

# THE EMPLOYMENT OF CHILDREN ACT, 1938

(Act No. 26 of 1938)

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## [SCHEDULE](#)

### **THE EMPLOYMENT OF CHILDREN ACT, 1938.**

**(Act No. 26 of 1938) 1**

**[1<sup>st</sup> December. 1938]**

An Act to regulate 2[the employment of children in] certain Industries trial employment.

Whereas it is expedient to regulate 2[the employment of children in] certain industrial employment;

It is hereby enacted as follows:

1. **Subs. by the A.O., 1950, for the words “ all the provinces of India.”**

2. **Subs by Act 3 of 1951, for the words “except Part B states” which was omitted by Act 51 of 1970, Sec. 2 and Schedule, (w.e.f.1<sup>st</sup> September, 1971).**

1. **Short title and extent. -**

(1) This Act may be called the Employment of Children Act, 1938.

(2) It extends to 1[the whole of India] 2 [\*\*\*]

1. **Subs. by the A.O., 1950, for the words “ all the provinces of India.”**

**2. Subs by Act 3 of 1951, for the words “except Part B states” which was omitted by Act 51 of 1970, Sec. 2 and Schedule, (w.e.f.1<sup>st</sup> September, 1971).**

**2. Definitions. -** In this Act, -

**1[(a)]** “Competent authority”, in respect of a major port, as defined in the Indian Ports Act, 1908 (15 of 1908), **2**[or so declared by or under the Act of Parliament] and in respect of **3**[\* \* \*] a railway, **4**[\* \* \*] means the Central Government, and in any other case means the **5**[State Government;

**1(b)** “Occupier” of a workshop means the person who has ultimate control over the affairs of the workshop;

**6[(bb)]** “Port authority” means a body of port commissioners or other authority administering a port:]

**(c)** “Prescribed” means prescribed by rules made under this Act;

**(d)** “Workshop” means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of Sec. 50 of the Factories Act, 1934 (25 of 1934), for the time being apply.]

**1. Ins. by Act 15 of 1939, Sec. 2 (w.e.f. 1<sup>st</sup> October, 1939).**

**2. Ins. by the A.O., 1950.**

**3. The word "federal" was omitted by ibid.**

**4. The words “as” defined in the Indian Railway Act, 1890” were omitted by ibid.**

**5. Subs. by ibid, for the words “Provincial”.**

**6. Ins. by Act 48 of 1951, sec. 3 (w.e.f. 1<sup>st</sup> September, 1951).**

**3. Prohibition of employment of children in certain occupations. -**

**6(1)** No child who has not completed his fifteenth year shall be employed or permitted to work in any occupation. -

(a) Connected with the transport of passengers, goods or mails by railway; or

1[(b) Connected with cinder picking, cleaning of an ash pit of building operation, in the railway premises; or

(c) Connected with the work in a catering establishment, at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train; or

(d) Connected with the work relating to the construction of a railway station or with any other work where such work is done in close proximity to, or between, the railway line; or]

2[(e)] Connected with a port authority within the limits of any port.

(2) No child who has completed his fifteenth year but has not completed his seventeenth year shall be employed or permitted to work in any occupation referred to in sub-section (1) unless the periods of work of such child for any day's are so fixed as to allow an interval of rest for at least twelve consecutive hours which shall include at least such seven consecutive hours between 10 p.m. and 7 a.m. may be prescribed:

Provided that nothing in this sub-section shall apply to any child referred to herein while employed or permitted to work in such circumstances and in accordance with such conditions as may be prescribed in any occupation aforesaid either as an apprentice or for the purpose of receiving vocational training therein:

Provided further that the competent authority may, where it is of opinion that an emergency has arisen and the public interests so requires by notification in the official Gazette declare that the provisions of this subsection shall not be in operation for such period as may be specified in the notification.]

3[(3) No child who has not completed his 4[fourteenth] year shall be employed, or permitted to work in any workshop wherein any of the processes set forth in the schedule in carried on:

Provided that nothing in this sub-section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family only and without employing hired labour or to any school established by, or receiving assistance or recognition from a 5[State Government].

1. **Ins. by the Employment of Children (Amendment) Act, 1978 (39 of 1978) (w.e.f. 1<sup>st</sup> March, 1978) (39 of 1978) w.e.f. 1<sup>st</sup> March 1978.**
2. **Relettered by Act 39 of 1978 (w.e.f. 1<sup>st</sup> March 1979).**
3. **Added by Act 15 of 1939, sec. 3 (w.e.f. 1<sup>st</sup> October, 1939).**
4. **Subs. by Act 63 of 1948, sec. 119, for “twelfth” (w.e.f. 1<sup>st</sup> April 1949).**
5. **Subs. by the A.O., 1950, for “Provincial”.**
6. **Subs. by Act 48 of 1951, S.S.C. 4, for the former sub-sections(1) and (2) (w.e.f. 1<sup>st</sup> September, 1951).**

**1[3-A. Power to amend the schedule. -** The 2 [State] Government, after giving, by notification in the official Gazette, not less than three months notice of its intention so to do, may, by like notification, add any description of process to the schedule, and thereupon the schedule shall have force in the 3[State as if it has been enacted accordingly.

1. **1957 S.C.R. 51.**
2. **State of Punjab v. Kailash Nath 1989 (1) C.L.R. 60 at p. 64.**
3. **Ins. by Act, 15**

**3-B. 1[1] Notice to inspector before carrying on work in certain processes. -**(1) Before work in any of the processes set forth in the schedule is carried on in any workshop after the 1<sup>st</sup> day of October, 1939, the occupier shall send to the Inspector, within whose local limits the workshop is situated, a written notice containing-

- (a) The name and situation of the workshop;
- (b) The name of the person in actual management of the workshop;

(c) The address to which communications relating to the workshop should be sent: and

(d). The nature of the processes to be carried on in the workshop.

2[(2) In its application to State of Jammu and Kashmir, reference to the 1<sup>st</sup> day of October, 1939, shall be construed as reference to the commencement of this Act in the said State.]

**1. Section 3-B renumbered as sub-section (1) by Act 51 of 1970, sec., 2 and Sec. (w.e.f. 1<sup>st</sup> September; 1971).**

**2. Ins. by ibid (w.e.f. 1<sup>st</sup> September, 1971).**

**3-C. Disputes as to age: -** If any question arises between an inspector and employer as to 1[the age of any child who is employed or is permitted to work by the employer] the question shall, in the absence of a certificate as to the age of such child, granted by a prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority].

**1. Subs. by Act 40 of 1994, for certain words (w.e.f. 1<sup>st</sup> May, 1949).**

**3-D. Maintenance of register: -** There shall be maintained by every employer, in respect of children employed or permitted to work in pursuance of sub-section, (2) of Sec.3 in any occupation referred to in sub-section (1) of that section, a register to be available for inspection by an inspector at all times during working hours or when work is being carried on in any such occupation, showing-

(a) The name and date of birth of every child under seventeen years of age so employed or permitted to work;

(b) The periods of work of any such child and the intervals of rest to which he is entitled;

(c) The nature of work of any such child; and

(d) Such other particulars as may be prescribed.

**1[3.E. Display of notice containing abstract of Secs., 3 and 4.-** Every railway administration **2** [every port authority and every employer] shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a part , **3** [or at the place of work] as the case may be, notice in such Indian language or languages as may be prescribed and in the English language containing an abstract of sub-sections (1) and (2) of Secs. 3 and 4 of this Act.

Explanation.- In this section “railway administration ”has the meaning assigned to in the Indian Railways Act, 1890 (9 of 1890).

- 1. Ins. by Act 48 of 1951, Sec. 5 (w.e.f. 1<sup>st</sup> September, 1951).**
- 2. Subs. by the Employment of Children (Amendment) Act, 1978 (39 of 1978) (w.e.f. 1<sup>st</sup> March, 1979).**
- 3. Ins. by ibid, (w.e.f. 1<sup>st</sup> March, 1979).**
- 4. Penalty. -**

**6(1)** Whoever employs any child or permits any child to work in contravention of the provisions of Sec. 3 shall be punishable with imprisonment for a term which shall not be less than three months by which may extend to one year with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees or with both.

**(2)** Whoever having been convicted of an offence under Sec. 3 for employing any child or permitting any child to work in contravention of the provisions of Sec.3 commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than six months.]

**1[(3)] 2[Whoever**

**3[(a) \* \* \* \* \*]**

- (b) Falls to give notice as required by Sec. 3-B; or
- (c) Fails to maintain a register as required by Sec. 3-D or makes any false entry in such register; ~~4~~[or]
- ~~5~~[(d) Fails to display a notice containing an abstract of subsections (1) and (2) of Secs. 3 and 4 as required by Sec. 3-E)

Shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to five hundred rupees or with both.]

- 1. Renumbered by Act 62 of 1995, Sec. 2ml (w.e.f. 20<sup>th</sup> August 1996).**
- 2. Subs. by Act 49 of 1951, Sec. 6. for the former Sec. (w.e.f. 1<sup>st</sup> September, 1951).**
- 3. Clause (a) omitted by Act 62 of 1985, (w.e.f. 20th August 1986).**
- 4. Ins. by Act 39 of 1978 (w.e.f. 1st March 1979).**
- 5. Ins. by the Employment of the Children (Amendment) Act, 1978 (39 of 1978) w.e.f. 1<sup>st</sup> March 1979).**
- 6. Ins. by Act 62 of 1985, Sec. 2 (w.e.f. 20<sup>th</sup> August 1986).**

**5. Procedure relating to offences. -**

(1) No prosecution under this Act shall be instituted except by or with the previous sanction of an inspector appointed under Sec.6.

~~1~~[(2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.]

(3) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.



**1. Subs, by Act 15 of 1939, sec. 6, for the original sub-section (2) (w.e.f. 1<sup>st</sup> October, 1939).**

**6. Appointment of inspector. -** The competent authority may appoint persons to be inspectors of the purpose of securing compliance with the provisions of this Act and any inspector so appointed shall be deemed to be a public' servant within the meaning of the Indian Penal Code (45 of 1860).

**7. Power to make rules. -**

(1) The competent authority may by notification in the official Gazette and subject to the condition of previous publication make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may-

(a) Regulate the procedure of inspectors appointed under Sec. 6,

**1**[\* \* \*]

(b) Make provision for the grant of certificates of age in respect of young persons in employment or seeking employment, **2**[the medical authorities] which may issue such certificates, the form of such certificate, the charges which may be made therefor, and the manner in which such certificates may be issued:

Provided that no charge shall be made for the issue of any such certificate if the application is accompanied by evidence of age deemed satisfactory by the authority concerned;

**3**[(c) Fix the seven consecutive hours between 10 p.m. and 7a.m. for the purpose of sub-section (2) of Sec. 3;

(d) Specify the circumstances in which and the conditions subject to which a child may be employed or permitted to work either as an apprentice or for the purpose of receiving vocational training in any occupation referred to in sub-section (1) of Sec. 3;

(e) Specify the other particulars which a register maintained under Sec. 3-D, should contain;

(f) Specify the Indian language or languages in which a notice referred to in Sec. 3-E shall be published; and

(g) Provide for exemption from the provisions of sub-section (2) of Sec. 3 in cases of emergencies which could not have been controlled of four-teen, which are not of a periodical character and which Interfere with the normal working of any occupation referred to in sub-section (1) or Sec. 3.]

**4[(3)** Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

- 1. The word "and" was omitted by Act 43 of 1851, Sec. 7 (w.e.f. 1<sup>st</sup> September, 1951).**
- 2. Subs. by Act 15 of 1939, Sec, 7, for "the authorities "(w.e.f 1<sup>st</sup> October, 1939).**
- 3. Added by Act 48 of 1951, Sec. 7 (w.e.f. 1<sup>st</sup> September, 1951).**
- 4. Ins. by the Employment of Children (Amendment) Act, 1978 (39 of 1978) w.e.f. 1<sup>st</sup> march, 1979).**
- 8. Amendment of sec. 6 of act 15 of 1908.] Repealed by the repealing and Amendment Act, 1942 (25 of 1942), sec. 2 and Sch..**

**Repeal.** - It Is a matter of legislative practice to provide while enactive an amending law, that an existing provision shall be deleted. Such deletion has the effect of repeal of the existing provision.**1**

- 1. Bhagat Ram Sharma v. union of India, A.I.R. 1988 740 at p. 746.**

**1[THE SCHEDULE]**

**(See Secs. 3, 3-A and 3-B)**

**List of processes**

**1. Added by Act 15 of 1939. sec. 8 (w.e.f. 1<sup>st</sup> October, 1939).**

- I. Bidi- making.
2. Carpet-weaving.
3. Cement manufacture, including bagging of cement
4. Cloth-printing, dyeing and weaving.
5. Manufacture of matches, explosives and fireworks.
6. Mica-cutting and splitting.
7. Shellac manufacture.
8. Soap manufacture.
9. Tanning.
10. Wool cleaning.