

Child Protection in labour laws in India

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Abstract

Child labour refers to the exploitation of children through any form of work that deprives children of their childhood, interferes with their ability to attend regular school, and is mentally, physically, socially or morally harmful. Such exploitation is prohibited by legislation worldwide, although these laws do not consider all work by children as child labour; exceptions include work by child artists, family duties, supervised training, and some forms of child work practiced by Amish children, as well as by Indigenous children in the Americas.

Generally the age for considering a person to be child is less than 18 years. Child labour is present everywhere but invisible, toiling as domestic servants in homes, labouring behind the hidden walls of workshops, out of sight of in fields.

The child engaged in labour is hazardous work. In which the person of age less than 18 years involving risk. This comes under the age under the definition set by ILO- International Labour Organisation.

Field where Protection of Child labour is needed

It is in a practice that small children are engaged in the works either part-time or full-time basis. This kind of work harms children and keeps them away from attending schools and grooming up. It infringes the theme of our Nation's laws, and threatens children's physical, mental or emotional wellbeing and intolerable abuse.

Areas where child labour is engaged

First and foremost area of child is found in factories. Many children are employed in factories dealing even hazardous substances, in carpet industries, clothing, glass and bricks, etc.

Second big area is of agriculture sector where children are often put to work on fields, where they have to harvest crops, they are even involved in commercial agriculture where they are exposed to long hours of extreme heat, temperatures, health risks from pesticides, little or no pay, no adequate food, water, etc.

Beside the above two areas there are Mining and quarrying, Domestic Helper, Domestic help services are the most common. Children of the age of 7-8 years

Last not least the more inhumane area is of flesh trade where girls of the age of 4-14 years are engaged. They are sold and forced into flesh trade. In such circumstances, they not only lose their childhood but also lose the happiness of their lives.

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Law relating with protection of child labour**The Mines Act of 1952**

In this act the employment of children below the age of 18 years in any mines are prohibited as it is one of the most dangerous occupations and many accidents have happened in the past where children were severely injured or even killed.

The Child Labour (Prohibition and Regulation) Act of 1986

This piece of legislation edifice that children below the age of 14 years cannot be employed for the work involving the use of hazardous substances and the list of the works involving hazardous substances is provided in the Act. Wevere punishment is there. Section 3 of the Act, lays down that whoever violates the provisions of the act shall be liable for an imprisonment of not less than 3 months and which can be extended to 1 year or with a fine of rupees 10,000 which may extend to 20,000 rupees or with both.

The Juvenile Justice (Care and Protection) of Children Act, 2000

This act mainly deals with the penal provisions when any act is in contravenes the provisions of the Act, shall be penalised with fine and imprisonment.

The Right of Children to Free and Compulsory Education Act of 2009

Mandates of this act says that every child below the age of 14 years is entitled to get free education and this being a fundamental right under article 21 Also, there shall be reserved 25% seats in private institutions as well, and no child shall be deprived of education or admission into any school on the grounds of him being from a poor family.

Fundamental rights and prevention of child labour.

- a. Article 15 – The State shall not discriminate against any citizen.....Nothing in this article shall prevent the State from making any special provisions for women and children.
- b. Article 21A- Added by 86th constitutional amendment – The State shall provide free and compulsory education to all children of the age of 6-14 years in such manner as the State may, by law, determine.
- c. Article 24- No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

The Directive Principles of State Policy provides guidelines for the framing of laws by the government. These provisions, set out in Part IV of the Constitution, are not enforceable by any court in India, but the principles on which they are based are fundamental guidelines for governance that the State is expected to apply in framing policies and passing laws relating to it.

Article 45 says that the State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years.

Article 243G read with Schedule 11 – provide for institutionalisation of child care by seeking to entrust programmes of Women and Child development to Panchayat), apart from education, family welfare, health and sanitation, and other items with a bearing on the child welfare.

In order to implement the constitutional and international obligation towards eradication of child labour in different occupations, the following legislative enactments have been in force, and continue

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after the Child Labour (Prohibition and Regulation) Act, 1986. It would be better to appraise various statutes and statutory provisions enacted in the existing labour laws to tackle the problem of child labour.

It applies to plantations in Tea, Coffee, Rubber or Cinchona, etc in which 30 or more persons are employed. It prohibited the employment of children less than twelve years in the plantation.²⁹ The child worker (A person who has completed 15 years) can be allowed to work if employed only between 6 am. and 7 pm.

The Plantation Labour Act, 1951 has now been amended by sec. 24 of Child Labour (Prohibition and Regulation) Act, 1986 to bring the age of the child in line with the definition under the said Act.

The above mentioned laws definitely have a check over the child labour but besides these laws there are certain laws which also deal with the protection of children from child labour. In the Merchant shipping Act 1958 provides the employment of children in any capacity, who are below 14 years of age on sea-going ships, except

- (a) In a scholarship or training ship; or
- (b) In a ship in which all persons employed are members of one family;
- (c) In a homemade ship of less than two hundred ton gross; or
- (d) Where such person is to be employed on nominal wages and will be in the charge of his father or other adult or a male relative. The Act also makes provision for modest penalty of a fine of Rs. 50/- for violating these provisions.

The Motor Transport workers Act 1961 the Minimum age required for employment in every transport undertaking employing five or more workers is 15 years. The State Governments are authorized to apply all or any of the provisions of the Act to any motor transport undertakings employing less than 5 workers. Now as amended by section 26 of the Child Labour (Prohibition and Regulation) Act, 1986, by which word 'fifteenth' in clauses (a) and (c) of section 2 has been substituted by word 'Fourteenth'.

Section 16 of Child Labour (Prohibition and Regulation) Act provides that if any person, police officer or inspector may file a complaint of the commission of an offence under this Act in any court of competent jurisdiction. The medical certificate granted by the authority for the purpose of this act will be conclusive evidence as to the age of child to whom it relates and it provides that no court shall inferior that no Magistrate shall try any offence under this Act.

Some Statistics related with child labour

A Child Labour Survey (2017) of CRY of census data in the country shows that the overall decrease in child labour is only 2.2 per cent year on year, over the last 10 years. Also, it has revealed that child labour has grown by more than 50 per cent in urban areas.

Role of Judiciary in combating child labour

The Supreme Court directed that children should not be employed in hazardous jobs in factories for manufacture of match boxes and fireworks, and positive steps should be taken for the welfare of such children as well as for improving the quality of their life.

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The Supreme Court directed that the employers of children below 14 years must comply with the provisions of the Child Labour (Prohibition and Regulation) Act providing for compensation, employment of their parents / guardians and their education.

Likewise in *Bandhua Mukti Morcha v. Union of India* in a Public Interest Litigation the Supreme Court of India asked the Law Commission to consider certain important issues regarding sexual abuse of children submitted by the petitioner and the feasibility of amendment to 375 and 376 IPC.

To conclude, we can say children are the future of our nation they should be free to live their childhood and enjoy it rather than being burdened with the responsibilities to raise up their family.

Their childhood needs such as education, fooding, clothing and biggest of all “time” to live their childhood. The laws made need to be propagated, and the people should know of these laws so that they can take benefits of the same and, at least, get their children elementary education, protect children from getting socially, physically and mentally abused.

Law provides sufficient mandate for child labour control but child labour prevention can be brought in action only when proper implementation as well as general awareness is imparted among the people.

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