



CHILD LABOUR LAWS IN INDIA: A CRITICAL ANALYSIS WITH SPECIAL REFERENCE TO CHILD LABOUR (PROHIBITION AND REGULATION) ACT 1986

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Abstract

Children are the tender flowers who need special care and protection as they are eventually going to shoulder the responsibility of the nation as a whole. At the international level, UNO has proposed various convention to protect the interest of children. Constitution of India has also provided Article 24 to regularize the conditions of employment of child labour. Along with other labour laws, Child Labour (Prohibition & Regulation) Act 1986 is providing good legal infrastructure to protect the child labour. But there are some loopholes which may hamper the object of the Act itself. Education is a ultimate solution to root out child labour from the society.

A pot, when it is being made, is handled with utmost care by potter to make it best unbreakable article, same is with the children. Children are the tender flowers who need special care and protection as they are eventually going to shoulder the responsibility of the nation as a whole. Contrary if in such a tender age, their shoulders are overburdened with the work as a labour, ultimately it results into the huge loss on the part of the nation.

The 2011 national census of India found the total number of child labour, aged 5–14, to be at 4.35 million, and the total child population to be 259.64 million in that age groupⁱ. Child labour is one of the serious issues in India which needs gross attention as it is a clear cut violation of human rights of children as well as an economic problem.

Universal Declaration of Human Rights under Article 25 provides for special care and assistance to every childhoodⁱⁱ.

It is realized that the total ban on child labour may not be feasible in socio economic environment of the country. Accordingly Article 24 of the Constitution of India puts only partial restriction on employment of child labour. Article 24, a fundamental right, prohibits the employment of a child below the age of 14 years to work in any factory or mines, or in any other hazardous employment. By reason of the compulsory mandate in Article 24, no one can employ a child below age of 14 years in a hazardous employment like construction work. It is also the duty of the Union Government, state governments and other government bodies to ensure that the contractors to whom they have entrusted the construction work also obey the obligationⁱⁱⁱ.

India has a federal form of government, and child labour is a matter on which both the Central Government and State Governments can enact the laws prohibiting child labour^{iv}. The major national legislative developments include the following:

The Factories Act of 1948: The Act prohibits the employment of children below the age of 14 years in any factory. The law also prescribed rules as to age, time and duration of employment related to pre-adults aged 15–18 years.

The Mines Act of 1952: The Act prohibits the employment of children below 18 years of age in a mine.

The Child Labour (Prohibition and Regulation) Act of 1986: The Act prohibits the employment of children below the age of 14 years in hazardous occupations identified in a list by the law. The list was expanded in 2006, and again in 2008.



The Juvenile Justice (Care and Protection) of Children Act of 2000: This law made it a crime, punishable with a prison term, for anyone to procure or employ a child in any hazardous employment or in bondage.

India has not ratified the ILO's two major conventions on child labour; the Minimum Age Convention 1973^v and the Worst Forms of Child Labour Convention, 1999^{vi}. The latter prohibits the employment of children altogether. Way back in 1979, Government formed the first committee called Gurupadswamy Committee^{vii} to study the issue of child labour and to suggest measures to tackle it. The Committee examined the problem in detail and made some far-reaching recommendations. It observed that as long as poverty continued, it would be difficult to totally eliminate child labour in India and hence, any attempt to abolish it through legal recourse would not be a practical proposition. The Committee felt that in the circumstances, the only alternative left was to ban child labour in hazardous areas and to regulate and ameliorate the conditions of work in other areas. It recommended that a multiple policy approach was required in dealing with the problems of working children.

Child Labour (Prohibition & Regulation) Act, 1986 was the culmination of effort and ideas that emerged from the deliberations and recommendations of various committees on child labour. Significant among them are the National Commission on Labour (1966-69), Gurupadaswamy Committee on Child Labour (1979). Sanat Mehta Committee (1984) and others^{viii}.

The basic objective of the Child Labour (Prohibition & Regulation) Act 1986, is to ban employment of children below the age of 14 years in factories, mines and hazardous employments and to regulate the working conditions of children in other employments.^{ix} The list of hazardous occupations and processes is progressively being expanded on the recommendation of Child Labour Technical Advisory Committee constituted under the Act.

Though the Act is unique piece of legislature and many provisions of it are satisfactory, it has few defects which may override purpose of the Act which it seeks to achieve. Lacunae in the Act are listed as below.

1. By studying the Act in detail, it can be observed that the Act has extended its protection only to those child labours who are employed in the factories or mines or any other hazardous industry. It has also regularized conditions of the employment of those child labours who are officially employed in the non-hazardous industries. But there is no specific provision in the Act related to the child labours who are employed in agriculture sector. Again there is no any specific strategy provided in the Act to curb and regularize child labour in unorganized sector. As unorganized labour sector is numerous and unregistered it is practically difficult to implement the provision of this Act.

Nowadays when we are facing the problem of disposal of electronic waste, we can observe in the society that the unorganized labours and specifically child labours are tackling these e-wastes for the purpose of recycling as well as for its disposal. As it contains hazardous substances like cathode ray tubes (CRT) etc. it may cause serious harm to the health of these children.

2. Section 3 of the Act is exempting from its purview the family enterprises in which all are several of the family members are involved. But it is very difficult to identify the real family member and excuse can be easily given by such employer that the particular child is a relative of him. Here there can be exploitation of child labour with no remedy.

It is to be noted that a large number of Indian children are adopted by foreign parents. There have been complaints that these children are maltreated in foreign lands after adoption. Thus pointing to Article 15(3), 24, and 39(e) and (f) in **Lakshmi Kant V. Union**



of India^x supreme court has taken the opportunity to lay down the guidelines for adoption of India children by foreign parents as there is no statutory enactment for the purpose.

3. It should be noted that, though Act prohibits employment of children in hazardous industries and processes it has nor defined anywhere the term 'hazardous'. As due to advent of science, the new technology and the processes are emerging day by day, it may not be possible to the legislature to amend the law every time for expanding list of hazardous industries and hazardous processes. For safe side it will always be wise to define the term hazardous which definitely contribute in securing the interest of child labour.
4. In absence of birth certificate, Section 10 has imposed the responsibility of determining the age of minor on the inspector and not of the occupier.

Determining the age of the child is a big problem. In a country like India, many children do not have birth certificates. This procedure needs to be simplified. Besides, it is recommended that till such time as age is determined the benefit of doubt should be in favour of the child.

5. A child who has a dispute relating to his wage, salaries and other employment benefits in the permissible areas of work has to approach the adult dispute resolution mechanism. The child labours in the prohibited areas of work cannot even approach the adult dispute settlement machinery as their provision in the Act for a dispute resolution mechanism for the protection of wages or other employments benefits. Special courts could be set up for a speedier and more effective trial of violations under this Act. It is suggested that the advisory function of the Technical Advisory Committee under Section 5(1) of the Act should be expanded and it should be able to receive petitions from individuals etc.
6. The provision for the appointment of a lawyer for child labour may also be made to advocate the interest of the him in an appropriate manner.
7. The rules relating to the Child Labour (Prohibition and Regulation) in various States need to be immediately amended for better implementation of the Child Labour (Prohibition and Regulation) Act.
8. As per Section 16 of the Act no time period has been prescribed with in which metropolitan magistrate or magistrate of First class required to complete the proceedings. On a complaint of the commission of an offence under this Act. It is suggested that a time limit from three to six month should be fixed for the disposal of the case so that the aggrieved party get relief in time.
9. When child labours are employed in a factory, they come in the contact with the other labours who may not be the properly cultured and mentally developed and educated person. There are high chances that such other labours may affect badly on the positive growth of the children. It is advisable that the in factories where child labours are employed, there shall be favourable arrangement made by the occupier to boost the mental and physical growth of the children.
10. The punishment provided in the act under section 14 is finding insufficient for the purpose thus it is advisable that the it should be increased to suffice the purpose.

The Child Labour (Prohibition and Regulation) Amendment Bill, 2012 was introduced in the Rajya Sabha on 4 December 2012 by the Minister of Labour and Employment, Shri Mallikarjun Kharge^{xi}. The main three points highlighted are^{xii}

- **Complete ban on child labour, and prohibition of hazardous work by adolescents** The Bill introduces the term 'adolescent' to mean a person who is between 14 and 18 years. And, prohibits the employment of adolescents in hazardous occupations or processes (mines, inflammable substances or explosives, or hazardous process) as defined in the Schedule.



The Bill redefines ‘child’ to mean a person below 14 years or any age as specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more.

➤ **Enhanced penalties for violation, and made a cognizable offense**

The Bill also enhances the punishment for employing a child labourer by increasing the penalty to between 6 months to 2 year, and the fine of Rs 20,000 to Rs. 50,000. The Child Labour Act, 1986 stipulated punishment from 3 months to 1 year, and a fine of Rs. 10,000 to Rs. 20,000. The imprisonment and fine can be applied cumulatively. Similarly, the Bill imposes punishment for employing an adolescent in hazardous occupation or processes of 6 months to 2 years, or fine of Rs. 20,000 to Rs. 50,000 or both. Furthermore, in case of person repeats the offense under the Bill, the punishment has been enhanced to 1 – 3 years, and makes the offenses punishable under this act as cognizable.

➤ **Accountability, Inspection and Monitoring**

To ensure implementation of the provision of the Bill, government may confer powers to the District Magistrate to carry out the duties set in the Bill. For accountability, inspection and monitoring, the Bill authorises the government to make periodic inspection of places at which employment of children is prohibited and hazardous occupations or processes are carried out.

Here it may be suggested that as the district magistrate is already overburdened with the other administrative and judicial work, he may not be able to justify the interest of the child labour. Thus there shall be a separate officer from the Department of Women and Child welfare appointed for this purpose to look after the interest of this vulnerable section.

The Bill is currently under review with the Parliamentary Standing Committee on Labour. The introduction and first review of the Bill was made on 7 February 2013.

Following the tradition of Mahatma Gandhi, Indian activist, Noble Peace Prize Winner Kailash Satyarthi has waged a peaceful struggle to stop children being exploited as labour instead of attending schools. He has also contributed to the development of international conventions on the rights of the children. Education is the base of civilized society^{xiii}. When every child will receive the proper education and develop himself in a proper manner, it will definitely contribute in the true success of the country. Child labour is acting as a curse to this thought. Thus every single step towards abolition of child labour is a necessary to make India a developed country in the world.

ⁱ http://www.censusindia.gov.in/2011census/population_enumeration.aspx

ⁱⁱ Article 25 UDHR

ⁱⁱⁱ M. P Jain, Indian Constitutional law, sixth edition, Page No 1313

^{iv} Entry 24 concurrent list schedule VII constitution of India

^v ILO Convention No. 138

^{vi} ILO Convention No. 182

^{vii} <http://labour.nic.in/content/division/child-labour.php>

^{viii} www.tnchildlabour.tn.gov.in

^{ix} <http://www.tnchildlabour.tn.gov.in/prohibition.htm>

^x AIR 1984 SC 469

^{xi} <http://globalmarch.org/event/page/proposed-amendments-child-labour-law>

^{xii} *ibid*

^{xiii} http://www.nobelprize.org/nobel_prizes/peace/laureates/2014/satyarthi-facts.html