

Child Labour Prohibition Act 1986

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1. ABSTRACT

Child labour is ruining nations' economies, their literacy fee, start fee, it simply ruins the complete manner a country is looked at by means of human beings. There might be human beings that have in no way heard of child labour, but it's time to behave. human beings may say that we can in no way alternate the truth that there is baby labour, and it's going to always be there, however we can usually attempt to diminish the quantity of Child labour inside the world. Its miles said that one in six kids in developing international locations is engaged in toddler labour. Many youngsters are put to work in methods that regularly "interfere with their education, drain their adolescence of joy and crush their proper to regular bodily and intellectual improvement". You might be thinking what this all does to a country. It ruins societies all around the international. Child labour lessens the world's income. You can't simply eliminate child labour from a society that has both been developed by the use of slavery and continues to thrive with the use of child labour. Although child labour is a dark aspect of reality, it is a part of reality nonetheless. Child labour predominantly exists in developing nations in which families are forced to sell their children into slavery as a means of survival and support, as the working child now generates income for the family and ultimately back into the economy. These children however are the ones who suffer at the end of the day; these kids miss opportunities of education, social development, and intra-personal developmental milestones. A trade off. With the complete abolishment of child labour you will see an increase in crime rates/ involvement rates, based off the basis that these children still live in poverty. With the elimination of the workplace for desperate and desolate youth, the structure of work is still sought after as means to generate income. This is the point in which criminal involvement rates will increase, especially to the youth who would normally at the local sweatshop; will now work at the nearest crack house or militia. So even though child labour is an ugly stain on society, it's not necessarily stains that can be bleached per say. In order to see positives in tradeoffs for these workers, standardization and policy implementation must be enforced.

GOVERNMENT'S POLICIES FOR ENACTING AGAINST CHILD LABOUR

Of 1881. A Commission was established in 1929 to fix the minimum age of child employment, on whose recommendation, the Child Labour Act 1933 was passed prohibiting employment of children below 14 years of age. The Factory Act of 1948 provided some safeguards to child laborers. In 1986, the Parliament enacted the Child Labour Act (Regulation and Prohibition), planning the employment of children in certain jobs and regulating the condition of work in hazardous occupations. The Juvenile Justice Act came into force on October 2, 1987 after superseding different Children's Act of different States/UTs. India has ratified six ILO conventions relating to labour and three of them as early as in the first quarter of the 20th century. Through a Notification dated 27 January 1999, the Schedule to the Child Labour (Prohibition and

Regulation) Act, 1986, has been substantially enlarged bringing the total number of occupations and processes listed in the Schedule 13 and 51 respectively. The National Policy on Child Labour was formulated in 1987 which enforces legal actions to protect the interests of children, makes development programmes for the benefit of child labour and projects based plan of action in the areas of high concentration of child labour. National Child Labour Projects (NCLP) has been set up to rehabilitate child labour. The Cabinet Committee on Economic Affairs (CCEA) in their meeting on January 20, 1999 approved continuance of the scheme of National Child Labour Project (NCLP) during the Ninth Plan. The CCEA also approved the increase in the number of such projects from 76 to 100. The Government's commitment to address the problem of child labour is reflected in the statement of National Agenda for Governance (1998), where it says that no child should remain illiterate, hungry/lack medical care and that measures will be taken to eliminate child labour. The Supreme Court of India in its judgment dated December 10, 1986 has directed to pay compensation of Rs 20,000 by the offending employers for every child employed in hazardous occupations. Efforts will be made to modify the existing National Child Labour Project under the Ninth Plan.

CHILD LABOUR (PROHIBITION AND REGULATION) ACT 1986

The Child Labour (Prohibition and Regulation) Act, 1986 is one the most debated acts regarding children in India. It outlines where and how children can work and where they cannot. The provisions of the act are meant to be acted upon immediately after the publication of the act, except for part III that discusses the conditions in which a child may work. Part III can only come into effect as per a date appointed by the Central Government (which was decided as 26th of May, 1993). The act defines a child as any person who has not completed his fourteenth year of age. Part II of the act prohibits children from working in any occupation listed in Part A of the Schedule; for example: Catering at railway establishments, construction work on the railway or anywhere nears the tracks, plastics factories, automobile garages, etc. The act also prohibits children from working in places where certain processes are being undertaken, as listed in Part B of the Schedule; for example: beedi making, tanning, soap manufacture, brick kilns and roof tiles units, etc. These provisions do not apply to a workshop where the occupier is working with the help of his family or in a government recognized or aided school.

The act calls for the establishment of a Child Labour Technical Advisory Committee (CLTAC) who is responsible for advising the government about additions to the Schedule lists. Part III of the act outlines the conditions in which children may work in occupations/processes not listed in the schedule. The number of hours of a particular kind of establishment of class of establishments is to be set and no child can work for more than those many hours in that particular establishment. Children are not permitted to work for more than three hour stretches and must receive an hour break after the three hours. Children are not permitted to work for more than six hour stretches including their break interval and cannot work between the hours of 7 p.m. and 8 a.m. No child is allowed to work overtime or work in more than one place in a given day. A child must receive a holiday from work every week. The employer of the child is required to send a notification to an inspector about a child working in their establishment and keep a register of all children being employed for inspection. If there is a dispute as to the age of the child, the inspector can submit the child for a medical exam to determine his/her age when a birth certificate is not available. Notices about prohibition of certain child labour and penalties should be posted in every railway station, port authority and workshop/establishment. The health conditions of work being undertaken by children shall be set for each particular kind of establishment of class of establishments by the appropriate government. The rules may cover topics such as cleanliness,

light, disposal of waste and effluents, drinking water, bathrooms, protection of eyes, maintenance and safety of buildings, etc. Section IV of the act outlines various remaining aspects such as Penalties. The penalty of allowing a child to work in occupations/ processes outlined in the schedule which are prohibited is a minimum of 3 months prison time and/or a minimum of Rs. 10,000 in fines. Second time offenders are subject to jail time of minimum six months. Failure to notify an inspector, keep a register, post a sign or any other requirement is punishable by simple imprisonment and/or a fine up to Rs. 10,000. Offenders can only be tried in courts higher than a magistrate or metropolitan magistrate of the first class. Courts also have the authority to appoint people to be inspectors under this act. Rules of this act must be passed by the respective parliaments (state or central). Any changes or added provisions must be passed by the parliament. The establishment of this act also calls for a change in a number of other acts. The Employment of Children Act of 1938 is repealed. The enactment of this act changes the definition of child to one who has not completed his fourteenth year of age. Hence under provisions of this act the age of a child is also changed in the Minimum Wages Act 1948, the Plantations Labour Act 1951, the Merchant Shipping Act 1958, and the Motor Transport Workers Act 1961.

PRECEDENTS SET BY SUPREME COURT

Though the government of India has enacted various labour legislations to prevent child labour still there are some contradiction among them, mainly the definitional debates on child labour as different legislation provide different definition of a 'child'. Section 2(ii) of The Child Labour (Prohibition and Regulation) Act, 1986, defines 'child' as "a person who has not completed his fourteenth year of age"; Section 2(c) of The Factories Act, 1948 defines 'child' as "a person who has not completed his fifteenth year of age"; Section 2(e) of The Mines Act, 1952 defines 'child' as "a person who has not completed his fifteenth year"; Section 2(c) of The Right of Children to Free and Compulsory Education Act, 2009, defines 'child' as "male or female child of the age of six to fourteen years"; Section 2(k) of The Juvenile Justice (Care and Protection) of Children Act, 2000 defines 'child' as "a person who has not completed eighteenth year of age"; Section 2(c) of The Plantations Labour Act, 1951 defines 'child' as "a person who has not completed his fourteenth year of age" Hence, we can clearly observe that this legislation is at contradiction to each other in defining that's a child and setting a uniform age limit. Therefore the center and respective state governments should set a uniform universal minimum age of the child as these contradictions adversely affect the objective of protection from child labour and providing a better educational and social development to children of India.

Following are few of important Supreme Court cases that have helped in framing better laws regarding child labour:

In *Democratic Rights V. Union of India*, it was contended that the Employment of Children Act, 1938 was not applicable in the matter of employment of children in construction works, as it was not mentioned in the act. But the court held even construction work is a hazardous employment and no child below the age of 14 years can be employed as given under Art 24 of the Indian Constitution, even though construction industry has not been specified in the schedule to the Employment of children Act, 1938, thus the SC rejected the contention.

In *Salal Hydro Project vs. Jammu and Kashmir*, the Court has restated the principle laid in *Democratic Rights V. Union of India* that Construction work is hazardous employment and any child below 14 cannot be employed in this work.

In *Sheela Barse and others vs. Union of India and others*, Bhagwathi, C.J. quoted from National Policy for the welfare of Children incorporated to provide better social and educational development to the children of India : "The Nation's children a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skill and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our large purpose of reducing inequality and ensuring social justice".

In *M.C. Mehta v State of Tamil Nadu & Ors*, the SC gave direction to the Union and state governments to identify all children and withdraw them from working in hazardous processes and occupations, and to provide them with free and proper education as incorporated into the Constitution, Article 21-A. The Court also directed the Union and state governments to set up a Child Labour Rehabilitation-cum-Welfare Fund using contributions from employers who breach the Child Labour Act.

In *Unnikrishnan v. State of Andhra Pradesh*, the SC held that every child has the right to free education till the age of 14 years. Article 21-A which was incorporated into the Constitution, reflects this standard.

CHILD LABOUR (PROHIBITION AND REGULATION) AMENDMENT ACT, 2016 OF INDIA

The central legislature of India had promulgated a legislation Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 ("**CL Act**") to regulate the child labour practices in India. The central legislature has made substantial changes in the provisions of the CL Act in the year 2016 and the said amendments have been made effective from July 30, 2016. Pursuant to the said amendment the name of the CL Act has been changed to 'Child and Adolescent Labour (Prohibition and Regulation) Act, 1986'. A complete prohibition has been imposed on employment of child labour (i.e. a person below the age of 14 years) in any establishment whether hazardous or not. A child is permitted to work only to help family, in family enterprise or as child artist after school hours or during vacations. The amendment has introduced the concept of adolescent labour for the first time. An adolescent has been defined as a person between the ages of 14-18 years. The amendment permits employment of adolescent labour except in hazardous processes or occupation. The number of hazardous occupations and processes has been reduced from 83 to only 3. The offences under the Act have now been made compoundable and cognizable notwithstanding the provisions of the Criminal Procedure Code. The CL Act provides for rehabilitation of children and adolescent who have been victims under the provisions of the CL Act. It provides for setting up of the Child and Adolescent Labour Rehabilitation Fund in which all the amounts of penalty have to be realized. Liability has been affixed upon the parents and guardian of the affected child/children separately from the employers. The Act provides for increased penalty and imprisonment which shall not be less than 6 months and may extend up to 2 years and fine which may vary between Rs.20, 000 to Rs. 50,000. Previously, the violations under the CL Act were punishable with imprisonment of not less than three months which could extend to one year or/and with fine of ten thousand rupees which could extend to twenty thousand rupees. While the new amendments appear

to be progressive in nature but they have down side also. Like the new amendments put a complete prohibition on employment of children, but at the same time it allows them to be employed in family enterprises/businesses. Considering that majority of child labor activities happen in economically weaker section of the society which is highly unregulated, no proper mechanism has been provided to keep the same in check with the new amendments. Further, the list of hazardous industries has been drastically decreased, this may allow the employers in industries like chemical mixing units, cotton farms, battery recycling units, and brick kilns etc. (which are actually hazardous) to employ adolescent labour, which they may even get at a much cheaper price. It is therefore more important now for the government to keep a check on the working conditions for adolescent labour as well as the working conditions for children in family run businesses. This would require more personnel deployment which currently is in shortage. The government, in order to effectively monitor the ground realities involve and empower the non-governmental organizations and individuals who are actively involved and are working for the said cause.

WORLD LABOR REPORT

According to the World Labor Report, the child labour is considered as 'forced labour' because children are rarely in a position to give free consent to any activities performed by them as most aspects of their lives are determined by adults. Though poverty forces families to send their children into labor, the employers find it a source of cheap and trouble-free labour. Children can be beaten and bullied into doing dirty jobs and they can trade union take their responsibilities. Child laborers don't seem to have any rights.

In Indian, however, there is no law which actually provided for elimination of child labour. The constitution in article 25 states that no child below 14 years will be employed in any factories or mines or engaged in any hazardous employment. But, nowhere does it make any mention of abolition or elimination of child labor. Although the Child labour Prohibition and Regulation Act of 1986 has suggested reasonable working conditions for children working in hazardous conditions the term hazardous neither been clearly defined anywhere in the Constitution, nor in different legislation proposed on child labor. Thus, the interpretation of the term 'hazardous' is ambiguous and inadequate especially in the case of child labor.

MEASURES TAKEN TO REMOVE CHILD LABOUR

Until poverty persists in India, child labor cannot perhaps be totally removed. Therefore, to eliminate the poverty and child labor in town the government has taken a number of measures

- The Government has announced 'Food for Education Programme' to eradicate child labor. Under this the family of child laborer was to be given 1 kg of cereal a day if the child is sent to school.
- The government proposes to amend Child Labor Act giving more power to the district magistrate in the implementation of the Act, thus, eliminating child labor in hazardous conditions. Beside he will also fix the minimum wages for children and adult labor.
- Children can be made to work in less exploitative and dangerous areas with regular working hours and assurance of proper meals and nourishment otherwise the case will be dealt with severity.
- The government has sanctioned child labor projects in 63 districts in addition to 12 ongoing ones under the National Child Labour Project Scheme (NCLP). Under the scheme nearly 240 thousand children would be covered. Further, the government has also released Rs 6.65

crore for district level awareness campaign to 133 most child labor endemic districts in the country. A detailed consultation with state government and district officials from the most child labor endemic areas of the country has also been done.

The government alone cannot deal such a great problem and a change in attitude is needed to eliminate/reduce this menace. If children of the poor can be provided education and vocational training and if stipends accompany such training, parents would be under less pressure to send their children to work in hazardous factories. But this requires a huge effort and a fresh thinking, which sadly is lacking and the blame for child labor must be shared by the society and the leaders.

2. CONCLUSION

If we try lessen Child labour it's going to hopefully assist the sector's financial system, and additionally make the sector better vicinity to live. It's going to also lessen crime, and reduce global poverty. There are a number of methods to reduce baby labour; the largest factor to boycott the kid-produced products. Some other factor is to offer youngsters a primary training so one can enable kids to reap ordinary jobs. Governments should additionally make strict exchange legal guidelines which appoint strict measures against Child labour. If those points are all listened too, the entire international could be modified plenty. Consider the sector without poverty, excessive literacy prices in every one of us and a high GDP. All this may be just because of the alternatives we chose to make. All we have to do is make the ones selections.

3. REFERENCE

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