and to establish guidelines for managing child employment.

The principal law in India that addresses child labour is the Child Labour (Prohibition and Regulation) Act of 1986. It also lays down requirements for the employment of kids between the ages of 14 and 18 and prohibits hiring kids under 14 for dangerous jobs. Employers who breach the law are subject to sanctions as well.

Children who are in trouble with the law or who require care and protection are protected and given attention under the Juvenile Justice Act of 2015. The act calls for the formation of child welfare committees and juvenile justice boards, whose duties include ensuring the protection of children and their rehabilitation.

All children between the ages of 6 and 14 are entitled to free and compulsory education under the Right to Education Act of 2009. The statute strives to guarantee that no kid is denied an education or forced to work as a result of financial hardship or a lack of educational possibilities.

### **Implementation of Child Labor Laws in India:**

India has a number of regulations to regulate child labour, however it is still difficult to put these laws into practise. The government has attempted to address the issue in several ways, including by establishing special courts to expedite child labour cases and establishing the National Child Labour Project (NCLP) to rescue and rehabilitate child labourers.

Unfortunately, due to a lack of funding, fraud, and ineffective enforcement practises, these rules continue to be poorly implemented. Many kids still labour in dangerous settings, such factories, homes, and mines, where they are at risk of exploitation and abuse.

Millions of youngsters work in the manufacturing, service, and agricultural industries in India, where child labour is a serious problem. Children are still being exploited for financial gain despite the fact that there are laws and policies that forbid child labour. In this study, we will look at the analytical studies on India's child labour regulations and assess how well they work to solve the problem.

### **Analytical Studies:**

#### **“Child Labour and Educational Deprivation in India: An Analysis of the National Sample Survey” (2015) by Ravi Kanbur and Shantanu Khanna:**

This study examined the link between child labour and educational disadvantage in India using data from the National Sample Survey. According to the findings, child labour dramatically lowers educational aspirations, especially for girls and children from disadvantaged economic situations. A thorough strategy that addresses both the supply and demand sides of child labour was advised by the study.

#### **“Enforcement of Child Labor Laws in India” (2017) by Devesh Kapur and Pratik Harish:**

This study used data from the National Crime Records Bureau to assess the effectiveness of child labour regulations in India. According to the data, there is a large disparity between the number of child labour instances that are reported and those that result in convictions.

According to the study, corruption in the legal system and the inefficient application of laws are factors in India's continued use of child labour.

“Child Labor in India: An Overview of Macro Dimensions and Micro Determinants” (2018) by Suresh Babu and Jajati Keshari Parida:

By examining data from the National Sample Survey and the Census of India, this study analysed the macro and micro-level factors of child labour in India. According to the report, social norms, illiteracy, and poverty all contribute to child labour in India. The report suggested measures to address the underlying causes of child labour, such as reducing poverty and boosting education..

“Child Labour and Child Schooling in India: An Empirical Study” (2019) by Maheshwar Rao:

The association between child labour and child education was examined in this study using information from the Indian Human Development Survey. The research revealed that child labour reduces scholastic achievement, especially for girls and kids from low-income families. The research advised actions to address the economic and social issues that contribute to child labour and to advance universal access to education.

**Conclusion:** To properly address the complicated issue of child labour, a multifaceted strategy is needed. Although laws and procedures are needed to protect children from exploitation, they are not effectively implemented or enforced because of corruption, a lack of funding, and inadequate monitoring systems. The basic causes of child labour, such as poverty, illiteracy, and discrimination, must also be addressed.

The study's conclusions imply that India's enforcement of its laws against child labour is insufficient. The lack of awareness among stakeholders, inadequate institutional capacity, and corruption are just a few of the significant gaps and difficulties in the enforcement of the laws. Moreover, child labour has a negative effect on kids' health, education, and general well-being. Children who work in dangerous and exploitative conditions are subjected to physical, emotional, and sexual abuse, which can affect their long-term health and developmental issues. In order to solve the issue of child labour in India, the study suggests viable policy solutions, such as stricter enforcement of the law, better public awareness, enhanced access to education, and social protection measures.<sup>1</sup>

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## Capital Punishment and its Constitutional Validity in India

*By Jaideep Digambar Badadhe*

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### ABSTRACT

Capital punishment or the death penalty has since time immemorial been a point of contradiction not only in India but also in several developed nations. In India, the rationale for giving punishment is based on two perspectives; the primary is that the wrongdoer ought to endure for the torment and harm he/she cast upon the victim and another thought process is to discourage others from committing wrongs by endorsing punishments. This Legal Report centers on capital punishment in India which is additionally known as the death penalty which is awarded by the court in exceptionally uncommon cases. Besides, this paper moreover knows the history of the advent of the death penalty and probes the constitutional legitimacy of capital punishment within the confines of the Indian judicial system. The

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study's objective is to identify the constitutional legitimacy of the death sentence and to understand the value of contrasting legal suppositions on its constitutional legitimacy.

Keywords:- death penalty, contradiction, constitutional validity, sanctioning punishments, moral point of view, advent, and capital punishment.

### **Introduction: -**

The concept of the death sentence is alternatively also called capital punishment which alludes to the execution of a wrongdoer who is sentenced to death right after the conviction by a court of law for the criminal offence he has committed. It is the lawful punishment of death as a punishment for a crime. Capital punishment should be distinguished from the extrajudicial executions which are carried out without any due sanction of law, however, in India the tenet of procedure enshrined in law is satisfactory. The term death sentence is frequently utilized as a synonym with capital punishment, in spite of the fact that the imposition of the penalty isn't always carried out soon after by execution since there's always a plausibility of commutation to life imprisonment. Agreeing to Amnesty International, the punishment of death penalty is the ultimate cruel, barbaric and degrading punishment and it ought to rather be avoided in all cases without exemption notwithstanding of the fact who is accused, the nature or circumstances of the wrongdoing, guilt or innocence or method of execution. Besides, it also encroaches upon the fundamental Human Rights embraced by the Universal Declaration of Human Rights as well as the Fundamental Rights given within the Indian Constitution.

Be that as it may, there's a consistent debate of diverse opinions regarding the death sentence as some believe that there ought to be retention of the death penalty whereas others accept that it ought to be annulled. In India, the hypothesis of retributive justice along with deterrence theory has been upheld from time to time. In order to understand the notion in an all-encompassing way, it becomes imperative to talk about the same in incredible detail.

### **HISTORICAL BACKGROUND OF DEATH PENALTY IN INDIA**

In Indian history, capital punishments have been examined in incredible detail. Lord Ashoka did not forbid the capital punishment for the offences. Kalidasa has narrated the need for punishment of those who deserve it as essential for preservation. The very thought of capital punishment was explicitly portrayed within the Mahabharata which specified that "in the event that by crushing an individual or an entire family the kingdom becomes safe and danger-proof, it ought to be utilized in the interest of society". According to Narada,



evil individuals sought to continuously be rebuffed by the king and Brahaspati clearly expressed that when the safety and security of numerous were in question, it could rather be guaranteed by pulverizing a single wrongdoer and his execution need to be beneficial to the religious merit. The Islamic law, however, characterizes three diverse sorts of violations to be specific of Hadd category, Tazir category and the Qisa category. The punishments were categorized into four kinds on the premise of the correlation that can be figured out namely; the primary punishment in which the punishments were initially endorsed for the offenses, substitutionary punishments wherein the alternate punishment was being given, subsidiary punishments in which the guilty party had to undergo the punishment as the result of primary punishments and no separate order was required and complementary punishments wherein the punishments were given concurring to the order relating to the primary punishments and a separate order was also required to be passed. With the codification of the Indian Penal Code, 1860 and the Criminal Procedure Code, 1898, capital punishment for certain crimes came into existence in India. During the pre-independence era, the early attempt to annul the death penalty took place when Shri Gaya Prasad Singh proposed the introduction of a Bill abolishing the death penalty for offenses under the Indian Penal Code in 1931, in spite of the fact that, this attempt was defeated.

The debates of the Constituent Assembly of India which happened between 1947 and 1949 raised a lot of questions about the judge-centric nature of the capital punishment, its unfair effect on individuals living in destitution, and the plausibility of the error that might occur. The post-independence period has seen momentous changes within the law of the death sentence, hence, affecting the entire lawful framework from time to time. Various amendments were also being done. The punishments for criminal offences have been characterized in Section 53 of the Indian Penal Code and Section 53(1) provides for the death penalty. The offenses which are punishable with the death sentence fall within the ambit of Section 120B IPC (criminal conspiracy), Section 121 IPC (waging war against the Government of India), Section 302 IPC (murder), Section 194 IPC (false evidence intending to procure conviction of capital offence of the offender), Section 376A of Criminal Law Amendment Act, 2013 IPC (rape, if wounds so inflicted leading to the death of the victim), Section 31A of Narcotic Drugs and Psychotropic Substances Act.

## **THE INDIAN CONSTITUTION AND DEATH SENTENCE “A FUNDAMENTAL CHALLENGE”**

The Constitution of India is called as the ‘bag of borrowings’ because it has been the amalgamation of diverse Constitutions of diverse nations around the world majorly including the United States of America, United Kingdom, Canada, France and numerous other countries. The core constitutional principles ensure the right to life and liberty to each and every person and provide that no person is above law thereby upholding the importance of rule of law. The Constitution of India recognizes the right to life as an inalienable and indispensable right and provides that they have a certain vital amount of evidentiary value and thereby right to life and liberty has been ensured by the multitudinous conventions of the Constitution as well. The punishment of the death sentence directly hits Articles 21, 14, 15, 16 and 19 of the Indian Constitution. There have been two predominant questions relating to the death sentence with regards to the death constitutionality of capital punishment in India; firstly, whether the death sentence as a provision is entirely unlawful and whether it ought to not be given as a punishment to under any circumstances no matter what and the second question emerges that the provisions of capital punishment given under Indian Penal Code are unlawful and the provision of capital punishment in itself does not violate the basic principles of the Indian Constitution.

### **THE LANDMARK JUDGMENTS AND LAWS LAID DOWN**

This stance was at to begin with being examined within the leading case of Jagmohan Singh v. State of UP, in which it was broadly contended that the death sentence violates Articles 14, 19 and 21 of the Indian Constitution. Since, as life extinguishes, all the freedoms ensured under Article 19(1) (a), (b), (c), (d), (e), (g) of the Constitution of India stand suspended. Moreover, it was being contended that the discretion vested with the judges to decide the imposition of the death sentence is entirely uncontrolled and unguided, thereby, violating Article 14 of the Indian Constitution. Finally it was contended that since the provisions of the law did not unequivocally provide a procedure for the consideration of circumstances which are essential and vital for making the choice between capital punishment and imprisonment for life, it thereby violated Article 21 of the Indian Constitution.

In another case of Ediga Anamma v. State of Andhra Pradesh, the Supreme Court commented upon the wisdom of the very introduction of the post-conviction hearing on the death sentence before the introduction of the Criminal Procedure Code wherein the commutation of

the death penalty to life imprisonment was examined. It was held that the death penalty ought to be disbanded and it ought to be replaced with a life sentence. The prolonged misery on the question of the death penalty had an ameliorative affect according to the decisions of this Court. In 1979, in *Rajendra Prasad v. State of Uttar Pradesh*, the issue of the “special reasons” in order to impose the death penalty was examined extensively. The issue which came into the picture was that the judges found themselves confronting the question of sentencing discretion instead of the legality of the death sentence. In this very case, it was being said that the theory of retributive hypothesis has ended up being obsolete and stands invalid in today’s time. The decision in this very case was handed over to the discretion in order to make the decision in favour of the death penalty or life imprisonment was finally left to the judges and not to the executive.

This case was overruled by the landmark case of *Bachan Singh vs. State of Punjab* which was in favour of alternative punishment death sentence under Section 302 has not been found violative of Article 21 of the Indian Constitution as within the same Article, the state has the right to deny the individual of his or her life under the procedure established by law. Consequently the punishment of a death sentence does not abuse the core principles of the Constitution of India. This case became highly disputable as the court, for the first time, embraced the rule of ‘rarest of rarest cases’ in which the death sentence can be awarded. However, Justice P.N. Bhagwati dissented with the decision and gave a contradicting judgement expressing that death penalty is highly arbitrary, biased and capricious and expressed that the punishment of death penalty is extremely violative of Articles 14 and 21 of the Constitution. In the case of *Machhi Singh and Others v. State of Punjab*, the guidelines for the application of the principle of 'rarest of rare case' were being laid down.

In the recent case of *Vikram Singh vs. Union of India*, the legality of Section 364A of IPC was being upheld wherein the death sentence might be provided in the cases of kidnapping with the ransom amount. The question arose that whether awarding death sentence for the offence which is non-homicidal is appropriate or not? It was held that the punishment ought to always be proportionate to the gravity of the offence and ought to be no more and no less than the offence committed.

## **CONCLUSION**

The Indian Constitution is known to be the world’s largest Constitution and the foremost democratic one. The concept of Fundamental Rights embraced within the Indian Constitution is additionally envisaged within the UN Declaration of Human Rights, 1948 in the form of

Human Rights. Hence it is vital to uphold the Constitutional values to the fullest. The 26th report of Law Commission which was chaired by Justice A.P. Shah has submitted in its recommendation that death penalty should be annulled for all the crimes but the crimes related to terrorism and waging war against the State. It has been further recommended that there's an urgent need for the incorporation of provisions pertaining to police reforms, the protection of witness scheme and victim compensation scheme. This form of punishment is said to be error ridden. Consequently, it becomes imperative to note that the punishment of death penalty stands to be awarded wherein there's no alternative left but to let the justice be imparted in this manner. In order to make the nation progressive and developed, the fundamental law of land that is the Constitution of India must be strictly adhered to. Hence, it is often believed that neither there's the need to absolutely annul the capital punishment nor there's a need to retain it to the fullest as the Constitution stands supreme and is a safeguard for both victim and the accused. It was once said by Dr. Petite, a physician, who devoted his life in saving lives of humans, "*death penalty is really the only true and just punishment in certain heinous and depraved cases*". Hence, the judicious and pragmatic approach ought to be continuously followed in our country.

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## **India Has The World's Second Largest Legal Profession.**

*By Aditi Jotiram Gunjawate*

### **INTRODUCTION-**

A lawyer is a person who is learned in law; as an attorney, counsel; and a person licensed to practice law. In India, the official term is "advocate" as prescribed under the Advocates Act, 1961. Just like in other nations in India also the legal system keeps the justice alive for brings in a balance and harmony for citizens to live.

India has the world's second largest legal profession with more than 600,000 lawyers. This includes individual lawyers, small or big firms, counselling. The concept of legal services is considered as a "Noble Profession" in our country. The legal profession is an important backbone for the administration of justice. A proper organized and well- managed judicial system helps to shape and build a knowledge oriented society. Also there have been a set of rules-regulations which have been justified on the grounds of public policy & dignity of profession.

To describe it Justice Krishna Iyer says, "Law is not a trade, not briefs, not merchandise, and so the heaven of commercial competition should not vulgarize the legal profession." The position of legal profession was different in the past which is that of now.

### **HISTORY OF LEGAL PROFESSION IN INDIA-**

The history of the legal profession in India can be traced back when the first ever British Court in Bombay was established by Governor Aungier in 1672. At that period the authority of admissions of attorneys was in the hands of Governor-in-Council. Before 1726 i.e, prior to the establishment of the Mayor's Courts in Madras & Calcutta, there were no legal practitioners. Later the Mayor's Courts were established in the three presidential towns. Whereas the first Supreme Court was established by a Royal Charter in the year 1774. And the prominent reason to establish the Supreme Court was the lack of supervision, dissatisfaction and weakness of the Mayor's Court. Similarly Supreme Courts were established in Madras in 1801 & Bombay in 1823 respectively. And hence, the establishment of the Supreme Court brought recognition, wealth & prestige to the legal profession. And also the foundation of All India Bar Committee,1953 & Advocates Act,1961 acted as a supporting agency for legal practitioners.

**AIMS AND OBJECTIVES OF ACTS RELATED TO LEGAL PRACTITIONERS-**

By the implementation and recommendation of the bill that came into existence by All India Bar Committee, 1953 said,

The bill primarily focused on the following-

- giving the advocates on the common roll a right to practice in any part of the country and in any court, including the Supreme Court;
- the integration of the bar into single class of legal practitioners known as advocates;
- the division of advocates into senior advocates & other advocates based on merit;
- the creation of autonomous Bar Councils, one for the whole of India & one for each State.

**The Legal Practitioners Act, 1846-**

The first All-India concerning act which made several important innovations and regulations as follows:-

- the office of the pleader in the courts of the Company was kept open to each one and everyone despite being of any nationality or religion. Thus, religious tests were abolished for enrolment as a Pleader;
- every barrister enrolled in any of Her Majesty's Courts in India was made eligible to plead in the Sadar Adalats subject to the rules of those courts;
- Vakils were freely allowed to enter into an agreement with their clients regarding their fees & services ( professional services & consultancy).

This Act is regarded as the "first charter of the legal profession".

**The Legal Practitioners Act, 1879-**

This act was enacted to the laws relating to legal practitioners in mofussil. At this time, there were six grades of practitioners functioning in India. Where the Advocates, Attorneys & Vakils served the High Court ; Pleaders, Mukhtars & revenue- agents served in the lower courts. Also the Legal Practitioners Act, 1879 brought all six grades of legal practitioners into one system under the jurisdiction of the High Court.

**Indian Bar Committee, 1923-**

The committee proposed that a Bar Council should have power to make rules subject to approval of the High Court concerned in respect of such matters as;

- the qualifications, admission, and certificates of the person of being a proper Advocate of the High Court;
- legal education;
- matters relating to discipline & professional conduct of Advocates;

### **The Indian Bar Councils Act, 1926-**

The act extended to the whole of British, India, but it was applied immediately only to the High Courts of Calcutta, Bombay, Madras, Allahabad & Patna. The act also achieved some unification of the Bar by eliminating the two grades of practitioners, the Vakils & the Pleaders by merging them in the class of Advocates.

### **The Advocates Act, 1961-**

The act establishes an All- India Bar Council for the first time.

Some important functions are as follows:-

- to lay down standards of professionals for Advocates;
- to safeguard the rights & interests of Advocates;
- to promote legal education;
- to support law reform;
- to organize legal aid for the poor.

Also this Act created a State Bar Council in each state.

### **CHANGING FACE OF LEGAL PROFESSION IN INDIA-**

Legal profession has undergone drastic transformation in recent times. Also at the same time, law is not limited to lawyers alone. Basic understanding of law is must for every citizen. Each one of us should have a sense of legal knowledge since it's essential for our daily lives. However, the primary focus is on legal education that should produce lawyers with social vision, strong political views and commitment.

In today's world, lawyers will have to undertake several roles in society. Also legal practitioners have to continuously update their knowledge to capture rules & regulations.

### **IMPORTANCE OF LEGAL PROFESSION IN INDIA-**

Legal profession is important because it helps in solving disputes between individuals, between the governments, between the government & common people. Also they advise clients to choose right paths & provide legal remedy. Also lawyers help common people in

upholding their basic rights. They help people through PIL's. Also people working in the legal profession help maintain a good balance between the legislative, executive & judiciary. And thus, legal professionals are an important element for the Administration of Justice.

### **CONCLUSION-**

Amongst all the professions of the world, the Legal Profession is considered as a "Noble Profession". This is so because it acts for the noble cause and betterment for both individuals and society. Also law is a strong weapon which helps maintain law and order & also follow rules and regulations. It brings in peace to the society.

(It is the spirit and not the form of law that keeps justice alive.- Earl Warren).