

THE LOOPHOLES IN CHILD LABOUR LAWS IN INDIA

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INTRODUCTION

In a country like India with poverty rate of about 87%,² every member in poverty-stricken family tries to earn to contribute to their daily bread and butter. As considerate as that sounds, the problem arises when innocent children are forced to abandon their education and seek opportunities to make minimum wage. This forces them to enter dull, dingy factories to make minimum wage. Employers, being the opportunist that they are, jump up on the first chance to employ these children to get their work done faster and cheaper. Recognizing this problem, the Legislature of India has enacted laws to ensure that virtuousness of children is not exploited by the employers for their selfish gain. However, even the law is not devoid of their lacunae which are taken advantage of by the Employers.

Before indulging into the loopholes of the Child Labour Law in India, let's understand what the term "child" and "child labour" means.

- As per the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, a "Child" is defined as any person below the age of 14.³ Children between age of fourteen and eighteen are defined as "Adolescent"⁴. This Act permits Adolescents to be employed in industries except the listed hazardous occupation and processes such as mining, inflammable substance and explosives related work and any other hazardous process as per the Factories Act, 1948.⁵
- As per Factories Act, 1948, "child" means a person who has not completed his fifteenth year of age⁶ and "adolescent" means a person who has completed his fifteen year of age but hasn't yet completed his 18th year.⁷

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² As of 2011, poverty rate is 86.80% <<https://www.macrotrends.net/countries/IND/india/poverty-rate>> accessed May 16, 2020

³ Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, s. 2(ii).

⁴ Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, s.2(i).

⁵ Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, s.3A.

⁶ The Factories Act, 1948, s.2(c).

⁷ The Factories Act, 1948, s.2(b)

- Mines Act, 1952 does not provide any definition of the term child. However, it defined adult as a person who has completed his eighteenth year.⁸
- The Bonded Labour System (Abolition) Act, 1976 does not define the terms child or adolescent anywhere.
- Child labour is often defined as work that bereaves children from their childhood, potential and dignity, and is harmful to physical and mental development. It refers to work that:
 1. is mentally, physically, socially or morally dangerous and harmful to children; and/or
 2. which intrudes in school-work by depriving them from attending school; or requiring an attempt to combine school attendance with excessively long and heavy work; or forcing to leave school prematurely.⁹
- Child labour is the % of children aged 5 to 14 years of age involved in child labour activities at the moment of the survey. A child is said to be involved in child labour activities in the following classification: (a) children aged 5 to 11 years that who did at least one hour of economic activity or at least 28 hours of domestic work, and (b) children aged 12 to 14 years who did at least 14 hours of economic activity or minimum 42 hours of domestic work and economic activity combined.¹⁰
- Child labour is participation of a child under 17 years of age in any economically productive activity with or without compensation, wages or profit. This could be physical, mental, or both. Such work may include part-time or unpaid work on any farm, family enterprise or in any other economic activity like cultivation and milk production, be it for sale or domestic consumption.¹¹

⁸ The Mines Act, 1952, s.2(b).

⁹ International Labour Organization, “*World Report on Child Labour*” (2012)

¹⁰ UNICEF, “*Impact of Unpaid Household Services on the Measurement of Child Labour*”, MICS Methodological Paper No. 2, UNICEF, New York (2013).

¹¹ Government of India, “*Census of India*” (2001).

CURRENT LAWS

The Parliament of India, understanding the mass exploitation of children in the factories and other industries, has passed a number of legislations to curb the same. A brief look at some of the statutes that provides for rules and regulations regarding child labour are as follows:

The Factories Act, 1948: This Act prohibits the employment of children below the age of 14 years in any factory vide section 67¹². The law also specifies for who, when and how long can workers aged 15–18 years be employed in any factory under section 71 which limits the working hours to four and a half hours in a day. This section further prohibits children working in the factories during night.¹³ Further, children are also prohibited near cotton-openers¹⁴ except on the side of the partition where the feed-end is situated if the feed-end of a cotton-opener is in a room separated by a partition extending to the roof or to such height as the Inspector may in any particular case specify from the delivery end.¹⁵ Section 99 penalizes the parent or guardian of the child or the person having custody of or control over him or obtaining any direct benefit from his wages for permitting double employment of child.¹⁶

The Mines Act, 1952: The Act prohibits the employment of children below 18 years of age in a mine vide Section 40. However, trainees, not below sixteen years of age, may be allowed to work under proper supervision in a mine with prior approval of the Chief Inspector or an Inspector. If a person below eighteen years of age is employed in a mine in contravention of Sec. 40, the owner of the mine, or his agent or his manager shall be punishable with fine, which may extend to five hundred rupees.¹⁷ Mining, considered to being one of the most dangerous occupations with many hazards, which in the past has led to many major accidents taking life of children, it is completely banned for them to even be in the mining site vide section 45.

¹² 67. Prohibition of employment of young children. — No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

¹³ 10 P.M. to 6 A.M.

¹⁴ The Factories Act, 1948, s.27.

¹⁵ Proviso to The Factories Act, 1948, s.27.

¹⁶ fine which may extend to one thousand rupees.

¹⁷ The Mines Act, 1952, s. 68

The Child Labour (Prohibition and Regulation) Act, 1986: The Act prohibits the employment of children below the age of 14 years in hazardous occupations, vide section 3, identified in a list by the law which was expanded in 2006, and again in 2008. However, even this Act, which was enacted to regulate the menace of employment of children and lay down a procedure for deciding modifications to the Schedule of occupations or processes which are banned, allows children to work in “non-hazardous” businesses, the entertainment industry and in family agricultural business. This Act also provides that no child shall work for more than three hours before he has had an interval for rest for at least one hour, or between 7 PM and 8 AM or work overtime.¹⁸

For violation these provisions, the employer shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine starting from ten thousand rupees up to twenty thousand rupees or with both.¹⁹

The Juvenile Justice (Care and Protection) of Children Act, 2000: This law made it a crime, punishable with a prison term which may extend to three years and also fine, for anyone to employ a child in any hazardous employment or bondage.²⁰ This act provides punishment with imprisonment for a term which may extend to three years and also fine to those who employ children to work for begging.²¹

The Constitution of India

The Constitution contains provisions in respect of children under Part III, i.e. Fundamental Rights, and Part IV, i.e. Directive Principles.

Article 14: Equality before law, i.e. equal treatment and protection under law. All children in similar circumstances are required to be treated in a similar manner, and if not so treated, such treatment can be challenged on the ground of discrimination and arbitrariness.

Article 15(3): Permits the State to make special provisions for women and children. Special enactments made for the benefit of children cannot be struck down on the ground of discrimination.

Article 19(1): Guarantees citizens of India the right to freedom of speech and expression, to form associations or unions, to move freely throughout the territory of India, etc. In India, child labour is prohibited only in factories, mines or other hazardous

¹⁸ The Child Labour (Prohibition and Regulation) Act, 1986, s. 7

¹⁹ The Child Labour (Prohibition and Regulation) Act, 1986, s. 14

²⁰ The Juvenile Justice (Care and Protection) of Children Act, 2000, s. 26

²¹ The Juvenile Justice (Care and Protection) of Children Act, 2000, s. 24

employment, and therefore, there is no blanket ban on employment of children. Though children form part of the labour force they are not permitted to unionise and fight for their rights as workers.

Article 22: It provides for safeguards upon arrest. A child in need of care and protection should be produced before the Competent Authority established under the Act within 24 hours of having been picked up by the police.

Article 24: It prohibits the employment of a child below 14 years in any factory or mine or any other hazardous employment.

Article 39(e) & (f): Under this Article, the State has to ensure that children of tender age are protected from abuse, and from entering vocations unsuited to their age and strength. Children are also to be provided with equal opportunities and facilities to develop in a healthy manner. The State has to also ensure that childhood and youth are protected against exploitation and abandonment.

Article 41: It requires the State to take steps to secure educational opportunities and facilities.

Article 45: The State is to take measures to ensure free and compulsory education for all children till they attain 14 years of age.

Article 47: The improvement of public health and the raising of the level of nutrition is a primary duty of the State.

Article 51(c): The State is to respect international law and treaty obligations. The Government of India and the State Governments are obligated to the commitments contained under the Convention on the Rights of the Child.

LOOPHOLES

Despite having enacted specific legislations to target the problem of child labour, the Indian Legislative body has ultimately failed to achieve the same as even today, this problem prevails all over the country and in different countries. This is so because the statutes have a number of loopholes in them which are exploited by the employers to their advantage by employing young children in factories and other workplaces. Even the Supreme Court of India recognized the lacklustre nature of the statutes long back in the case of *M.C. Mehta vs. State of Tamil Nadu*.²² This case dealt with employment of

²² *M.C. Mehta vs. State of Tamil Nadu*, AIR 1997 S.C. 699

child labour in manufacturing of matches and fire-crackers at Sivakasi in the state of Tamil Nadu. These factories employed 27,340 workmen out of which about 2,940 were children.

This judgment examined the reasons for continuation of child labour despite the Child Labour (Prohibition and Regulation) Act 1986. The Supreme Court took note of the causes of child labour as mentioned by Dr. J.C. Kulshreshtra in the book 'Indian Child Labour', viz. (i) poverty, (ii) low wages of the adult, (iii) unemployment, (iv) absence of schemes for family allowance, (v) migration to urban areas, (vi) large families, (vii) children being cheaply available, (viii) non-existence of provisions for compulsory education, (ix) illiteracy and ignorance of parents, and (x) traditional attitudes.

On the basis of facts and circumstances of the case, the Supreme Court made the following directions:

- a) The employer to pay compensation of Rs. 20,000/-for every child employed in contravention of the provisions of the Child Labour (Prohibition and Regulation) Act.
- b) This sum was to be deposited in a fund known as 'Child Labour Rehabilitation-cum-Welfare Fund' which was established district wise.
- c) Inspectors appointed under the Act to secure compliance of the payment.
- d) An adult member of the family to be provided by the State Government with a job. If State Government is unable to provide a job to an adult member of the family, the State Government to contribute Rs. 5,000/- to the Child Labour Rehabilitation-cum-Welfare Fund.
- e) The liability of the employer does not cease even if he desires to disengage the child presently employed.
- f) On discontinuation of employment, the child to be assured an education in a suitable institution. The Inspectors to ensure that this direction is carried out.

Starting with the Child Labour (Prohibition and Regulation) Act, 1986 (CLPRA) which was enacted for the main purpose to curb, control and regulate child labour in India. Although the Act claims to be regulating the problem of child labour in India, on a bigger picture, it has failed to do so. The law on the surface seeks to restrict child labour that continues to pervade unregulated low-wage industries, ranging from brick making to tea harvesting. The Act still allows children to work in non-hazardous businesses,

the entertainment industry (including films, advertisements and TV serials) and sporting events from the 18 occupations and 65 processes.

The Act also allows children to work in family agricultural business. Exemption for certain “family”-based businesses leaves a soft spot for household-based industries which are fuelled by kids’ cheap labour, which may include traditional trades like cigarette rolling or cutting cobblestones. India’s beedi-making industry is quite infamous for employing kids as young as 7 years old. While government figures put the total number of workers engaged in this informal industry at 4.4 million, activists claim the real number is nearly double that, totalling roughly 10 million labourers. Children in this sector are made to carry heavy loads and sprinkle harmful pesticides on crops.

This will push millions of innocent children into forced labour and deprive them of education and a normal childhood which not only violates Right to Education Act but also violates precedent set by the Supreme Court in the case of Unni Krishnan, J.P. vs. State of Andhra Pradesh²³, wherein the judgment emphasised the importance of education, and included the right to education as a fundamental right under Article 21 of the Constitution, i.e. right to life. The Supreme Court also observed that ‘education is a preparation for a living and for life’, and concluded that the right to free education up to the age of 14 years is a fundamental right. Moreover, it also violates Article 32²⁴ United Nations Convention on the Rights of the Child²⁵, which was signed and ratified by India in the 1992.

In some agricultural industries, the line dividing “family-based” and industrial work is perilously blurry which was reported particularly about the cottonseed cultivation industry by the India Committee of the Netherlands (ICN)²⁶ which stated that:

“Children below 14—of which two-thirds are girls—are employed in the seed fields on a long-term contract basis through loans extended to their parents by local seed producers, who have agreements with the large national and multinational seed

²³ Unni Krishnan, J.P. vs. State of Andhra Pradesh, AIR 1993 S.C. 2178

²⁴ Article 32 - States Parties recognize 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.

²⁵ United Nations Convention on the Rights of the Child (2010) <https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf?_ga=2.236824641.1920045988.1589466510-494285412.1589466510> accessed May 26, 2020

²⁶ India Committee of the Netherlands, *Cotton’s Forgotten Children* (2015) <<http://www.indianet.nl/pb150723e.html>> accessed May 26, 2020

companies. Children are made to work 8 to 12 hours a day and are exposed to poisonous pesticides.... Most of the children working in cottonseed farms belong to poor Dalit ('outcaste'), Adivasi (tribal) or Backward Castes families. Around 70 percent of the children are hired or even trafficked from other states while 30 percent is 'family labour'. Most are school-dropouts."

Allowing children to work before and after school hours in family enterprises dilutes the intent of the law that is meant to enable children enjoy their right to education. Under oppressive conditions, these children are forced to work for long hours, at the cost of health and well-being within their homes. They do not get to participate in schools, which results in them lagging behind, and eventually they dropout sooner than later.

In fact, the Ministry itself is offering loopholes by inserting this proviso since it would be very difficult to make out whether children are merely helping their parents or are working to supplement the family income. Also, allowing young children to work after school-hours is detrimental to their health, as rest and recreation is important for full physical and mental development in the formative years, besides adversely affecting their studies.

Apart from this, it should also be noted that older children, aged between 15-18 may remain tethered to the workforce in some form, despite the reforms, by both economic pressures on their families and ancestral tradition. There is currently no law in India that provides protection to children of this age group. Once attaining the age of 15, most children drop out of school to start working full time in industries.

This gap in the law can possibly also reverse India's gains in moving children from workplaces into classrooms in line with Goal 2 of the Millennium Development Goal (MDG) target of achieving universal primary education towards the end of the year 2015.²⁷

It will also contravene the Right to Education Act, 2009, which guarantees a child the right to complete his or her elementary education even after the age of 14.²⁸

²⁷ United Nations, *The Millennium Development Goals Report* (2015)

<[https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20\(July%201\).pdf](https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%201).pdf)>
accessed May 26, 2020

²⁸ Right to Education Act, 2009, s.3

The government is also neglecting the fact that even in household enterprises, children are still vulnerable to exploitation and health hazards, which impacts their education and any possibility of a bright future.

The “family enterprises” are no better since they include industries such as matchbox making, carpet weaving and gem polishing. In such sectors, where child labour is in high demand, police raids have highlighted inhumane conditions in which children are made to work for no pay, with scant food and no access to toilets.

Easing the law on child labour as a means to alleviate poverty is an extremely flawed strategy as this move will nullify whatever progress the country has made in getting children out of forced labour and into school. If child labour is legalised in India, the situation will spiral out of control and more children will quit school to earn a few pennies.

The case of *Rajangam, Secretary, District vs State Of Tamil Nadu And Ors*²⁹ is a perfect example of this.

In this case, petitions were filed in relation to prevalence of contract labour system, child employment, and non-implementation of Beedi and Cigar Workers (Conditions of Employment) Act, 1966. The Supreme Court considered the petitions and appointed a Trust viz., Society for Community Organisation Trust for conducting appropriate investigation and to submit a report thereon. On this basis, even the Court took notice of the pallid child labour law and passed a number of directions including insurance, setting up and administration of Welfare Fund, maintenance of Register, etc. Yet, there was no prohibition of employing children in such industries. Even after coming face to face with such dire working conditions, there was no ban on employment of children.

It is also to be noted that although mining remains a “hazardous occupation” withing the Child Labour Act, most mica mining across key provinces was performed by small enterprises which were run by “extended family enterprises” that engage children, while traders formed the key link to buyers of mica, be it domestic or international.

Entertainment and sporting industry are another loophole overlooked by the legislatures. Desperate and overambitious parents may push children in such industry

²⁹ *Rajangam, Secretary, District vs State Of Tamil Nadu And Ors* ,1992 SCC (1) 221

where they may be exploited as currently there is no such law that provides protection to children from such exploitation.

It is no secret that reality shows and T.V. serials in which children participate exposes them to work pressure and enormous publicity for which the children are not mentally or emotionally equipped to handle. It burdens them to work and finish schooling at the same time, depriving them of a normal childhood. Psychologists have repeated quite a number of times that exposure to limelight and the eventual deprivation of attention can have a serious impact on young and tender minds once they become adults. The prohibition on employing children enumerated under Section 3 of the Act, are also relaxed for child artists and actors.

The Kerala State Council for Child Welfare (KSCCW) recently received a complaint about Child Labour in Television daily soap. The rights of child artists were violated on a serial set. The complaint was lodged by the parents of child actors. From their complaint, it comes to know that the children were forced to work for long hours. It also highlighted the issue of non-payment of remuneration.³⁰

Around 132 children were part of a serial. According to the rules, child actors are not supposed to work for more than 3 hours. Still, they were forced to work for long hours without break & at the end of shooting they didn't even get the payment also. There was a clear violation of child rights onset of the TV serial.³¹

In the United States of America, the famous case of Jackie Coogan³² paved way for California's Child Actor laws which later came to be known as Coogan Laws. In this case, the petitioner, Jackie's parents spent all the earnings from being a famous child actor. The result was that, in the year 1939, the Coogan Law was put into force, to protect future young artists from finding themselves in the same terrible situation that Jackie Coogan was left in.

³⁰ Shainu Mohan, THIRUVANANTHAPURAM: TINY TRAGIC TALES, UNTOLD DECCAN CHRONICLE (2019), <https://www.deccanchronicle.com/nation/current-affairs/260719/thiruvananthapuram-tiny-tragic-theses-untold.html> (last visited Jun 5, 2020).

³¹ Ibid

³² Jackie Coogan Productions v. Industrial Acc. Com., Civ. No. 1857. Fourth Appellate District.

According to the new Rules, at least 21% of the income earned by the child from the production or event should be directly deposited in a fixed deposit account in a nationalized bank in the name of the child which may be credited to the child on attaining majority; and no child shall be made to participate in any audio-visual or any sports related activity including informal entertainment against will and consent.³³

SUGGESTIONS AND CONCLUSION

First and foremost, it has to be recognized by the Legislators that the only way to completely get rid of exploitation of children to call for a complete ban on employment of children in workplaces. For instance, the Supreme Court called for a complete ban on employment of children in the case of *Bachpan Bachao Andolan vs Union of India & Ors*³⁴. In this case, petition was filed in public interest under Article 32 of the Constitution in the wake of serious violations and abuse of children who were forcefully detained in circuses without any access to their families under extreme inhuman conditions. There were instances of sexual abuse on a daily basis, physical abuse as well as emotional abuse. The children were deprived of basic human needs of food and water. The Court ordered to implement the fundamental right of the children under Article 21A and to issue suitable notifications prohibiting the employment of children in circuses within two months from the date of the judgement.

Further, the age group of 15-18 must also be included under the term “children”. If not, at least there should be rules that provides for banning of employment during school hours and allowing children to only work for few hours after school hours.

The nation should display a fervour of national commitment in abolishing all sorts of child labour and resonate with the constitutional objective of eliminating child labour in India. A new act should be framed in the context of the socio-economic realities of India and the preservation of the social fabric and learning of traditional occupations so as to ensure that children are not pushed into labour and made subjects of exploitation at the labour market.

³³ Guidelines to Regulate Child Participation in TV Serials, Reality Shows and Advertisements, 2010-2011

³⁴ *Bachpan Bachao Andolan vs Union of India & Ors*, AIR 2011 SC 3361

Children of the nation are pre-eminently important asset of the nation. Programs related to promoting child welfare should form a significant part in our national plans for development of human resources. An example of this is the Sarve shiksha Abhiyan, which was launched to educate poor and employed children in all states in the year 2001. Establishing Anganwadies was also a considerable step by the government towards the welfare of children and their physical, mental and educational development. Educating children could be a solution for solving this problem of child labour. Provisions to provide compulsory primary education and in order to reduce the burden on parents to meet the expenditure for their children's education should be made more stringent for which our Government had allotted funds. But because of the lack of awareness, most poor families aren't availing these facilities. So, proper steps should be taken to create awareness.

Child labour cannot be eliminated by zeroing in on one determinant, being education, or by brute enforcement of child labour laws. The government must ensure that the needs of the poor are filled before attacking child labour. If poverty is addressed as whole, the very need for child labour will automatically diminish in return. No matter how much our country tries, child labour always will exist in the poorer regions of the country until the need for it, poverty, is removed.

Development of our country is being obstructed by child labour. Children are growing illiterate as they have been working in factories instead of attending school. This cycle of poverty is formed every generation and the requirement for child labour is reawakened after every generation. This situation needs to be addressed by tackling the underlying cause of child labour through policies and their strict enforcement. India will only then succeed in its fight against child labour.