

# Constitutional Provisions and Laws Relating To Eradicate the Child Labour in India

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## **ABSTRACT**

The problem of child labour became more distinct with the beginning of industrial revolution. Being labour, children are denied educational opportunities; their physical, mental and intellectual development is hampered. The working children usually remain unskilled, underpaid and underprivileged throughout their life. The problem of child labour with multidimensional repercussion is one among the many crucial problems faced by the developing nations, and even India is no exception to this. However, here the researcher tries to identify the constitutional provisions and laws which have deliberately implemented in India to curb the problem of child labour.

***Key words: Child labour, Constitution of India, Legislations.***

## **INTRODUCTION**

The incidence of child labour is not modern phenomenon. Even in the olden days children were put to strenuous labour in houses and in fields at an early age. Children should perform the tasks such as nurture of cattle, collection of grass and fuel etc. Because of this adult member of the family could able get relive for more fruitful and productive works. There was no common labour beside children working along with their family members. It was the factor that child labour which strongly established family and kinship ties in many occupations. In urban areas, because of an abject poverty majority of the parents cannot make any investment on their children development and they are also averse to support them. They are eager about children to find work for themselves. The employers wish to prefer children as they are more nimble, amenable to discipline, control and too cheaper. The problem of child labour became more distinct with the beginning of industrial revolution.

The recent ILO report on child labour pointed out that globally 152 million children engaged as a child labour, out of these 64 million girls and 88 million boys and this is accounting for almost one in ten of all

children worldwide as child labour. In this estimate 71 per cent of children working as a child labour in agricultural and allied sector and 69 per cent work within their own family. Nearly half of all those in child labour 73 million children are in hazardous work that directly cause dangerous to their health, safety, and moral development. Children in employment, a broader measure comprising both child labour and permitted forms of employment, involving children of legal working age, number 218 million. (ILO, 2017).

## CONSTITUTIONAL PROVISIONS

The Constitution of India contains the provisions in respect of children under Part III i.e. Fundamental Rights, and Part IV of the constitution, i.e. Directive Principles. The provisions are as follows;

**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 an associations or unions, to move freely throughout the territory of India, etc. Under Indian law, child labour is prohibited only in factories, mines or other hazardous employment; 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 21:** This article guarantees the right to life to all persons. The Supreme Court has interpreted "right to life" to include right to food, clothing, adequate shelter, and other basic necessities of life.

**Article 21(A):** The article 21A states that there must be a free and compulsory education to all children of age of six to fourteen years.

**Article 22:** Provides for safeguards upon arrest, and states that a person should be produced before the nearest Magistrate within 24 hours of arrest. A juvenile in conflict with law or a child in need of care and protection should be produced before the Competent Authority established under the Juvenile Justice [Care and Protection of Children] Act 2000 within 24 hours of having been picked up by the police.

**Article 23:** Prohibits trafficking in human beings and forced labour. Any contravention of this provision is punishable under law.

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

**Article 39(e) & (f):** The State is required to ensure protection of children of tender age 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 is to further ensure that childhood and youth are protected against exploitation and abandonment.

**Article 41:** The State is required to take steps to secure Educational opportunities and facilities.

**Article 44:** The State is to endeavour to secure for all citizens a uniform civil code. A uniform civil code implies a uniform legal framework for adoption of a child applicable to all religions.

**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.

## MAJOR LEGISLATIVE MEASURES

### FACTORIES ACT, 1948

The Factories Act, 1948 prohibits employment of a child below 14 years in any factory. To safeguard the health of young persons of above 14 years of age and below 18 years, and for their safety, the Act places

a few other restrictions on their employment. Such young persons are required to obtain a certificate of fitness from a certifying surgeon. The Act also provides for initial and periodical examination (at intervals of not less than twelve months) of young person's by certifying surgeons. The Act puts restrictions in the matter of working hours of these young persons. Thus, a child belonging to the age group of 14 years and below 17 years is not to be employed at night (night means a period of at least twelve consecutive hours which shall include the interval between 10 P.M. to 6 A.M.). Then a child between the age group of 14 and 15 cannot be employed for more than 4 ½ hours in any day, and he cannot be employed in two shifts and cannot be allowed to work in more than one factory on-the same day. Subject to what has been stated above, a young person between the age group of 15 years and 18 years is considered to be an adult *for* purposes of other provisions of the Factories Act, provided he has a certificate from a certifying surgeon that he is fit for a full day's work in a factory, otherwise he is considered to be a child.

### **MINES ACT, 1952**

The Mines Act, 1952 has provisions regulating the employment of children in mines. The provisions in the Mines Act are more stringent than the Factories Act in this respect. No young person who has not completed the age of 16 years can be employed in any mine. A child (a person who has not completed 15 years of age) cannot even be present in any part of a mine which is below ground, and also above ground after such date as the central government may by a notification fix. A young person who is between 16 years of age and 18 (known as adolescent) is allowed to work in any part below ground if he has a medical certificate from a certifying surgeon certifying that he is fit for work as an adult. Even then such a person cannot be allowed to work at night.

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

To prevent employment of children in hazardous employments and those injurious to health, the Employment of Children Act, 1938 prohibits their employment in certain occupations. Thus no child

who has not completed 15 years of age can be employed in any occupation connected with the transport of passengers, goods or mails by railway; or a port authority within the limits of a port.

### **MERCHANT SHIPPING ACT, 1958**

The Merchant Shipping Act, 1958 applies to sea-going ships. It has some provisions regulating employment of children. The Act bars employment in any capacity of a person below 15 years in a ship except (a) in a school ship, or training ship, in accordance with the prescribed conditions; or (b) in a ship in which all persons employed are members of one family; or (c) in a home-trade ship of less than two hundred tons 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 near male relative.

### **MOTOR TRANSPORT WORKERS ACT, 1951**

The Motor Transport Workers Act, 1951 regulates the condition of work of employees in motor transport undertakings. Section 21 of the Act prohibits an employment of children in a motor transport undertaking, and a child is defined as a person who has not completed 15 years of age. An adolescent (a person who has completed 15 years of age but not 18 years) is allowed to work provided he has a certificate of fitness granted by a certifying surgeon. The certificate is valid for a period of one year but can be renewed.

### **PLANTATION LABOUR ACT, 1951**

The Plantations Labour Act, 1951 applies to plantations in tea, coffee, rubber or cinchona which admeasures 10.117 hectares or more, and in which thirty or more persons are employed Section 24 of the act prohibits employment of children. This act applies to any land used for cultivation of the coffee, rubber, cinchona or cardamom which measures five hectares or more and in which fifteen or more persons are employed.

**BIDI AND CIGAR WORKS (CONDITIONS OF EMPLOYMENT) ACT, 1966**

As far as the specific provisions of the Act with regard to child labour are concerned, no child (a person who has not completed 14 years of age) can be employed in any "industrial premises".

**CHILDREN (PLEDGING OF LABOUR) ACT, 1933**

The Children (Pledging of Labour) Act of 1933 prohibits the making of agreements to pledge the labour of children for employment. A child is defined as a person who is under the age of fifteen years. An agreement to pledge the labour of a child is void under the Act. Such a contract will also be void under the Indian Contract Act on account of the contract being opposed to public policy.

**APPRENTICES ACT, 1961**

The Apprentices Act, 1961 regulates the training of apprentices in industry so that the programmes of training may be organised on a systematic basis, and the apprentices may get the maximum advantage of their training. The Act provides that a person who is less than 14 years of age will not be qualified for apprenticeship training. In other words only children between the ages of over 14 years and below 18 years adults are eligible for training.

**SHOPS AND ESTABLISHMENTS ACT, 1961.**

Different states have enacted their own statutes regulating conditions of work of workers in shops and establishments. These Acts apply to shops, commercial establishments, restaurants and work of workers in shops and establishments. These Acts apply to shops, commercial establishments, restaurants and hotels and places of amusement at notified urban areas, to which the Factories Act does not apply, the state governments are empowered to extend the application of the Act to such other areas or categories of establishments as may be considered necessary. The Acts prohibit the employment of a child in shops and establishments, and he cannot be employed even as a member of the family of the employer.

Generally speaking, a child is a person' who has not completed the age of 12 years, though in a few states like Tamil Nadu, Pondicherry and Uttar Pradesh and even in Karnataka the age is 14 years.

**CHILD LABOUR PROHIBITION AND REGULATION ACT, 1986  
(AMENDMENT, 2016).**

This Act may be called the Child Labour (Prohibition and Regulation) Amendment Act, 2016. In the Child Labour (Prohibition and Regulation) Act, 1986 (hereinafter referred to as the principal Act), for the long title, the following shall be substituted, namely:—An Act to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto.”

According to this amendment Act “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;’

“Adolescent” means a person who has completed his fourteenth year of age but has not completed his eighteenth year.

Under section 3 (1) of the Act, No child shall be employed or permitted to work in any occupation or process.

(2) Nothing in sub-section (1) shall apply where the child,—

(a) Helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;

(b) Works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed:

Provided that no such work under this clause shall effect the school education of the child.

Section '3A' of the Act says that 'No adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule.'

According to section 14 (1) whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both:

Provided that the parents or guardians of such children shall not be punished unless they permit such child for commercial purposes in contravention of the provisions of section 3.

(1A) Whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of section 3A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both:

Provided that the parents or guardians of such adolescent shall not be punished unless they permit such adolescent to work in contravention of the provisions of section 3A.

### **Conclusion**

The issue of child labour is not confined to third world countries; it is existed even in the developed countries. In India the issue of child labour is getting suppressing due to the awareness on the importance of education for the parents, legislative measures which have being implemented by the Government by time to time for the welfare of the children, the employers' perceptions on the punishment if he employs the child labour. In India, as mentioned above, there are several laws are plays vital role in curbing the issue. However, the proper implementation of laws is very essential to suppress the issue of child labour.



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