

AMENDMENT TO CHILD LABOUR LEGISLATION IN INDIA- ITS PROGRESSIVE PROHIBITION AND REGRESSIVE IMPLEMENTATION

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Abstract

India being one of the nations in the world struggling to free itself from the vice of child labour, the area of law being discussed is a recent amendment of the pivotal act which aims at prohibiting and regulating child labour. The interpretative advantage or disadvantage of the laws, its foreseeable ramifications, and hindrances in effective implementation have been argued and prospective counters have been supplied, in this article.

This article aims at studying these provisions regarding child employment in respect of their eventual expansions, enforcement and implementation. The arguments have previewed the amendments from standpoint of constitutional, statutory safeguards, entitlements, duties and their impact on international conventions and relations.

The progressive intent of the amendments have backfired with its failure to encompass implementation mechanisms. This article sensitises the economic and emotional status of the strata of people to whom the Act caters to, and analyses their take on child labour and incentives to disengage in such practices.

Key words- 2016 amendment, child labour, domestic employment, exploitation of children, labour law.

Introduction

Child Labour can be defined as the practice of engaging children in commercial activities for some kind of economic benefit, on a part-time or full-time basis.

As per to the 2001 census, there were about 12.6 million¹ child workers aged between five to fourteen years, however, in as per the 2011 census, this number has reduced to 4.35 million. Even though, this is a great accomplishment, these are still a huge number of children who are being subjected to the evil of child labour on a daily basis.

The practice of child labour deprives children of the equitable right of all children which is the right to lead a decent, dignified and unexploited childhood and right to life, as it has been guaranteed by the Indian Constitution² and the United Nations Convention of Right to Child (UNCRC)³, which India ratified in the year 2002.

Apart from this, child labour has been considered to have a negative and harmful impact on the physical and mental development of children. It prospers upon factors such as poverty, lack of good schools and growth of informal economy.

The act entitled to prohibit the engagement of children in certain employments and to regulate the terms & conditions of work of children in certain other employments, in India is known as the Child Labour (Prohibition and Regulation) Act, 1986 (CLPRA) (Hereinafter referred to as, “The Act”) has been amended with the passing of the Child Labour (Prohibition and Regulation) Bill of 2012⁴ which was introduced by labor minister, Bandaru Dattatreya.

This bill was placed before the parliament and has been recently passed by the Rajya Sabha on the 19th July, 2016⁵ and the Lok Sabha on 25th July 2016. This article discusses the said amendments and the need/rationale behind endorsing the amendments. The article also raises arguments deliberating the merits and shortcomings of the new act *vis-à-vis* the previous act of 1986.

Methodology

¹ Child labour facts and figures: An analysis of census 2001, Indus child project, [2007] http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@sro-new-delhi/documents/projectdocumentation/wcms_125442.pdf.

² Indian Constitution 1950, art. 24.

³ United Nations Treaty Collections, Convention on the Rights of the Child. www.treaties.un.org (accessed on 30 April 2015).

⁴ PRS Legislative Research: <<http://www.prsindia.org/billtrack/the-child-labour-prohibition-and-regulation-amendment-act-2012-2553/>> [2012].

⁵ Nita Bhalla, Reuters <<http://in.reuters.com/article/india-children-labour-idINKCN10619V>> (Last accessed July 27, 8:49am IST).

The research work undertaken for the purpose of this article is primarily doctrinal research, that is, a data analysis which is concerned with analysis of laws and policies. It analyses how these laws have been developed over time and applied to the situation of child labor.

It also analyses the literature dealing with international and national provisions & is structured on a rationale concerned with deductive and inductive reasoning.

Positive Consequences of the New Act

1. The Objective Rectification

The Amendment extends the ambit of applicability and reduces the regulatory burden on itself. Amendment of the long title of the 1986 Act,⁶ completely prohibits employment of the children below the age of 14 years in all occupations and additionally prohibits the engagement of adolescents in hazardous occupations and processes and in matters connected therewith or incidental thereto. The 1986 Act covers only the prohibition of children in their engagement in certain employments and regulates the conditions of work of children in certain other employments.

1.1. Ambit of applicability

Amending the old Act, the 2016 amendments aim at safeguarding not only children (i.e. those under 14 years), but also lays down a prohibition in engaging adolescents (15-17 years) in certain employments. The most common issue against the amendment is the limitation in the ambit of prohibited labour to only those connected and incidental to hazardous occupations and processes. The point of issue seems invalid since the Act essentially extends the ambit of prohibition on children which was earlier limited to certain occupations⁷ but now imposes a complete prohibition of children in any form of employment. It instead extends the applicability of the prohibition to adolescents who were never catered to in the 1986 Act.

The amendment tries to match International standards of providing for children under 18 years as referred to in the ILO Conventions 138⁸ and 182⁹ and UN Convention on Rights of Child¹⁰. Even a complete prohibition signifies abundance with International principles¹¹. India has been unable to ratify most international conventions related to child labour, owing to its inability to

⁶ Child Labour (prohibition and regulation) Amendment Act 2016, clause 2.

⁷ Child Labour (prohibition and regulation) Act, 1986, Sch - Part A and Part B.

⁸ ILO Minimum Age Convention, 1973, Art 3.

⁹ ILO C182, Worst Forms of Child Labour Convention 1999, Art 2.

¹⁰ UN Convention of Rights of the Child, Art 1.

¹¹ UN Convention of Rights of the Child, Art 32.

treat them as children as per the National labour laws, child labour (prohibition and regulation) Act, etc. Now that India has acceded to the conventions on being classified as nation facing economic hardship It has been attempting to come closer in spirit to the international policies, and this amendment is a step in the direction.

1.2. Regulatory burden

The 1986 Act severely failed in regulating the provisions of prohibitions, and the major drawback of the Act was its incapacity to regulate other employments (apart from those specified under the schedule¹² of the act i.e. 18 specified occupations and 65 processes). The earlier Act had certain progressive aspects such as, banning employment of children, bringing uniformity in the definition of “child” in related laws, laying down penalties for the employment of children in violation of the provisions of the Act and other Acts which forbade the employment of children¹³. Though, the Act had certain procedural aspects such as the laying down of procedure to make additions to the schedule of banned occupations¹⁴ or processes and regulating working conditions of children in occupations where they were not prohibited from working.¹⁵ Understanding the limitations the 1986 Act, the Amendments aimed at severing such regulatory provision from the main act, since the regulation of certain employments was the single most inefficient factor of the Act.

The Amended Act was not required to ‘regulate’ the conditions of any other form of employment of adolescents. The hazardous occupations, processes and other employments had a blanket prohibition on them for which there was no need of regulation of any other employment, since all others were, permitted if not prohibited and that wouldn’t anyway have been the scope of the Act. Hence no burden is relieved in case of adolescents by the subtraction of the term.

The question arises as to whether the ‘Prohibition of the ‘child labour’ made any effort to regulate when there was a proposed ‘complete prohibition’ on all forms of child labour.

It must be pointed out that under the 1986 Act, the conditions of employment were to be regulated for ‘certain other employment’ which involved an aid of his family or referred to any school, established by, or receiving assistance or recognition from the Government of India¹⁶ The working conditions of those falling under the ‘other employment’ category needed regulation, since there could’ve been an overlap in services, just termed ‘other services’ owing to the conditions of their employment.

¹²*supra* note at 6.

¹³ Child Labour (prohibition and regulation) Act, 1986, s.14.

¹⁴*supra* note at 6.

¹⁵ Planning Commission Report on the 12th Five Year Plan [2012-17].

¹⁶ Child labour (prohibition and regulation) Act 1986, s. 3, clause 5.

The Amendment Act, also similarly had the provision¹⁷ for allowing children to ‘help’ their family or family enterprise or in the entertainment industry after school hours or during vacations. There is need for regulation, but it is just beyond the object of the Amended Act.¹⁸ The Amendment hence, delegates bodies regulating the conditions of such employment, to determine whether it actually amounts to any kind of ‘help’ for the ‘family or family enterprise’ but doesn’t undertake such a task in itself. Hence, the relief in respect of the regulatory burden.

2. Guaranteeing right to education

Child Labour although is a result of poverty stricken conditions, it is a vicious cycle only in the absence of quality education and cases of illiteracy. Since, an uneducated labourer or farmer, will only pass on the similar skills of the trade to its next generation, and thereby the next generation will further propagate the same traditions. Hence, poverty and child labour will subsist. Basic elementary education¹⁹ or skill training will render a useful tool in enabling the child break free from the shackles of poverty. An educated child can hence be in a position to better his future and not be a victim of traditional poverty.²⁰

The 1986 Act had no provision for striking a balance between prohibition of child labour and education. The Amended Act, in its attempt to prohibit all forms of employment and allow to help family members post school hours and during vacations, indirectly proposes to encourage and facilitate enrolment of children in schools, and hence establishes congruence with the Right of Children to Free and Compulsory Education Act of 2009 (RTE)²¹ enacted by the Ministry of Human Resources and Development²²

The penalties on parents/guardians of children employed in prohibited occupations and activities, on a recurring engagement in such activities, serves as an accountability generating measure on the parents as per their fundamental duty under Article 51A of the Constitution of India to provide opportunities for education to his child. The Act thereby not only criminalises the parent’s engagement in Child Labour, but also their failure to educate them.

Under the RTE Act, a child shall refer to a male or female child of the age of 6-14 years²³ It envisages that it shall be the duty of the state to ensure free and compulsory education below the age of 14. Hence, the objective of the amendment is to ensure that all children up to 14 years of age are in schools instead of work places.

¹⁷ *Id.*

¹⁸ Child Labour (prohibition and regulation) Amendment Act, 2016, clause 2.

¹⁹ Right of Children to Free and Compulsory Education Act of 2009, Section 2(f) defines ‘elementary education’ which means education from first class to eighth class.

²⁰ Diana Kruger, Rodrigo R. Soares, &Matias Berthelon, Household Choices of Child Labour and Schooling: A Simple Model with Application to Brazil, 2007 (IZA DP NO. 2776); Budhwani et al. [2004] ; Bhat et al. [2009]; Lana Osment : Child labour – the effect on child, causes and remedies to the revolving menace, *Springpublication*, [2014].

²¹ Ministry of Human Resource Development, Govt of India, Right to education <<http://mhrd.gov.in/rte>> (Accessed on Fri, 03/04/2016 - 16:32).

²²Caldwell, J. Mass Education as a Determinant of the Timing of Fertility Decline, *Population & Development Review*(1980), 6, 225-255; Weiner, M., The Child and the State in India (Princeton, NJ: Princeton University Press) [1991].

²³Right of Children to Free and Compulsory Education Act 2009, s 2(c).

The National Draft Education Policy, pending before the houses of parliament is a framework to legislate free and compulsory education.²⁴

The National Child Labour Project Scheme (Hereinafter, referred to as NCLP) is currently in the process of revising its latest five-year plan in accordance with the requirements of the new Act. This was initiated in 1988, it aims to provide for the details of procedures, implementation schemes, development tools in rehabilitating Child Labourers.

The Act in its 12th Five Year Plan (2012-17) provided for the setting up of National Special Training Centres, schools and other national, state and district projects for its implementation. It proposed the schemes such as the Sarva Shiksha Abhiyan (SSA) and the Mid-day meal Scheme to promote education as a tool to inhibit Child Labour. These schemes were monitored at several levels which provided a bridge for education, vocational training, mid-day meals, stipend, health care and recreation to those rescued from Prohibited Child Labour Venture. Children were enrolled within the Special schools for periods of 6 months to 3 years, by the time they would be streamlined for formal education or self-employment (redundant after the New Amendment, since all forms of employment were prohibited). The NCLP set up central, state and district level projects to aim at expanding since the local NGOs were few in certain regions, the NCLP was required to set up schools to protect Child Labourers. The NCLP will thereby be responsible for the regulation, functioning and the working of the amended Act.

Hence, the requirement of education for children under the amended act, diminishes the scope of poverty to devolve as bequest,²⁵ it synchronises with the enforcement of education policies and NCLP schemes which aims at incentivising education for not only children but also parents and society.

3. New amendments are in line with the existing laws

There have been many acts, schemes, policies and legislations which have been passed with respect to child labour since Independence.

The act aligns itself with the provisions of the Indian Constitution, 1950 and RTE Act, 2009 to enhance their implementation²⁶ Article 24 of the constitution²⁷ prohibits the employment of children below 14 years in factories, mines and other hazardous employments. Also, Article 21 A²⁸ and Article 45²⁹ endeavour to provide free and compulsory education to all children up to 14 years following which the RTE Act was implemented, taking into account the constitutional provisions.

Hence, the new amendment aligns and supports the further implementation of previously established laws.

²⁴ Ministry of Human Resource Development, Govt of India- http://mhrd.gov.in/sites/upload_files/mhrd/files/Inputs_Draft_NEP_2016_0.pdf, [2016].

²⁵ Jean Marie Baland & James Robinson, "Is Child Labour Inefficient".

²⁶ *Id.*

²⁷ Indian Constitution 1950, art 44. (prohibition of employment of children in factories).

²⁸ Fundamental right to free and compulsory education to all children of the age of six to fourteen years.

²⁹ State's duty to provide early childhood care and education for all children until they complete the age of six years.

4. Inclusion of adolescents

The amendment of the short title of the act by insertion of new Section, Section 3A³⁰, includes a new class of persons, “adolescents” which means person from 15-18years of age.³¹ The amendment prohibits the employment of adolescents in hazardous occupations and processes³²

Adolescents would be protected if international standards were complied with, however, several factors indicate why the national law doesn't provide for children up to the age of 18 in the same uniform way as the international conventions.

From a country struggling to inspire its people to promote primary elementary education, it would be burdening on children to study till 18, with weak financial back up. Therefore, enforcing compulsory education till 18 is a slightly impractical to achieve at this nascent stage in development.

Additionally, provision of free education requires investments from the country. Since India is a developing country, the uplifting of backward communities doesn't contribute much to the national GDP. An incapacity to meet the current financial needs of the current schemes³³, signifies a need for efficiency at this level before expanding the bracket of children.

The definition of “Child” as per the amended Act³⁴, involves a more progressive definition of Child, i.e. those under 14 years of age or those covered under the RTE Act as a child. It can hence thereby be assessed that international standards of catering to a broad audience of 0-18 year olds, is a process involving various element of educational, employment and financial schemes. Therefore, the interim protection for the 15-18-year-old adolescents from hazardous labour industries is a sign of acknowledgment of the International Conventions.

5. Child as help v. subordination

The amendment of Section 3 of the Act³⁵ prohibits employment of children in all occupation and processes with the exception of the child helping his family after or before his school hours or helping his family in the fields, home-based work and forest gathering.

The proviso providing an exception to Section 3, allowing children to work in “Family enterprises” is considered acceptable since it allows the parents/guardians of the children to pass on their traditional knowledge and skill which they possess and hence, it is only in a way encouraging Indian art and culture. Apart from this, it is considered acceptable to have children

³⁰Prohibition of employment of adolescents in certain hazardous occupations and processes.

³¹ Child Labour (prohibition and Regulation) Amendment Act, 2016, clause 3 r/w clause 6.

³²*Supra* note on 6.

³³ Pundarik Mukhopadhaya, Uttam Bhattacharya & Craig Mac Millan, “Education of Child Labour in India- West Bengal [2012].

³⁴ Child Labour (prohibition and regulation) Amendment Act 2016, s. 2(ii).

³⁵ Child Labour (prohibition and regulation) Amendment Act 2016, clause 5.

help their parents with the daily chores of work which eventually accelerates and eases the burden off the entire family by helping in meeting the demands of supply.³⁶

Faster and timely completion of the contracts will eventually determine easier flow of income so as to facilitate the cost of food, water, shelter for the entire family and eventually their future sustenance.³⁷

It had been argued in the parliament while proposing the Bill that it propagates and protects Indian traditional and cultural skills. Any contribution towards it by the child would be termed as helping family and family enterprises. The term 'help' must be narrowly interpreted, not only the nature of the relationship while doing an act must be evaluated but the results reaping out of such a relation would also be taken into consideration since in this case, there is no employer-employee relationship as economic gain and accountability of work proposes the relation of the child with the act performed. The difference can easily be plotted, once the intent behind the legislation is understood. The provision of the 1986 Act was refined but retained in essence because an act of help for parents is not considered as the same as a subordinate relation, which would be covered as a prohibited engagement, post the amendment.

The bangle making industry, cracker industry, wood carvings et. al. are forms of industries where children are often employed and exploited because of their cheap availability. The employment of children have been coming down the generations, because of caste based work and would literally fall under family enterprises.

The amendment proposes the view into the merits of cases, to determine the nature of contributions of the child and engagement by the family where such work is considered as help, in situations it is often seen as a way of bonding with parents who're educated only in the particular skill, and through the task of helping, the core values of the child gets shaped. It is the only way the uneducated parent can propose to contribute to the child's upbringing and hence is protected by the initial Act and its later amendment.

It also allows the child to attend technical institution during vacations for the purpose of knowledge building and learning. However, it does not include helping in technical institutions where there is subordinate relation of labour which are carried out or outsourced inside homes.

6. Progressive Sub-delegation

The amendment to Section 4³⁸ of the Act empowers the Central Government to include or seclude any hazardous enterprise or process from the schedule of the Act³⁹

³⁶ International Labor Organisation, (definition of child labour), <http://www.ilo.org/ipec/facts/lang--en/index.htm>.

³⁷ Dr. Ashhad Ahmad, Child Labour in India: A Politico-Legal Study, *Kalpaz Publications* [2004] (ISBN: 81-7835-264-8) pp 17-53.

³⁸ Child Labour (Prohibition and Regulation) Act

http://labour.gov.in/sites/default/files/THE%20CHILD%20LABOUR%20%28PROHIBITION%20AND%20REGULATION%29%20AMENDMENT%20ACT%2C%202016_0.pdf.

The power to add to the schedule was delegated even in the 1986 Act but no power to omit the schedule was given. The Amendment expanded the scope to implement the changes in the schedule enforceable by the Central Government, whenever deemed necessary. The power to omit from the schedule was realised so that certain occupations and processes can be added for having temporarily hazardous impact on those employed. Those industries which do not comply with safety standards can be included in the bracket till such date when working conditions are deemed fit.

7. Punishment and its intensity

The 2016 amendments similar to the 1986 Act, criminalises and deems as cognizable offence any employment or permission in contravention to the Act. The criminalisation of the offence doesn't change, but the amendment proposes to vary in intensity⁴⁰. The 1986 Act treats parents, guardians and employers alike, whereas the 2016 amendments vary in treatment for the contravention committed by each of them.

The new Act brings with itself an amendment to Section 14 Sub-section (1) to increase the punishment to almost double. Additionally, the parents and guardians would be punished by the same section, except for the first instance of commission of offence. The parents and guardians would only be penalised the second time, the second time would be considered a repeat offence and would levy the penalties due for the offence and the extra term under section 14(2) as suggested. Since although it is the first time the parent was charged, but it's the second time an offence was made out.

The psychology behind special exemption for contravention (at first instance) by parents and guardians took inspiration from the recommendations of the Standing Committee Report, which suggested the idea that child labour was resorted to by the parent in the first place, owing to a financial incapacity and insufficiency and given their backwardness, a heavy penalty for such an act, would be undue, oppressive and capable of worsening their conditions.

However, the standing committee's suggestion was not completely adhered to since while penalizing for other criminal offences, financial background of the wrong doer is never considered and hence, such an easing for the offences under the Act would be unwarranted.

8. Rehabilitation Fund

Apart from the budget set aside for the rehabilitation and improvement schemes, the penalties collected on the contravention of the Act, would constitute a Fund known as the 'Rehabilitation Fund'. Such a fund established as per the newly introduced section 14B in the amended Act, would be set up in every district or two or more districts and for each child rescued from an offence under the Act, a fine of 15,00 would be deposited by the employer and additionally interest may accrue upon the deposited amount.⁴¹ It is an explicit mechanism under the Act to

³⁹ Child Labour (prohibition and regulation) Amendment Act 2016, Clause 7.

⁴⁰ Child Labour (prohibition and regulation) Amendment Act 2016, clause 18.

⁴¹ Child Labour (prohibition and regulation) Amendment Act 2016, clause 19.

ensure accurate appropriation of fines paid and to avoid the scope for corruption. It endows the child with the right to claim under the Act.

9. Implementation and Inspection

Both the 1986 Act and the amended Act have been criticised for having less provisions for implementation but the object of the amendment was accurate delegation of power. The addition of new Section 17 A⁴² empowers the Government to impose duties on a District Magistrate, the role of the District Magistrate shall be to ensure proper implementation of the provisions of the Act. Section 17 B⁴³ has also been inserted to the Act allowing the appropriate Government to make timely and periodic inspection and monitoring issues to the places where employment of children is prohibited specifically in hazardous occupations as listed in the schedule.⁴⁴

⁴²Powers of District Magistrate,

http://labour.gov.in/sites/default/files/THE%20CHILD%20LABOUR%20%28PROHIBITION%20AND%20REGULATION%29%20AMENDMENT%20ACT%2C%202016_0.pdf

⁴³ Power to inspect,

http://labour.gov.in/sites/default/files/THE%20CHILD%20LABOUR%20%28PROHIBITION%20AND%20REGULATION%29%20AMENDMENT%20ACT%2C%202016_0.pdf

⁴⁴ Child Labour (prohibition and regulation) Amendment Act, 2016, clause 20.

Short-comings of the new act

The new amendment is an inefficient and premature expression of exhibiting the protection of children and prohibition of child labour.

1. The Amendment doesn't address the target group.

1.1. Family and family enterprises

Section 3⁴⁵ in the Amended Act allows child labour in 'family or family enterprises'. The amendment overall benefits only a small number of children engaged in specific forms of child labour. It doesn't cater to the wider ambit of child labour issues prevalent in the country⁴⁶. Most industries today also delegate assignments and contracts to labourers who work from home. Any help done thereby would by definition not fall under a type of employment and would rather be termed as help to the family. When discussing the prohibition of child labour, the amended Act in its apparent prohibition of all forms of labour except for help rendered to family members and enterprises, omits the usage of specific terms under the ambit of 'hazardous occupations and processes'.

The 'help' rendered becomes the determining factor and It must be pointed out that such assignments and contracts make the labourer (parent of the child) an independent worker and the engagement of the child in working with the skill professed by him would escape the prohibition. These occupations are mostly of the nature of making of glass bangles, wooden carvings, bidi manufacturing, etc., which would earlier have been covered under the act. With the advent of the new amendments, the 83 entries in the schedule⁴⁷ are limited to an ambit which is not restrictive on the basis of harm or hazard but on whether contribution was in the form of aid or help.

Furthermore, the definition of family⁴⁸ under the amendment includes not only the child's parents but also includes the siblings of the child's parents' (explanation clause). Thus, the misuse of the section and the exploitation is not just limited to direct family but also extends to the child's indirect relatives.

Earlier, families gave birth to children rampantly with the view of selling their services from a young age to "thekedars" to receive a good sum of money in exchange.

The amendment again incentivises families to produce children for the purposes of expanding their businesses. In this way, the families can expand their human resources just by reproducing and hence, this allowance is counter-productive. The amendment also does not justify regular routine family work and doesn't provide boundaries for it. Instead, it gives way for caste based exploitation of labour⁴⁹. It promotes the child to take over the family business, and thereby proposes employment on the basis of caste, sect, family, and similar factors.

⁴⁵ *Supra* note at 30.

⁴⁶ Sarup & Sons, C.K. Shukla & S. Ali, Child Labour: socio-economic dimensions, ISBN: 81-7625-677-3.

⁴⁷ *Supra* note at 6;

⁴⁸ Child Labour (Prohibition and Regulation) Act 1986, S. 2(v).

⁴⁹ Human Rights Watch <https://www.hrw.org/reports/2001/globalcaste/caste0801-03.htm>.

The act also allows for arbitrariness in determining whether children are attending regular school apart from being employed as workforce in their family occupation.

2. Persistence of Harm and damage

The 2016 changes allowing child's engagements in helping his/her family post school hours and during vacations,⁵⁰ has provided for child engagement up to a certain limit of 'help' rendered, which is a legit provision even under the ILO guidelines.

The limitation under the ILO provisions⁵¹ are although that, such engagement mustn't interfere with the physical, mental and moral well-being of the child. The amendments though provides for 'help' which is in sync with international standards but they do not provide the same safeguards. It only aims at ensuring education of the child. The right to childhood is not restricted to education and the Act must aim at providing safeguards in all respect. The act doesn't ensure the maintenance of the child's physical, mental and moral well-being. The amendments are unable to foresee the ramifications of the inclusion of 'help' in the provisions, and hasn't provided for enough safeguards to prevent all possible damage or harm caused to a child.⁵²

3. Child engagement in the Entertainment industry

The burden a child faces in other forms of non-hazardous labour is not much different from that of the engagement in the entertainment industry⁵³. The amendment allows child to be "artist in audio-visual entertainment industry"⁵⁴

Caste based employment is not just a vice faced by the poor, but faced by everyone alike. In encouraging the employment of the child in the entertainment industry from a tender age, we encourage the child of an actor to conveniently opt for being an actor⁵⁵. When, as a child most hours are spent in work rather than education and play days, there is a tendency for it to determine the future. No monitoring with respect to number of hours after school are proposed, and may still tend to exploit the child in spite of a prohibition on child labour, under the Act.

4. Non-obvious hazardous industries and processes

The act only mentions a very limited number of hazardous occupations in which the child shall not be allowed to work and conveniently ignores radioactive industries such as battery making, electronic industries, mechanical industries, etc.⁵⁶.

⁵⁰ The Child Labour (prohibition and regulation) Amendment Act 2016, clause 5, amending s. 3(2)(a).

⁵¹ ILO Convention No. 182, Art 3.

⁵² Singapore Child Labour Report: <https://www.dol.gov/ilab/reports/pdf/hr2739singaporechildlabor.pdf>.

⁵³ Preeta Nilesh, Journal of humanities and social science, e-ISSN: 2279-0837.

⁵⁴ The Child Labour (Prohibition and Regulation) Act, s. 5, sub-s. 2, clause (b);

⁵⁵ Alok Srivastava, Television Shows – Child Labour in a new form?, http://www.cmsindia.org/mediacoverage/vidura_july.pdf.

⁵⁶ Swarup & Sons, S. Wal, Child Labour in various industries, Vol 3, ISBN: 81-7625-635-8.

This could enable employers and family members to exploit children by letting them carry out home based hazardous processes. Such works include forms of latent exploitation and trauma under unregulated and unauthorized labour conditions. Children are sensitive entities and regular work could cost on the child's health and life.

When even helping in domestic labour can challenge the mental and physical potential of the child, and leave a prolonged aftereffect in which case, the hazard is not avoided and the object of the Act is not fully accomplished.

Primarily, there is no limit, control, regulation or need for classification for employment of children in hazardous or non-hazardous industries. 'Helping' is the only determining factor in which children as resources can be employed in hazardous or non-hazardous industries. Some prima-facie non-hazardous industries have deep impact on the child after prolonged performance in the industry.

5. Impact on education

Children may lose focus in studies and on basic education of things that they must have the knowledge of, eventually destroying the child's retention power. They often may be forced to give up on education, pushing them on to the vicious cycle of poverty and underdevelopment. The provision for helping parents after school hours do not mitigate the effect or occurrence of child labour. If the child is to be employed in a certain sector, either by a formal contract, or as a matter of help to his parents, it would amount to undue engagement of the child, thereby affecting his/her childhood. Since, there are a lot of theories which synch education to not mere attendance of school but to a variety of factors.

The new act interferes with the equitable right to all children to a right to a decent and unexploited childhood. Children should be enabled and encouraged/allowed to engage actively in the school and as well as in other extra-curricular activities which enhances their overall self-esteem and dignity.

6. Low conviction rates and ambiguous prohibition

6.1. Regulatory difficulty

An NCLP report⁵⁷ pointed out that in the last 10 years, 7000 cases of child labour were reported and filed, but only 435 were convicted, out of them. Even the old Act which prescribed a crisp list of hazardous and non-employable sectors⁵⁸ for children, and put a clear ban on such employment, the administrative set up was unable to convict wrong doers effectively for it. The proposed amendment with the inclusion of the possibility to engage in activities to help family, without any regulatory mechanism, determining the number of hours and conditions of service makes it even more difficult for the authorities to punish those engaging in child labour

⁵⁷NCLP Guidelines, Ministry of labour and employment, <http://labour.nic.in/sites/default/files/RevisedNCLPguidelines01.04.2016.pdf>.

⁵⁸*Supra* note at 12.

activities. The ambiguous provision, of permitted and non-permitted engagements, give scope for the already low conviction rates to fall further, thereby, in effect, decriminalising child labour.

Moreover, the flexible list of hazardous occupations and processes⁵⁹ as per the Act for adolescents may similarly turn out counterproductive, given the already weak implementation in terms of conviction rates.

The prohibition of child labour is implementation intensive, and that was realised the introduction of the 1986 Act, but no improvement on such a front was enforced. No procedure explicitly delegating authority and providing guidelines for their operation was proposed and hence implementation cannot be said to have been ensured by the Act.

6.2. Impact on Rehabilitation

The object of strict criminalising mechanism would indicate, higher quantum fines collected, which would whereby not only rehabilitate those subject to child labour, but also uplift the segment of poor who belong to backward classes. With ambiguity in criminalisation of forms of labour engaging children, the weak administration would render the amount of conviction to fall considerably, thereby impacting the sum amount in the rehabilitation fund.

The Act was aimed at bettering the conditions of the Dalit and backward communities (mostly victims of child labour), through the rehabilitation fund. Low level of convictions, with no real change in the rate of child employment, would prevent the rehabilitation and upliftment of these people, thereby allowing poverty and backwardness to subsist, and hence not eradicating the root cause of such engagement.

7. Incapacity and inability of the new act to match International standards-

Though India is one of the founding members of the International Labour Organization, (ILO) it has been unsuccessful in ratifying to the two main child welfare convention namely Convention 138⁶⁰ and Convention 182⁶¹ of the ILO.

Convention 138 provides that the minimum age for admission to employment shall not be less than the age of completion of compulsory education⁶² and the Convention 182 provides for prohibiting employment of all children below the age of 18 years in occupations exhibiting worst forms of child labour⁶³

However, the primarily issue keeping the Government away from the ratification is that the Convention provides for prohibiting employment of all children below 18 years of age, whereas,

⁵⁹*Id.*

⁶⁰ ILO Convention 138 - Minimum Age Convention 1973
Convention concerning Minimum Age for Admission to Employment (Entry into force: 19 Jun 1976).

⁶¹ILO Convention 182 - Worst Forms of Child Labour Convention 1999
Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Entry into force: 19 Nov 2000).

⁶²*Supra* n.60.

⁶³*Supra* n.61.

according to the CLPRA of 1986 in India, persons above the age of 14 years can be engaged in hazardous and dangerous occupations and processes.

7.1. International limits to child labour not observed

The amendment seems arbitrary and the act doesn't clearly specify the number of hours of work which the child shall be allowed to contribute in. The standards as prescribed by the ILO minimum age convention and the UNICEF Rights of Child (both of which India is signatory to), a child in the age group of 5-11 is permitted to be engaged in 1 hour of economic activity or 28 hours of domestic activity per week, and a child in the age group of 12-14 years is permitted to contribute in a week 14 hours to any economic activity and 42 hours to any domestic labour. These standards accommodate for any work the child is willing to perform in helping his parents. The limitation in their contribution hasn't found a place in the amendments and with no regulation in the amount of work rendered, or working conditions, the international standards cannot be said to have been met with.

8. **Backward classes upliftment**

Mostly cited as a positive, that both the 1986 Act and the amendments do not differently provide for the upliftment of the backward communities such as SCs, STs, and OBCs. It is seen usually that the areas comprising majorly of such communities and tribes tend to engage in such activities more, and hence there is a need to cater specifically to them.

The decrease in backwardness, poverty and realisation of the need for education are elements which will mitigate child labour engagements and hence targeted upliftment, may a good way to ensure positive development.

9. **Poverty and low wages not addressed**

There were no steps taken to better the conditions of the parents or the family of the child engaging in prohibited activities. It must be understood that children opt or made to opt to such activities only owing to their family's financial status. The low income rates of the families, if not bettered, will not effectively remove the need for child labour, and hence families will find ways to engage their children to mint economic gains. Better wages for parents must be ensured, to remove the need for employing their children to help their financial position.

10. **Varied imposition of penalties not justified**

The amendment exempts the parents and guardians from punishment on the first count of an offence under the Act.⁶⁴ This was proposed in light of their economical backwardness. Crimes are not limited to a particular social strata or financial status of individuals but poor

⁶⁴ Child Labour (Prohibition and Regulation) Amendment Act, s. 14(1B), clause 18.

people resort to criminal activities if survival is at stake. These poor people not only resort to the crime described under this Act, but several other crimes under other penal acts, where no differential treatment is provided for the commission of offence, in spite of their economical backwardness. It is hence argued, that criminology doesn't in essence sympathise with such concepts, and a cognizable offence as that described in the Act is unjustified in exempting the parents and guardians from punishment.

Observation

1. If the said purpose of the act is to preserve Indian art and culture by enabling parents with the traditional skill and knowledge to pass them to their children. This transfer of skill should be through reform and investment in education. Moreover, the NCLP provided schools aim at providing one vocational teacher for every 20 students. The reality as seen in several reports⁶⁵, schools were found lacking these vocational trainers. In order to protect art and culture, craftsmen must be hired to promote their trade. In that way, it would give the family an additional source of income, and promote the traditional skill, without delving into the ambiguity of “help to the family” to justify propagation of traditional skill.
 2. Budgets for educational schemes and policies should be restored
 3. Mid-day meal scheme schemes should be re-instituted.
 4. Secure housing and rehabilitation should be provided to children through the Sarva Siksha Abhiyan boarding schools to homeless children
 5. To address the intense issue of relieving adolescents from work requires a proper established legal framework not a superficial token effort to satisfy an international obligation.
 6. Need to have a standardized age to define “Child”-
 7. Inspections required to take place in places of employment
 8. Vigilance and monitoring committee needs to be established
- The scope of permitted forms of engagement which can be classified as help to the family, can be expanded or restricted as per situations but this requires an active vigilance and monitoring committee which examines the conditions of service. The Act brings itself a need for active implementation and monitoring, but fails to provide for the same.

⁶⁵ Pundarik Mukhopadhaya, Uttam Bhattacharya & Craig Mac Millan, “Education of Child Labour in India – West Bengal [2012].

Conclusion

Even though the new amendments were proposed to bring about positive changes in the legislation, with the view to safeguard and protect children from exploitation whilst guaranteeing them their right to education as being established under Article 21 A and Article 45 of the constitution and the RTE Act of 2009, legit concerns about the misuse and exploitations of the new provisions have been raised by various experts, child activists, member of parliament, etc.⁶⁶.

The opponents of the new act believe that these amendments could exponentially transform the lives of the children being engaged in any kind of employment. It is believed to have very little overall benefit to children yet in turn have some serious and grave repercussions, since it would encourage employers, parents or guardians to use/exploit children for their personal gains and benefits, overlooking/ reducing the focus off their right to education.

This would not only reduce the quality of learning and retention but it would also be very difficult for the children belonging to poor and underprivileged communities to compete with the privileged children, propagating the vicious loop of poverty and perpetuating caste and hierarchy.

Hence, it might be a wrong decision/lost opportunity to provide justice to the marginalized children in the Indian democracy and thus, eradicating poverty.

⁶⁶Mukesh Eswaran, Fertility in Developing Countries [2004].

References

1) PRIMARY SOURCES

a. Legislations

Indian legislations:

- 1) Child Labour (prohibition and regulation) Amendment Act, 2016
- 2) Child Labour (prohibition and regulation) Act, 1986
- 3) Indian Constitution 1950, art. 24.
- 4) Right of Children to Free and Compulsory Education Act of 2009
- 5) Juvenile justice (care and protection of children) Act, 2013

International legislations:

- 1) ILO Minimum Age Convention no. 138, 1973,
- 2) ILO Worst Forms of Child Labour Convention no. 182, 1999
- 3) Convention on the Rights of the Child
- 4) Universal Declaration of Human Rights (UDHR)

b. Reports

- 1) Child labour facts and figures: An analysis of census 2001, Indus child project, [2007]-
http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@sro-new_delhi/documents/projectdocumentation/wcms_125442.pdf.
- 2) PRS Legislative Research: <<http://www.prsindia.org/billtrack/the-child-labour-prohibition-and-regulation-amendment-act-2012-2553/>> [2012].
- 3) Ministry of Human Resource Development, Govt of India, Right to education <<http://mhrd.gov.in/rte>> (Accessed on Fri, 03/04/2016 - 16:32)
- 4) Planning Commission Report on the 12th Five Year Plan (2012-17)
- 5) Ministry of Human Resource Development, Govt of India-
http://mhrd.gov.in/sites/upload_files/mhrd/files/Inputs_Draft_NEP_2016_0.pdf, [2016].
- 6) Laws Governing Exploitative Child Labor Report—Singapore
<https://www.dol.gov/ilab/reports/pdf/hr2739singaporechildlabor.pdf>
- 7) NCLP Guidelines, Ministry of labour and employment,
<http://labour.nic.in/sites/default/files/RevisedNCLPguidelines01.04.2016.pdf>.

c. Journals

- 1) Diana Kruger, Rodrigo R. Soares, & Matias Berthelon, Household Choices of Child Labour and Schooling: A Simple Model with Application to Brazil, 2007 (IZA DP NO. 2776); Budhwani et al. [2004]; Bhat et al. [2009]; Lana Osment : Child labour – the effect on child, causes and remedies to the revolving menace, *Springpublication*, [2014].
- 2) Caldwell, J. Mass Education as a Determinant of the Timing of Fertility Decline, *Population & Development Review* (1980), 6, 225-255; Weiner, M., The Child and the State in India (Princeton, NJ: Princeton University Press) [1991].
- 3) Jean Marie Baland & James Robinson, “Is Child Labour Inefficient”.
- 4) Pundarik Mukhopadhaya, Uttam Bhattacharya & Craig Mac Millan, “Education of Child Labour in India- West Bengal [2012].
- 5) Dr. Ashhad Ahmad, Child Labour in India: A Politico-Legal Study, *Kalpa Publications* [2004]
- 6) Sarup & Sons, C.K. Shukla & S. Ali, Child Labour: socio-economic dimensions, ISBN: 81-7625-677-3.
- 7) Preeta Nilesh, Journal of humanities and social science, e-ISSn: 2279-0837
- 8) Mukesh Eswaran, Fertility in Developing Countries [2004].

2) **SECONDARY SOURCES**

a. **Books**

- 1) Uma Sharma, Child Labour in India [2006]
- 2) Amitabh Ray Law Relating to Child Labour and Welfare [2010]
- 3) S.K. Pachuli Children and Human Rights [2011]

b. **Websites**

- 1) Nita Bhalla, Reuters <<http://in.reuters.com/article/india-children-labour-idINKCN10619V>> (Last accessed July 27, 8:49am IST).
- 2) International Labor Organisation, (definition of child labour), <<http://www.ilo.org/ipec/facts/lang--en/index.htm>>
- 3) CLPRA, <http://labour.gov.in/sites/default/files/THE%20CHILD%20LABOUR%20%28PROHIBITION%20AND%20REGULATION%29%20AMENDMENT%20ACT%2C%202016_0.pdf>
- 4) Human Rights Watch <<https://www.hrw.org/reports/2001/globalcaste/caste0801-03.htm>>.
- 5) Alok Srivastava, Television Shows – Child Labour in a new form?, <http://www.cmsindia.org/mediacoverage/vidura_july.pdf>.