

## CRITICAL ANALYSIS OF CHILD LABOUR (PROHIBITION AND REGULATION AMENDMENT ACT, 2016

Dr. Balwinder Kaur\*

### ABSTRACT

*India's commitment to the cause of children is as old as its civilization. All children must have an equal right, regardless of their background. Every child has right to lead a decent life and is entitled for the basic human rights. The physical, mental and social wellbeing of a child depends upon the family to which she/ he belong. Family and school are two important institutions which play significant role for integrated development of the child. According to the United Nations Convention on the Rights of Child,<sup>1</sup> child means a person male or female who is below 18 years of age. Because of its caring years and inefficiently developed mind and understanding, every child wants protection against harm and exploitation by others. In the decisive years of its life, the child wants special care service to realize its full potential for growth and development. There are about 300 Central and State Statutes concerning children. Majority of them have been enacted with an intention to protect and help children and achieve the goal of child labour welfare enshrined in our Constitution.<sup>2</sup> This paper shall attempt to discuss in brief the child labour in India and the paper also highlights critical appraisal of the amendments to the Child Labour (Prohibition and Regulation) Act, 1986.*

**Keywords:** Child labour, Amendment, Child Labour (Prohibition and Regulation) Act, 1986.

---

\* Hidayatullah National Law University, Raipur

<sup>1</sup> Available at: [www.unicef.org/crc/](http://www.unicef.org/crc/) ; visited on August 15, 2016

<sup>2</sup> Provisions of Fundamental Rights and Directive Principles of State Policy under Indian Constitution provides for welfare of child labour. Special Issue 6-June, 2015

## INTRODUCTION

Child labour is a difficult and a divisive issue. In most of the societies, children work in some way, though the nature of work they do and the forms of their involvement be different. But, its reality many millions of children work under the obnoxious and abusive conditions that are clearly unsafe to them. UN Convention on the Rights of Child, 1989<sup>3</sup> is the most important international instrument concerned with the rights of children in general. Besides this, there are other Conventions which specifically deal with child labour. Some of which India has ratified and the others it has abstained from ratifying. Nonetheless, India has tried to include the provisions of these unratified instruments in its national policies to realize child rights. There are eight core ILO Conventions with respect to labour. Out of these India has ratified four. The two main Conventions with regard to child labour that India has not yet ratified are Minimum Age Convention, 1973<sup>4</sup> and Convention Worst Forms of Child Labour, 1999.<sup>5</sup> A decade after India ratified a UN convention pledging to protect children's rights, the India continues to be home to the world's largest number of child laborers. In spite of legislative and constitution provisions for regulating and prohibiting child-labour even after many years of independence our country is unable to eradicate child labour. Child labour is still reality in India. According to the report<sup>6</sup> 150 million children throughout the world, one of every four children works in India, Thailand and Turkey. India has approximately one-third of Asia's child labor and one-fourth of the world's working children. According to the NSSO,<sup>7</sup> child workers constitute 3.4 percent of the total labor force and agriculture accounts for more than 75 percent of the total employment of child labor. The Child Labour Prohibition and Regulation Act 1986 prohibits employment of children below 14 in hazardous occupations and regulate employment of children in nonhazardous occupations but it legally permits child labour in the non-hazardous sectors. ILO Conventions are vital towards complete eradication of Child Labour in India but ratification of ILO Conventions

<sup>3</sup> Available at <http://childrensrights.ie/childrens-rights-ireland/un-convention-rights-child/>; visited on September 11, 2016

<sup>4</sup> Available at

<sup>5</sup> Available at

<sup>6</sup> WHO's office of occupational health, Geneva

<sup>7</sup> The National Sample Survey Organization (NSSO), now known as National Sample Survey Office, is an organization under the Ministry of Statistics of the Government of India. It is the largest organization in India conducting regular socio-economic surveys. It was established in 1950.

without proper policy implementation neglects the rights of those who are in need of protection and rehabilitation.<sup>8</sup>

## CONSTITUTIONAL FRAMEWORK AND CHILD PROTECTION

Constitution of India provides certain provisions for the protection and development of children; these provisions are mainly incorporated in Part III and Part IV of the Constitution, i.e., fundamental rights and directive principles of state policy. Indian Constitution clearly prohibits practices of child labour. The relevant articles are given below:

Article 15(3) - *Nothing in this article prevents the State from making any special provision for women and children. Thus, this article empowers the State to make special provisions for the children.*<sup>9</sup>

Article -21A - *The State shall provide free and compulsory education to all children of the age 6- 14years in such manner as the State may, by law determine.*<sup>10</sup>

Article 23- *Prohibits traffic in human being and begar and other similar forms of forced labour.*<sup>11</sup>

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. This is very important constitutional provision which prohibit the child labour in hazardous employment.*<sup>12</sup>

Article-39(f) - *Enjoins the State to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that the childhood and youth are protected against exploitation and against moral and material abandonment.*<sup>13</sup>

Article 39(e) and (f) - *Requires the State and secure that the tender age of children are not abused and to ensure that they are not forced by economic necessity to enter avocations unsuited in their age or strength. Those children are given opportunities and facilities to*

---

<sup>8</sup> Available at <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>; visited on September 11, 2016

<sup>9</sup> M. P Jain, Indian Constitutional Law, at p. 1300, LexisNexis Butterworth's Wadhwa, Nagpur, 6th Edn., 2010.

<sup>10</sup> Id at 1547 Article 21A inserted by the Constitution (Eighty Sixth Amendment) Act, 2002.

<sup>11</sup> Id at 1712

<sup>12</sup> Id at 1775

<sup>13</sup> Ibid.

*develop in a healthy manner and conditions of freedom and dignity and that childhood and youth are protected.*<sup>14</sup>

Article-45- *The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.*<sup>15</sup>

Article 51A (k)-*Makes it a fundamental duty of the parent or Guardian to provide opportunities for education to the child or ward between the age of 6 and 14,15years.*<sup>16</sup>

Thus our Constitution makers were also keen to provide, protection to children in free India.

## DEFINITION OF CHILD LABOUR

“*Child Labour*” is not an incident or feature strange to India. This has been there all over the world. The weak conditions of a child forced child to labour for his employer described by Charles Dickens in his well-known novel ‘*Nicholas Nickleby*’.<sup>17</sup> The concept of child labour is complex in its nature. It is very hard to define and give a suitable definition of child labour. But International bodies, like UNICEF, ILO, Research Groups, had made their best efforts to define the concept of child labour in a more coherent manner based on time and space factor.

According to the Recommendation of the Second National Labour Commission Report the definition of child labour must be as follows: “*All out of school children must be treated as child laborers or as those who have the potential to become child laborers. Thus, all work done by children, irrespective of where it is done, must be considered as child laborers. Only then girls and children working within the family become a part of the strategy to eliminate child labour, and significant headway will be made towards achieving the goal of eliminating child labour*”.<sup>18</sup>

United Nations Conventions on the Rights of the Child 1989, Article 1 defines ‘*a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier*’.

---

<sup>14</sup> Supra Note 8 at 1988

<sup>15</sup> Id at 2002

<sup>16</sup> Article 51A of the Constitution

<sup>17</sup> *A Sriram Babu v. The Chief Secretary of the Government of Karnataka & others* cited in the Child Labour (Prohibition and Regulation) Act 1986, 4<sup>th</sup> Edn, Bangalore: Karnataka Law Journal Publication, 2010, p.89.

<sup>18</sup> Report of the Study Group on Women and Child Labour, Second National Commission on Labour, 2002, Section VIII - Recommendations, pg.220

International Labour Organization proposes following definition of child labour-“*Child labour includes children permanently leading adult lives, working for low wages under conditions damaging to their health and physical and mental development. They are sometimes separated from their families, frequently deprived of meaningful educational and training opportunities that could open up for them a better future*”.<sup>19</sup>

The Child Labour (Prohibition and Regulation) Act (CLPR Act) 1986 prohibits employment of a child in 18 occupations and 65 processes and regulates the conditions of working of children in other occupations/ processes. As per this Act, a child means any person who has not completed 14 years of age.<sup>20</sup>

A child is considered to be involved in Child Labor activities under the below classification given by the United Nations International Children’s Emergency Fund (UNICEF):

- Children 5 to 11 years of age, those who did at least one hour of economic activity or at least 28 hours of domestic work during the week preceding the survey did and
- Children 12 to 14 years of age those who did at least 14 hours of economic activity or at least 42 hours of economic activity and domestic work combined during the week preceding the survey.<sup>21</sup>

The definition of children given under Child Labour (Prohibition and Regulation) Act, 1986 is in contradiction with United Nations Convention on the Rights of the Child, 1989 and Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. Article 24 of the Constitution indirectly permits the child labour and it provides for only partial ban on child labour.<sup>22</sup>

Number of legislations was enacted since 1881 which provides the legal protection to the working children. The Children (Pledging of Labour) Act, 1933 followed by the Employment of Children Act, 1938 was the first statutory enactment dealing with child labour which was repealed by the Child Labour Act, 1986. The Child Labour (Prohibition and Regulation) Act

---

<sup>19</sup> International Labour Organization 1919

<sup>20</sup> The Child Labour (Prohibition and Regulation) Act, 1986

<sup>21</sup> Available at [http://www.unicef.org/infobycountry/stats\\_popup9.html](http://www.unicef.org/infobycountry/stats_popup9.html); visited on August 11, 2016

<sup>22</sup> M. P Jain, Indian Constitutional Law, at p. 1300, LexisNexis Butterworths Wadhwa, Nagpur, 6<sup>th</sup> Edn., 2010

1986 is an outcome of various recommendations made by a series of Commissions.<sup>23</sup> The Act was amended in the year 2006. On August 01, 2006, the Government imposed a ban on employment of children as domestic servants or servants in dhabas (road side eateries), restaurants, hotels, motels, teashops, resorts, spas or in other recreational centers. Employing children in these categories would make the offender liable to prosecution, and may result in imprisonment up to two years or fine shall not be less than Rs.10,000 but may extend to Rs.20, 000.<sup>24</sup>

### **MAIN FEATURES OF THE AMENDED ACT CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986**

The new bill imposes a complete ban on employing children, except in the following two cases: Children allowed helping his family or family enterprise(s) provided that (i) such enterprise is not involved in hazardous processes and (ii) the work is carried out after school hours or during vacations. Children are allowed to work in the audio-visual entertainment industry including in advertisements, films, television serials or any such other entertainment or sports activities except in a circus subject to (i) compliance with prescribed conditions and adoption of safety measures, and (ii) the work does not affect the school education of the child.

The proposed amendment of the definition 'child' to provide that child means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more.

Prohibition of employment below the age of 14 years– In the view of the Right of Children to Free and Compulsory Education Act, 2009,<sup>25</sup> the Act places the blanket ban on employment of children below 14 years but permit them to work in home, family enterprises, outside of school hours and during holidays, and in audio –visual entertainment industry and sports only if it does not affect their education.

'Adolescents' introduced. The Act inserts a new section 3A to prohibit employment of 'adolescents' (the 14-18 age groups). They can be employed in 'non-hazardous' occupations.

---

<sup>23</sup> The National Commission on Labour 1969; The Gurupadswamy Committee on Labour 1976 & Sanat Mehta Committee 1984.

<sup>24</sup> Child Labour (Prohibition and Regulation) Act 1986, Sec. 2 (ii)

<sup>25</sup> The Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009) received the Assent of the President on 26.8.2009 and came into force w.e.f. 1.4.2010 Sec. 2(c)

An 'adolescent' has been defined as a person who has completed his 14th year but has not completed his 18th year. This definition too is slightly different from the definition of adolescent in the Factories Act.<sup>26</sup>

**THE AMENDMENT OF SECTION 4 OF THE ACT TO EMPOWER THE CENTRAL GOVERNMENT TO:**

- (i) To alter the list of hazardous occupation.
- (ii) To empower District Magistrate in order to ensure effective implementation of law.
- (iii) To conduct periodic inspection of places where children and adolescent cannot be employed.

***The omission of Part III***-The amendment proposed to omit part III of the said Act in view of the prohibition of employment of children below fourteen years of age in all occupation and processes;

***The amendment to omit the provisions of Clause (a),(b) and (c) of sub-section (3) of section 14 of the Act***- In view of the prohibition of the employment of children below fourteen years in all occupation and processes;

***The amendment of sub-section (1A) of section 14 to enhance the punishment***– The Act has enhanced the punishment by way of this amendment. For the first time offender, the fine has been increased from 20,000 to 50,000 and imprisonment has been extended from 6 months to 2 years. The offence is cognizable and a punishment of 1-3 year will be awarded to repeat offenders. The Act incorporates relaxed penal provisions for a parent. In a case of a repeat offender, a parent has to pay a fine of 10,000 rupees.

***The amendment inserted new section 14A***- to provide that the offence under the proposed legislation shall be cognizable notwithstanding anything contained in the Code of Criminal Procedure, 1973;

***The insertion of new section 17A***-to empower the appropriate Government to confer such powers and duties on a district magistrate, to ensure that the provisions of the proposed legislation are properly carried out and to empower the District Magistrate to specify the

---

<sup>26</sup> Available at: [http://164.100.47.134/lsscommittee/Labour/15\\_Labour\\_40.pdf](http://164.100.47.134/lsscommittee/Labour/15_Labour_40.pdf); visited on September 17, 2016

officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer in accordance with the rules made by the appropriate government.<sup>27</sup>

***The insertion of new section 17B***-It ensures that appropriate government to make periodic inspections.

***Child and Adolescent Labour Rehabilitation Fund*** –The constitution of a *special Child and Adolescent Labour Rehabilitation Fund* has been proposed for the rehabilitation of rescued children and adolescents. The Act proposes to set up Child and Adolescent Labour Rehabilitation Fund for rehabilitation of children. The Act puts the responsibility on the State Government to rehabilitate the child and to extend monetary assistance by giving Rs 15,000 and add the fine from the employer for child's rehabilitation.<sup>28</sup>

## ASSESSMENT OF THE AMENDMENTS TO THE ACT

The proposed amendment to the Act Slashed list of hazardous occupation encourages child labour- Reducing the list of hazardous occupation from 83 to just 3 (mining, explosives, and occupations) would only reduce child laborers in number, not in reality.

The new proposed amendment provides that adolescents can be employed in rest 80 hazardous occupations. Section 4 of the Child Labour (Prohibition and Regulation) Act, 1986 gives discretionary power to government authorities, not to parliament, to revise the list. Therefore, it will increase child labour.

Legalizing Child labour in “family enterprise” will results in forced labour – Section 3 Clause 5 of the Act permits a child to work in family or family enterprises and in an audio-visual entertainment industry. The said provision is controversial and harmful as it is silent about the hours of work. It simply provides that only after school hours and during vacation child can work. Such legal provision is likely to be misused such provision will have a bad impact on education, minds, as well as health and overall development of a child.

---

<sup>27</sup> Available at: <http://www.prsindia.org/billtrack/the-child-labour-prohibition-and-regulation-amendment-act-2012-2553/>; visited on September10, 2016

<sup>28</sup> Fortieth Report on The Child Labour (Prohibition AND Regulation) Amendment BILL 2012



The proposed amendment to the Act lacks the provisions concerning to regulation, inspection and monitoring systems. The lack of such provisions will be hindrance in implementing the Act effectively.

The proposed amendment to the Act is in violation of domestic legislations as well as international convention– The Act not only overturn the gains of previous laws, but also goes against the spirit of RTE Act of 2009 as it allows a child to work in a family enterprise.

## **CONCLUSION**

The present amendment brought many major changes to the child labour (Prohibition and Regulation Act), 1986. The basic objective of the Act is to safeguard the childhood of every child in our country and to see that each and every child goes to school. It is fact that child labour is a global evil therefore we need joint effort to wipe it out. The government has framed legislation and has also taken many steps to stop child labour but the major determinants of child labour is socio-economic conditions prevailing in the country like poverty, illiteracy. Poverty and child-labour are inter-related. Poverty is main reasons for children being engaged in work from a young age, lack of schooling facilities, lack of basic community's health services, lack of awareness and, lack of social protection are some of the contributory reasons compelling the push of the children into work. In spite of number of legislative enactments, child labour continues to be a major problem. A large number of children are exploited and deprived of what is due to them.