

Exploring the Ambit of Child Labour (Prohibition and Regulation) Act, 2016

Varad Ozarkar

LL.M. Scholar, Manipal University Jaipur

ABSTRACT Modern-day slavery is child labour. Young people are the country's future. Progressive countries invest a large portion of their budgets on health, education, nutrition, etc. India has the most kids. Poverty and unemployment have forced millions of children to work. Child labour is illegal in India. Our Constitution has this characteristic. No major democratic constitution addresses child labour. Despite the Constitution progressivism, child labour continues to undermine our democracy. In 1986, Parliament banned child labour. It was a positive step. The 1986 Act was revised in 2016. International organisations and NGOs had different reactions to the amending Act. Some amendment provisions are unjustifiable, and the government has retreated from them. Right to Education, which envisions complete elementary education in our country, won't happen unless child labour is eliminated. In the landmark case of Unnikrishnan J.P, in which the Supreme Court put the right to education into Article 21 of the Constitution, the court urged state governments to guarantee that child labour is not practised anywhere in the country. Education and child labour eradication are linked.

KEYWORDS: Article 21, Child Labour, Poverty, Education, ILO.

I. SCOPE AND NEED FOR LEGISLATION

"In the little world in which children have their existence, whosoever brings them up, there's nothing so finely perceived and so finely felt, as injustice"

A. CONSTITUTION AND CHILD LABOUR

The Constitution of India provides for 'welfare state'. Welfare state is one which endeavours to promote the well-being of all especially the marginalised section of the society. The Preamble of the Constitution provides for economic and social justice. Protection against child labour is a specific fundamental right in the Constitution under Article 24. Child Labour (Prohibition and Regulation) Act, 1986 was the first significant step in independent India to comprehensively deal with the menace of child labour. However, the problem did not fade off despite laws, policies, action plans and efforts of NGOs. This prompted the Parliament to significantly amend the Act in 2016. The Amendment Act is a severely criticized piece of legislation which takes the country decades back in the fight against child labour. There is a huge international criticism of the Act. The paper analyses the problem of child labour in India in the background of the recent Amendment of 2016 in Child Labour (Prohibition and Regulation) Amendment Act, 2016.

B. DEFINITIONS OF CHILD LABOUR

1. **International Labour Organisation (ILO)** has defined child labour as "*work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.*"
2. **Article 32 of United Nation Convention on the Rights of the Child** defined child labour as "*employment of children in work that is dangerous or might harm their health or their education*".
3. **Delhi High Court**¹ defined Child labour as "*the*

system of employing or engaging a child to provide labour or service to any person, for any payment or benefit, paid to other person exercising control over the said child" the child or any

C. STATISTICAL DATA ON CHILD LABOUR

India ranks 13th in the world as the percentage of children engaged in child labour. Around 2% of the total population is engaged in child labour in India. When converted into absolute numbers, the figure comes at staggering 43 Million children. This is more than the total population of several countries in the world. India has the highest number of children engaged in child labour in the world. The number of children employed as child labourers has come down significantly in 2011 when compared to 2001 census. However, still the number is worrisome and India continues to have the highest number of child labourers in the world.

ANALYSIS OF LEGISLATION VIZ-A-VIZ NATIONAL COMMISSION ON LABOUR I & II

1. IMPORTANT RECOMMENDATIONS ON CHILD LABOUR [NATIONAL COMMISSION ON LABOUR I & II]

- The employment of children is more of an economic problem than anything else.
- While the economic difficulties are real, a way has to be found to give the child the necessary education in his more receptive years. This can be ensured by fixing the employment hours of children so as to enable them to attend to schooling.
- There are various pitfalls in the existing laws on child labour. The law does not recognise the child as an individual being. Instead, the focus is on the establishment, employer,

administration and procedures on cleansing the establishments of child provisions for the child's rehabilitation.

- The State laws on Education operate on the premise that State intervention is necessary to send children to school. Instead of enabling and empowering parents to send children to school, the law empowers the State to take punitive action against parents who do not send their children to school.

II. CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 2016

The menace of child labour has prompted the legislature to enact several laws on the subject over the years of independence. The first exclusive legislation on the subject can be traced back to colonial era of Employment of Children's Act, 1938. Post-independence, Child Labour Prohibition and Regulation Act, 1986 (hereinafter referred to as "*the Act*") was enacted to protect tender age of children from forced labour and exploitation. The Act had repealed Employment of Children's Act, 1938. In 2012, The Child Labour Amendment Bill, 2012 was introduced in the Rajya Sabha. On July 26, 2016, parliament passed the modified version of the Bill i.e. Child Labour Amendment Bill, 2016. On August 1, 2016, the Bill got the nod from the President. The new Act i.e. Child and Adolescent Labour (Prohibition and Regulation) Act, 2016 was notified on 1st September, 2016.

SALIENT FEATURES

- The Act banned the employment of children, i.e., a person who has not completed his fourteenth year of age, in various occupations connected with: Transport of passengers, goods or mail by railway; Cinder-picking, cleaning of an ash pit, work in catering establishment at a railway station, etc.
- The Act provides for the setting up of the Child Labour Technical Advisory Committee to advise the central government and for the purpose of addition of occupations and processes to the Schedule.
- Under the Act, certain standards had been set to regulate children working non-hazardous occupations with regard to health and safety, maintenance of registers, periods and hours of work, overtime, weekly holidays and days of rest.

LIMITATIONS OF THE ACT

- The Act had reduced the age of children from fifteen to fourteen, and simultaneously replacing the age of children in all other acts.
- The Act did not prohibit night employment of children.
- The Act did not prohibit child labour in the family enterprises. This resulted in no restriction of the employment of the children in hazardous occupation or processes provided by the occupier (person who has ultimate control over the establishment or workshop) with the aid of his family. Thereby, indirectly allowing children to work in hazardous

occupations under the guise of the family.

- The Act did not mention various processes that should be barred under the schedule for the employment of children.
- The agricultural sector, which constitutes 80 percentage of child employment, was kept outside the reach of the act. Therefore, no set measures or standards have been formulated.
- Also there is not an absolute ban on child labour. Instead employment of children in certain occupations is regulated with various set standards. However, these standards do not prescribe the minimum age of children for these occupations.

2. CHILD LABOUR AND ADOLESCENT LABOUR (PROHIBITION AND REGULATION) ACT, 2016

Child and Adolescent Labour (Prohibition and Regulation) Act, 2016 (hereinafter referred to as "*amendment Act*") is the first comprehensive amendment to the Act. The amendment Act changes the policy of the Act in more than one ways.

SALIENT FEATURES

- **Blanket Ban:** The act imposes a blanket ban on all hazardous occupations for the children below fourteen years except if are employed in "own account enterprises" i.e. family enterprises and in entertainment industry.
- **New Category of Adolescent:** The Act adds a new category called "adolescent". An adolescent means a person between 14 and 18 years of age. The amended Act prohibits employment of adolescents in hazardous occupations as specified in the Schedule.
- **Penalty for employer:** Punishment for employing any child in an occupation has been enhanced. The punishment for those employers, employing children for the first time is 5000 Rs and 6 months to 2 years imprisonment. For offenders who repeat the offence, the offense will become cognizable and proposes a punishment of 1-3 year.
- **Penal Provisions for parents relaxed:** In case of parents being repeat offenders, it proposes a fine of 10000 rupees.
- **Child and Adolescent Labour Rehabilitation Fund** has been set up to provide funds to the families of the children who were employed as child Labourers.

III. LIMITATIONS OF THE AMENDMENT ACT

The Amendment Act is a classic case of lost opportunity. The Amendment in the Act which came in the background of startling 2011 census report and immense pressure from ILO and other international organisations is unfortunately only an eye wash.

- **Allows child labour in family enterprises**
- **Section 3(2) of the Amended Act provides that child labour is permitted "where the child helps his family or family enterprise after school hours or during vacations". UNICEF has shown red-flag to this**

provision of the statute.2 The fact remains that majority of the child labour in our country is engaged in family enterprises. They work at the same place as their parents be it household, hotels, or other hazardous places. This is a self-defeating provision which 'legalises' majority of the prevalent child labour in our country.

- *Noble laureate KailashSatyarthi commented on the Amendment Act as "We were able to rescue a large number of children in the last five years. When we*

analysed their profile we found out that 80 per cent of them would not have been rescued if the proposed amendment had already been in place as most of the children are employed in family-run trade"3

- *No uniformity in the definition of 'child'*
- *Different laws in India define 'child' differently. This results in inconsistencies and contradictions in law.*

Various definitions of "child" in different laws is summarized below:

Amendment Act	14 years or as defined in Right to Education Act, 2009, whichever is more
Right to Education Act, 2009	6 – 14 years
Factories Act, 1948	15 years
Plantation Labour Act, 1951	15 years
Protection of Children from Sexual offences Act, 2012	18 years
40 th Report of Standing Committee on Labour (2013-14)	Recommended uniform age of 18 years

- ***Abridged list of Hazardous occupation***

The biggest criticism of the Amendment Act is that it waters down the long list of hazardous occupation as provided in the 1986 Act. It is worth noting that the schedule to 1986 Act which provided the list of hazardous occupation is deleted by the Amendment Act in its entirety. The erstwhile schedule was divided into two parts – Part A with 18 occupations, and Part B with 65 processes. The Amendment Act replaces these 18 hazardous occupations and 65 hazardous processes with just 3 occupations (mines, inflammable substances and explosives) and 29 processes through referencing to Factories Act, 1948.

This amendment will now permit child labour in handloom industry, chemical industries, stone cutting, sari making, slaughter house, construction work etc. This amendment is in clear violation of **Article 24** of the Constitution.

Widespread criticism of the Amendment Act prompted the Ministry of labour & Employment to release a draft notification on 31.03.2017 to amend the Schedule. on 30th August, 2017 the government notified the draft notification earlier released. With this notification, the earlier schedule has been substantially expanded.

- ***Incomplete Legislation***

The Amendment Act is a beneficial legislation intended to protect the interests of the children engaged in hazardous occupation and processes. The Act misses the aspect of rehabilitation of the rescued children. The Act does provide for Child and Adolescent Labour Rehabilitation Fund, but there are no clear guidelines for its usage for the benefit of children. The Act is silent on the measures for preventing child labour. Apart from the punishment to the employer, there is no deterrence to child labour. The root-cause of child labour remains unaddressed by the Amendment.

IV. CONSTITUTIONAL PROVISIONS CONSTITUTION/JUDICIAL INTERPRETATION

1. **Article 24** of the Constitution of India prohibits employment of children below the age of **14** years in any factory or mine or any hazardous work.
2. **Article 39(e)** of the Constitution provides that the state shall endeavour that the tender age of the children is not abused and that citizens are not forced by economic necessity to enter a vocation unsuited to their age or strength.
3. **Article 39(f)** of the Constitution also provides that the State shall endeavour that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
4. **Article 21A** of the Constitution further provides that it shall be the fundamental right of every child of the age group of **6-14** years to get free and compulsory elementary education.
5. **Article 15(2)** of the Constitution provides that the State can make special laws for the benefit of children. Thus, the differential treatment in favour of children is exempted from the equality clause of **Article 15(1)**.

V. PRECEDENTS

Judiciary, as a responsible branch of State, has played an active role in eradication of child labour.

1. Recently, **Himachal Pradesh High Court**⁴ took *suo motto* cognizance of the non-implementation of the Amendment Act and directed the State government to ensure that the child labour is not practiced anywhere in the State.
2. Kerala High Court in *Joseph Valamangalam, Rev. Fr.*

v. *State of Kerala*⁵, held that even though **Article 45** of the Constitution is non-justiciable, State cannot shy away from its duty to provide healthy environment to every child for proper growth and education.

3. Supreme Court of India in *People's Union for Democratic Rights v. Union of India*⁶, was interpreting erstwhile Employment of Children Act, 1938. Court held that even though Construction work is not considered as hazardous occupation in the concerned Act, yet the employment of children in construction industry is in violation of **Article 24** of the Constitution. This was the first time that the Supreme Court enforced **Article 24** as an independent right irrespective of an implementing legislation.
4. In *M.C. Mehta v. State of Tamil Nadu*⁷, Supreme Court held that the children cannot be employed in the factories engaged in the manufacturing of match boxes and fireworks.
5. Supreme Court of India in *Labourers Working on Salal Hydra Project v. State of Jammu & Kashmir*⁸ observed that there is a widespread violation of Inter-state Migrant Workmen Act, Minimum Wages Act, Contract Labour (Regulation and Abolition) Act and **Article 24** of the Constitution.
6. In *Hammer v. Dagenhart*⁹, US Supreme Court held that child labour is in violation of "due process" clause of Bill of Rights. It was a progressive case decided in early 1900s on the issue of child labour.

VI. CONCLUSION

Child labour is the modern day form of slavery. The future of the country is on the shoulders of the young generation. Progressive countries are spending a significant portion of the budget on human resource development in the form of health, education, nutrition etc. India has the highest number of children in the world. The large scale poverty and unemployment has necessitated millions of children to engage in child labour.

Child labour is expressly recognised as a violation of fundamental rights in India. This is a unique feature of our Constitution. Constitution of no other major democracies addresses the issue of child labour expressly. Despite the progressive nature of the Constitution, child labour continues to be stand as a blot on our democracy. Parliament enacted the law on prohibition of child labour in 1986. It was a significant step in the right direction. In 2016, Parliament significantly amended the 1986 Act. The amendment Act has received mixed reactions from the international organisations and NGOs. Some provisions of amendment Act are indefensible and the government has taken cue from the criticism and to some extent retracted from the Amendment. Right to Education which envisages complete elementary education in our country can never become a reality unless child labour is eradicated. In the landmark case of *Unnikrishnan J.P*¹⁰, wherein Supreme Court read right to education into **Article 21** of the Constitution, court directed the State governments to ensure that the child labour is not practiced in any form or type

anywhere in the country. The interlink between education and eradication of child labour is real and clear.

Eradication of child labour can never be an over-night exercise. No government has a magical wand to eradicate child labour by merely passing a piece of legislation. The efforts of the government and social organisations should be towards addressing the root-cause of child labour which is unemployment and poverty. Long-term sustainable elimination of child labour is not possible without addressing the underlying reason for the same.

REFERENCES

1. UNICEF concerned about amendments to India's Child Labour Bill', available at: https://www.unicef.org/media/media_92021.html, last accessed on 15.09.2019 at 10:31 pm. Amendment to Child Labour Act leaves issues unaddressed', The Hindu, available at: <https://www.thehindu.com/news/cities/Delhi/amendment-to-child-labour-act-leaves-issues-unaddressed/article7910560.ece>, last accessed on 15.09.2019 at 10:45 pm.
2. Court on Its Own Motion v. State of Himachal Pradesh, MANU/HP/0880/2017
3. Joseph Valamangalam, Rev. Fr. v. State of Kerala, AIR 1958 Ker. 290
4. People's Union for Democratic Rights v. Union of India, (1984) 2 SCC 244
5. M.C. Mehta v. State of Tamil Nadu, (1991) 1 SCC 283
6. Labourers Working on Salal Hydra Project v. State of Jammu & Kashmir, AIR 1984 SC 177.
7. Hammer v. Dagenhart, 247 U. S. 251, 38 Sup. Ct. Rep. 529 (1918).
8. Save the Childhood Foundation v. Union of India, W.P. (Crl.) No. 2069/2005.
9. 'UNICEF concerned about amendments to India's Child Labour Bill', available at https://www.unicef.org/media/media_92021.html 'Amendment to Child Labour Act leaves issues unaddressed', The Hindu, available at: <https://www.thehindu.com/news/cities/Delhi/amendment-to-child-labour-act-leaves-issues-unaddressed/article7910560.ece>
10. Court on Its Own Motion v. State of Himachal Pradesh, MANU/HP/0880/2017
11. Joseph Valamangalam, Rev. Fr. v. State of Kerala, AIR 1958 Ker. 290
12. People's Union for Democratic Rights v. Union of India, (1984) 2 SCC 244
13. M.C. Mehta v. State of Tamil Nadu, (1991) 1 SCC 283
14. Labourers Working on Salal Hydra Project v. State of Jammu & Kashmir, AIR1984 SC 177
15. Hammer v. Dagenhart, 247 U. S. 251, 38 Sup. Ct. Rep. 529 (1918)
16. Unni Krishnan JP v. State of Andhra Pradesh, 1993 (1) SCC 645

IJRAA