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Critical Analysis of Child Labour Prohibition & Regulation Act, 1986

Lara Joanna Macedo Borges^a

^aSymbiosis International University, Pune, India

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This article is an attempt to analyze the strengths, shortcomings, and loopholes of the Child Labour Prohibition & Regulation Act, 1986. With subsequent amendments having taken place after the year 1986 i.e., in 2012, 2015, and 2016, efforts are directed to analyze whether such changes are truly beneficial or a step in the reverse direction. The impact of COVID-19 has been felt on the ever-increasing child labour practices. This makes it the need of the hour to critically analyse the provisions of the act. This article goes on to explain some pertinent definitions, with specific emphasis on the responsibilities of the employer which is often flouted. Lastly, the article focuses on futuristic corrective measures, having the potential to contribute to reducing child labour. This is propagated by the International Labour Organization's (ILO) mission, United Nations General Assembly Resolution, and allied projects to eradicate child labour.

Keywords: *child labour, historical evolution, amendments, responsibilities of employer.*

INTRODUCTION: HISTORICAL EVOLUTION

Child labour is a prominent constituent of the workforce and has its roots legally since 1881 when the *Indian Factories Act* came into existence. It set the “*minimum age for employment at*

seven years, along with a maximum of nine hours of work per day”.¹ Over time there have been developments of restricting “double employment” of children, adhering to certain criteria to receive a ‘certificate of fitness’ and even subsequent amendments in 1891 and 1911 to the Factories act, to make the employability of children more stringent, thereby protecting such children who are at the mercy of such employers. In 1929, there were fruitful steps taken by the *Royal Commission on Labour*, on re-defining criteria for children’s employability across industries such as tea plantations, mines, ports, carpets, and bidi making.

The “*Employment of Children Act, 1938*”, was the first legislation introduced to regulate the working conditions and terms of children.² The act was given birth from the *International Labour Conference*, in 1937 during its twenty-third session. In 1944, there were studies conducted by the *Labour Investigation Committee*, and it was deduced that there still is the existence of child labour in small-scale industries- tobacco, carpet weaving, and glass industries, which pose a detriment to children. There was still the existence of isolated legislations which tackled the issue but flouting of these provisions was prevalent.

In 1979, the “*Gurupadaswamy Committee on Child Labour*”, recommended the need for a law that would operate uniformly while emphasizing who a child is, what activities can a child be permitted to undertake, and the penalties for any violations. This was taken forward by the “*Sanat Mehta Committee*”, in 1986 which led to the formulation of the Child Labour Prohibition & Regulation Act in the same year. A relevant international convention would be the “*United Nations Convention on the Rights of a Child*”, in 1989 which has been ratified by India in 1992. Article 32 of the Convention highlights how children must be protected from “*economic exploitation*”, which includes any facet- be it mental, physical, or social growth.³

OBJECTIVE OF LEGISLATION

¹ Indian Factories Act 1881

² Employment of Children Act 1938

³ United Nations Convention on the Rights of a Child 1989, art 32

There were several acts in existence up till 1986 which prohibited employment of children below 14 years (in factories)⁴ and below 18 years (in mines)⁵ and other specific acts. However, these acts only laid emphasis on the permissible age of children and failed to provide a course of action on permissible activities, banned activities, and steps employers should mandatorily undertake to avoid exploiting children.

Objectives of the legislation are:

- Prohibit employment of children, especially if they have not adhered to the minimum criteria of completing 14 years under specific acts governing their respective occupation.
- Introduce a special procedure (which isolated employment acts fail to lay down) on prohibited activities or businesses for children.
- Regulate the working conditions of children in permissible activities.
- Introduce stringently and intensified forms of penalties to deter employers from circumventing the act.
- Provide a uniform meaning to the definition of a 'child', which will be applicable to children employed in respective industries.

The attainment of these objectives was subject to a few *social apprehensions*:

- The proviso clause under Section 3 of the concerned act states that “*provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or recognition from Government*”⁶. This is under contention because the act of performing any kind of work at home does not make it a safe one.
- The act is also a somewhat attempt to regularise and regulate child labour (by providing it a legal backing) just because it exists.
- Since there has been an act introduced in furtherance of prohibiting child labour, a mere attempt on paper does not result in the adoption of a holistic approach. Other allied

⁴ Factories Act 1948, s 67

⁵ Mines Act 1952, s 45

⁶ Child Labour Prohibition & Regulation Act 1986, s 3

areas which need attention are economic deprivation and ensuring initial years of education of children (enrolment and retention) are met with.

SUMMARY OF LEGISLATION

This legislation broadly covers the following aspects:

- *The two crucial definitions:*

1. Child: A person who has not attained the age of 14 years.⁷
2. Occupier: "A person who has ultimate control over the affairs of the establishment or workshop".⁸

- *Prohibition to employ children in specific business activities: (Section 3- Section 5)*

1. Children will not be able to engage in activities under Part A and Part B mentioned in the Schedule.
2. The above restriction is not applicable to any children in a workshop where the business is being conducted by his family. However, the child must first attend school during the day before lending a hand.
3. A provision for a "Child Labour Technical Advisory Committee", has been set up to provide advice to the Central Government.

Some of the prohibited occupations are: (Part A)

- "Transport of passengers, goods or mails by railway
- Work in a catering establishment at a railway station
- A port authority within the limits of any port
- Slaughter Houses"⁹

Some of the prohibited processes are: (Part B)

- "Bidi-making

⁷ Child Labour Prohibition & Regulation Act 1986, s 2 (ii)

⁸ Child Labour Prohibition & Regulation Act 1986, s 2 (vi)

⁹ Child Labour Prohibition & Regulation Act 1986, Part A

- Carpet-weaving
- Building and construction industry
- Soap manufacture
- Tanning
- Wool-cleaning¹⁰

RESPONSIBILITIES OF THE EMPLOYER

Regulations on the terms and conditions of the children: (Section 6- Section 13)

- No child should work for more than three hours in a row, without taking a break for an hour.¹¹
- The total number of hours that a child can work in a day is six, which is inclusive of the time worked, an interval of rest, and time spent waiting for work to be allotted.¹²
- No child should be put to work from “7 PM – 8 AM”.¹³
- Children should not be made to work in more than one establishment at a time, neither should they work overtime.
- The employer is required to give “notice to Inspectors, maintain a register and display the notice”.¹⁴

Some of the Health and safety conditions are: (Section 13)

- “cleanliness in the place of work and its freedom from nuisance
- disposal of wastes and effluents
- ventilation and temperature
- dust and fume
- artificial humidification
- lighting

¹⁰ Child Labour Prohibition & Regulation Act 1986, Part B

¹¹ Child Labour Prohibition & Regulation Act 1986, s 7 (2)

¹² Child Labour Prohibition & Regulation Act 1986, s 7 (3)

¹³ Child Labour Prohibition & Regulation Act 1986, s 7 (4)

¹⁴ Child Labour Prohibition & Regulation Act 1986, s 11

- drinking water
- latrine and urinals
- spittoons
- fencing of machinery”¹⁵

Penalties:

Penalty for Imprisonment:	<p>Minimum: 3 months</p> <p>Maximum: One year</p>
Fine imposed:	<p>Minimum: Rs. 10,000</p> <p>Maximum: Rs. 20,000¹⁶</p>

The only person capable of taking cognisance of such a matter is the *Metropolitan Magistrate*.¹⁷

AMENDMENTS

The amendments to the 1986 act occurred in 2012, 2015, and finally in 2016 which remains to be in force. Reasons for introducing the following amendments and changes are as follows:

1. *2012 amendment:*

- Institute a complete ban on employment of children below the age of 14 years, except where the child helps his family after school. This was introduced in consonance with the *Right of Children to Free and Compulsory Education Act, 2009*¹⁸.

¹⁵ Child Labour Prohibition & Regulation Act 1986, s 13

¹⁶ Child Labour Prohibition & Regulation Act 1986, s 14

¹⁷ Child Labour Prohibition & Regulation Act 1986, s 16 (3)

¹⁸ Right of Children to Free and Compulsory Education Act 2009

- A complete ban on the employment of adolescents (between the age of 14-18 years) while engaging in hazardous activities.

2. 2015 amendment:

- If the parents or guardians of children or adolescents have committed an offence (due to “poverty, neglect, trafficking, lack of schools”, then they will be exempted from liability if it is an offence committed for the first time.
- If the parents have repeated their offence, then they shall be liable to a fine of Rs. 10,000.

3. 2016 amendment:

- The number of hazardous activities has been reduced from 83 to 3.
- Provision for a “Child and Adolescent Labour Rehabilitation Fund” which is used to treat such victims.

JUDICIAL RESPONSE

In “*Raj Holmes Pvt. Ltd vs State of Madhya Pradesh*”, the Petitioner was engaged in selling houses, and the labourers were employed for manual work on a contractual basis. The “Assistant Labour Commissioner of Bhopal” held the Petitioner liable for violating Section 3 of the concerned act¹⁹, (which highlights non-permissible activities for children) and ordered him to pay “an amount of Rs. 20,000 per labour and to release any child labourer in employment”.

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In “*Hemendra Bhai vs the State of Chhattisgarh*”,²¹ Plaintiff was a partner of a firm and was in charge of manufacturing and selling the business of bidis. A surveyor conducted an enquiry and found an eleven-year-old boy making bidis. This was then intimated to the Assistant Labour Commissioner, and Plaintiff was ordered to pay a sum of Rs. 20,000 to the child, along with the educational expenditure for the child and others alike. This was challenged by the

¹⁹ Child Labour Prohibition & Regulation Act 1986

²⁰ *Raj Holmes Pvt Ltd v State of Madhya Pradesh* (2004) ILLJ 690 MP

²¹ *Hemendra Bhai v State of Chhattisgarh* 2003 (97) FLR 402

Plaintiff. The High Court held that a firm has no control nor has exercised any supervision over the workers who employed the child. If the place where the worker was conducting the business was considered to be a '*workshop*', then the worker would be considered to be the '*occupier*'. Thus, the occupier was held to be liable as he had "ultimate control over the affairs of the workshop".

CRITICAL APPRAISAL

The different amendments introduced in the aforementioned years have undoubtedly materialized stringent penalties, instituted a comprehensive list of non-permissible activities, and meticulously explained the mandatory terms and conditions to be enforced. However, it can be mentioned that children can help in a family business after they have attended school. The above provision provides a green signal to children falling under this category, thereby permitting such activities. But in its truest sense, it goes against the very essence of this act.

Moreover, the 2016 amendment gave rise to the reduction of hazardous activities from 83 to 3 which is a step in the reverse direction. With this decision, activities involving "chemical mixing units, cotton farms, battery recycling units" are now permissible. By widening the scope of permissible activities for children and adolescents, we are also increasing opportunities for child labour, making this a very contentious move. Another glaring aspect is that the term "*hazardous*" has not been defined in the act. The act accounts for permissible occupations and non-permissible occupations making it an *exhaustive list*. Had it been an *inclusive list*, a lot more prohibited occupations and processes would have fallen within its ambit which would have been a good step.

CONCLUSION

The United Nations General Assembly has adopted a resolution by declaring "*2021 as the International Year for the Elimination of Child Labour*". Member states must compulsorily take steps to achieve their goal and eliminate all its forms by 2025. The International Labour

Organization in 2021 said that *“Covid-19 pandemic has not only significantly exacerbated this situation but threatens to undo years of achievements in the fight against child labour.”*²²

With education taking place virtually, parents are facing additional financial strain to purchase electronic mediums to further the child’s education. For most families who are at the brink of poverty and economic hardship, employing children and adolescents are a way to increase the household income. The European Union has been cognizant of such matters and has introduced *“CLEAR Cotton project”*, ever since schools have been closed. This project aims at re-joining children’s education, with trained teachers who will aid in providing tutorial classes, spread awareness about sanitary steps and most importantly, educate students about the risk of the virus.

For a country like India, 80% of child labour surfaces from rural areas. Thus, the Panchayat can play an integral role by collecting funds via donations and drives to fund secondhand laptops for children’s education during the pandemic. Additionally, the Panchayat can team up with Village Education Committee’s (VEC) to aid the growth in children’s education and be a source of inspiration for other rural areas.

²² Federica Versea, ‘The Year to End Child labour’ (*Humanium*, 23 March 2021) <<https://www.humanium.org/en/the-year-to-end-child-labour/>> accessed 22 August 2021