



Constitutional rights of child labor in India

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Abstract

Poorer caste members are more likely to be forced into child labor. In India, the number of children working is rising. Young people labor in extremely dangerous situations. A child's normal development—physical, intellectual, emotional, and moral—is hampered by child labor. When children are growing, carrying heavy loads or being forced to work long hours in unnatural positions can permanently deform or disable their bodies. Considering the scope and complexity of the issue, putting kids to work in any capacity stunts their development. The goal of legislative provisions is to stop the threat of child labor. Child labor is a significant component of the labor force, particularly in developing nations. These children represent the most marginalized group in society, compelled to enter the workforce at a young age in order to make meager wages or assist with household chores, often at the expense of their own personal growth. This article reviews the Indian constitutional safeguards for children and makes an effort to comprehend the various forms of child labor in India. The best way to combat child labor is to implement a number of strategies, such as encouraging kids to enroll in and stay in school, providing adult learners with opportunities for income generation, and running concurrent poverty eradication campaigns. In order for every child to reach their full potential and develop into healthy, contributing adults, the government must take all necessary steps and provide an environment that is supportive of their survival, growth, and development.

Keywords: UNICEF, employment, fundamental, decisions

Introduction

A person who has not reached the age of fourteen is considered a "child" under the Child Labor (Prohibition and Regulation) Act, 1986. A child at such a young age is expected to play, learn, and live carefree. But expectations rarely match reality because of the nature of things. Children are forced or compelled to work in dangerous environments and conditions that endanger their lives. Child labor impairs a child's ability to fully develop mentally and physically, which slows down a child's growth. According to the 2011 census, there are 10.1 million child laborers in India, 5.6 million of whom are males and 4.5 million of them are girls. It is extremely important to provide children with whatever they need, from fundamental needs like food, shelter, and clothing to social needs like education and other things, as children make up the future youth of India. In a complicated society like India, the right legislative measures are required to achieve this. A number of laws have been passed in India to address the problem of child labor. You'll learn about all the pertinent laws and rules in India toward the end of the article.

Definitions of child labor those are important

Child labor is defined by the International Labour Organization (ILO) as "work that robs children of their childhood, their potential, and their dignity, and that is detrimental to physical and mental development." It refers to labor that is risky and damaging to children on a mental, physical, social, or moral level, or work that interferes with their ability to attend regular school, concentrate in class, or have a healthy childhood.

Child labor is defined differently by UNICEF. According to UNICEF, a child engages in child labor activities if, between the ages of 5 and 11, they perform at least one hour of economic activity or at least 28 hours of household

chores per week, and if they perform at least 14 hours of economic activity or at least 42 hours of economic activity and domestic chores per week, respectively. In a different report, UNICEF makes the following recommendation: "Children's work needs to be regarded as occurring along a continuum, with positive work - encouraging or strengthening children's development without interfering with their schooling, recreation, and rest - at the other end. Between these two extremes, there are enormous fields of endeavor that need not harm a child's growth.

Child labor is defined as "participation of a child less than 17 years of age in any economically productive activity with or without compensation, wages, or profit" by the Census 2001 office in India. Physical, mental, or both types of participation are all possible. Part-time assistance or unpaid employment on a farm, family business, or in any other type of economic activity, such as farming and producing milk for sale or household use, is included in this category. Child laborers in India are divided into two categories by the government: Those who work six months or more each year are considered main workers. Additionally, marginal child workers are those who work for less than six months out of the year, regardless of when they work.

Reasons why children work: When considering the situation in India, the following significant factors might be considered as reasons of child employment.

Poverty: Since children have historically been seen as a source of food, support, and independence for their families, it is impossible to regulate child labor in developing nations. Parents are unable to support their families and feed their children due to poverty, illiteracy, and unemployment. As a result, low-income parents put their kids to work in cruel conditions for lower pay.

The majority of people in the country are poor. Poor parents make their kids work at an early age since they can't afford to pay for their education. They are actually completely cognizant of the effects brought on by often losing loved ones to poverty. They use their young children as labor in their factories, workplaces, and homes. To help their low-income family, they must get to work as quickly as feasible. These decisions are made solely to give their family a subsistence-level existence. However, because they rob kids of their youth at a young age, such decisions harm children's physical and emotional health.

Previous Debts: People in India are forced to borrow money due to their dire economic circumstances. The illiterate populaces turn to money lenders and occasionally mortgage their possessions as repayment for the debt they incur. However, because of their insufficient income, debtors have a very tough time repaying their debt and the interest. The debtors' children are dragged into the vicious cycle of poverty by the debtors' need to work nonstop for the creditor in order to pay off their obligations. Some kids are compelled to labor because their families are under financial stress to provide for them with food and housing as well as to pay off debt that their parents owe. In the meantime, some kids are forcibly sold into slavery.

Household child labor

- According to reports, 74% of child domestic workers in India are between the ages of 12 and 16. They are both boys and girls that perform everyday errands for wealthy homes as domestic helpers.
- These kids are forced to assist other families at a time when they should be in school and playing with friends. The main factor in the majority of cases is poverty.
- Parents typically give their approval in exchange for financial assistance and a safe environment for their kids. According to statistics, girls make up the majority of domestic workers, and approximately 20% of all domestic workers hired are under the age of 14.
- These kids work as live-in servants for the family, doing chores including cooking, cleaning, looking after the family's pets or young children, and other jobs.

Child labor with bonds

- A youngster is said to be working as a slave if they are being made to do so in order to pay off their parents' or guardians' debt.
- Strong government control and laws against it have considerably reduced the occurrence of bonded child labor in recent years, but it still happens clandestinely in remote locations.
- It is more likely that children who reside in rural areas and work in agriculture will be forced to this type of labor. The siblings of poor farmers who are severely indebted to lenders may consent to work as slaves for wealthy lenders.
- Many different enterprises utilized thousands of bound laborers up to the last 10 years, but as of today, their numbers have significantly decreased, and the government claims that no longer exists any bonded child laborers.

India's legal working age

Employing minors under the age of 14 for any form of labor is a crime that carries a potential 2-year prison sentence, with the exception of some family-based occupations. Between the ages of 14 and 18, teenagers are not allowed to work in any hazardous jobs. The youngster Labor (Prohibition and Regulation) Amendment Bill, 2012 permits both the parents and the hired youngster to receive punishment.

Younger than 14-year-olds

- There are no professions or processes that children under the age of 14 may participate in, and they are not eligible for employment. However, this restriction won't apply if a child helps his or her family or family business after school or during a break (which is not a hazardous activity). All of a child's grandparents as well as their mother, father, brother, sister, mother's sister, father's sister, and other relatives make up their family.
- A child under the age of 14 may also work as an artist in the audio-visual entertainment industry, which includes advertisements, movies, television shows, and any other form of entertainment or sport excluding the circus, provided that specific limits and safety procedures are followed

Teenagers (14 to 18 years old)

The Child Labour (Prevention and Regulation) Amendment Act allows adolescents to participate in non-hazardous tasks and procedures. Before hiring an adolescent, the business must comply with the following requirements:

- The work schedule for each day should be planned so that no block of time exceeds three hours.
- The teenager must take a rest for at least an hour after working for three hours.
- Teenagers are only permitted to work a maximum of six hours a day, excluding any waiting time.
- Teenagers are not allowed to work between the hours of 7 p.m. and 8 a.m.
- They can't be made to work longer hours.
- They are not permitted to work concurrently at more than one place of business.
- Teenagers must get a full day off every week.

Indian legislation on child labor

The necessity for legislation and rules to forbid the harmful practice of child labor was recognized when, in the 20th century, child labor became so prevalent that stories of industrial accidents and risks killing innocent children splashed all over the press. Today, many laws exist to condemn and forbid child labor, including:

The 1948 Factories Act

Children under the age of 14 are not allowed to work in factories under the Act. The law also set restrictions on who, when, and how long pre-adults between the ages of 15 and 18 might work in any factory.

The 1952 Mines Act

The Act forbids the employment of minors in mines under the age of 18. Since mining is one of the most hazardous professions and has historically resulted in numerous fatal

accidents involving children, it is absolutely prohibited for kids.

A 1986 law called the Child Labor (Prohibition and Regulation) Act

The Act forbids hiring children under the age of 14 for dangerous jobs that are listed on the law's list. In 2006 and again in 2008, the list was increased.

Act of 2000 Concerning the Care and Protection of Children in Juvenile Justice

By virtue of this rule, it was illegal and subject to a prison sentence for anybody to procure or hire a minor for any risky work or as a bond. This law imposes penalties on individuals who use child labor in violation of earlier legislation.

In accordance with the 2009 Right of Children to Free and Compulsory Education Act

All children between the ages of six and fourteen are required by law to attend free, public schools. This Act also required that children from underprivileged groups and children with physical disabilities receive a quarter of the seats in every private school.

National child labor policy framework

Indian Constitutional provisions relating to child labor-

▪ Mandatory instruction

All Indian citizens between the ages of six and fourteen are required to receive free, compulsory education, as stated in

Article 21(A) of the Indian Constitution^[1]

▪ Prohibition of forced labor and human trafficking

Article 23 forbids the trafficking in human people, the use of beggars, and other forms of forced labor, and anyone discovered in violation of this provision may suffer legal repercussions.

▪ Preventing the use of children as laborers in factories

The employment of minors under the age of 14 in dangerous factories that could cause them long-term physical and mental harm is further expressly prohibited under Article 24^[2].

▪ Protection against coercive elements

Article 39(e)'s^[3] directive principles of state policy specify that individuals should not be forced by financial need to work jobs that are not suitable for their age or physical ability or to take advantage of the health and strength of workers, men and women, and children at a young age.

▪ Fundamental obligation

Every person, including parents and guardians of children, has a fundamental obligation to provide their offspring with educational opportunities between the ages of 6 and 14, in accordance with Article 51A(k) of the Constitution^[4], which is a part of the Directive Principles of State Policy (DPSP).

▪ The state's responsibility is to improve nutrition

The State must improve the standard of living, nutrition, and public health in accordance with Article 47^[5].

▪ Defending against exploitation

Children must be protected against exploitation and other forms of abandonment, per Article 39(f)^[6]. They must also be provided the opportunity and means to develop freely and with dignity. The duty to raise the threshold for livable circumstances, food quality, and public health has been handed to the state.

Child care

Article 243G read with Schedule 11 seeks to institutionalize child care by attempting to entrust programs of women and child development to panchayat (item 25 of Schedule 11), in addition to education (item 17), family welfare (item 25), health and sanitation (item 23), and other items with a bearing on the welfare of children.

Domestic legislation pertaining to child labor

1948 Minimum Wage Act

A number of jobs that have been selected by the relevant authorities and are listed in the schedule of the Minimum Wages Act, (1948), establish minimum pay rates. Adult, adolescent, and child minimum wage rates were established under the Act.

1951 Plantation Labor Act

A kid (under the age of 14) or a teenager (aged 15–18) cannot be engaged for labor unless a doctor certifies that they are fit to do so, according to the Plantation Labour Act of 1951. The certificate of fitness may be issued by a certifying surgeon who has determined that the subject of his examination is qualified to work as a child or as a teenager. This Act makes it clear that the employer is in charge of providing housing, healthcare, and recreational amenities.

1958 Merchant Shipping Act

The Merchant Shipping Act of 1958 prohibits the employment of children under the age of 15 on ships, with the exception of school or training ships, family-owned ships, home trade ships of less than 200 tones gross, or ships where the child will work for a meager wage and be supervised by his father or another nearby adult male relative.

Act of 1966 governing the employment conditions of beedi and cigar workers

All industrial facilities where any manufacturing activity linked to the production of beedis, cigars, or both is currently being done or is normally being done, with or without the use of power, are covered by the Beedi and Cigar Workers (Conditions of Employment) Act, passed in 1966. Children under the age of 14 are not permitted to work in these establishments under the Act. Between the hours of 7 p.m. and 6 a.m., minors between the ages of 14 and 18 are not permitted to work.

Act of 1986 prohibiting and regulating child labor-

- In accordance with the kid Labor (Prohibition & Regulation) Act of 1986, anyone under the age of 14 is referred to as a "child."
- The employment of children in 57 jobs and 13 activities is prohibited by the Act's Schedule.

- In order to make suggestions for the addition of new jobs and operations to the Schedule, the Act creates a Technical Advisory Committee.
- The Act (Part III) regulates all jobs and activities whose labor conditions aren't specifically prohibited by it.
- If Section 3 of the Act is violated, the offender may be sentenced to a period of imprisonment of at least three months and up to one year, a fine of at least Rs 10,000 and up to Rs 20,000, or a combination of the two.
- The Central and State Governments implement the provisions in each of their respective spheres of influence.

Act of 2016 Amending Child Labor (Prohibition & Regulation)

The government's Child Labor (Prohibition & Regulation) Amendment Act of 2016 became effective on January 1, 2016. Anyone under the age of 14 cannot be hired, according to the Amendment Act. The amendment also restricts teenagers' working circumstances when it is not prohibited to hire them for hazardous tasks and processes between the ages of 14 and 18. The amendment strengthens the penalty for such offenses by making it unlawful for enterprises to employ any child or teenager in violation of the Act. The modification grants the competent Government the power to provide a District Magistrate the necessary authority and impose the necessary obligations in order to achieve the effective implementation of the provisions. The State Action Plan has additionally been made available to all States and UTs in order to guarantee that the Act is implemented successfully.

Period and work hours

No youngster may be made to work in any establishment for more than the allotted number of hours (Section 7).

Each day's work time cannot exceed three hours, and no child is allowed to go past that point without taking a break that lasts at least an hour. Between the hours of 7 p.m. and 8 a.m., no kid shall be permitted or compelled to labor.

No child shall be required to work overtime or be allowed to do so.

Penalties

A violation of Section 3 is punishable by a term of imprisonment of not less than three months or more than one year, or by a fine of not less than ten thousand rupees or more than twenty thousand rupees, or by both. A continual violation of section (3) is penalized by a period of imprisonment that may not be less than six months but may not exceed two years. Any additional infractions of the Act are subject to a fine of up to 10,000 rupees or simple imprisonment for up to one month, or a combination of the two.

Groups that make recommendations regarding child labor

India's government is making an effort to stop child labor

The Child Labor (Prohibition and Regulation) Act of 1986 forbids the employment of children under the age of 14 in 65 processes and 16 occupations that endanger the lives and health of the children. To address the issue, distinct labor cells are being developed in many states, including Haryana, and district-level child labor rehabilitation and welfare funds

have been established. The central government began implementing national child labor programmes in states in 1988 to offer non-formal education and pre-vocational skills. The Sarve Shiksha Abhiyan was established in 2001 to educate underprivileged and employed children throughout all states. Non-formal education and career training have been provided by the Ministry of Women and Child Development. Another significant step taken by the government for the welfare of children and their physical, mental, and scholastic development is the creation of Anganwadies.

Plans and programs at the national level to combat child labor

2017 Rules for Amending the Child Labor (Prohibition and Regulation) Act

The Child Labour (Prohibition and Regulation) Amendment Rules, 2017, were enacted by the Indian government following extensive deliberation. The Rules provide a thorough and precise framework for the prevention, prohibition, rescue, and rehabilitation of child and adolescent workers. To address issues with family assistance, family businesses, and the definition of family with reference to children, specific provisions have been added to the regulations. During school hours or between the hours of 7 p.m. and 8 a.m., the child is not allowed to work more than five times a day and for a total of no longer than three hours without a break. In terms of working conditions and hours, it also provides protection for artists who have been granted permission to work under the Act. The rules provide precise provisions that embody the duties and tasks of enforcement agencies in order to ensure the appropriate execution and compliance with the Act's provisions.

2009's Right to Education Act

Children in India between the ages of 6 and 14 have the right to free and compulsory education, as stated in Article 21A of the Indian Constitution. The Right of Children to Free and Compulsory Education Act, popularly known as the Right to Education Act (RTE), was passed by the Indian Parliament on August 4, 2009. The key characteristics are:

- All Indian children, ages six to fourteen, are entitled to free and compulsory education;
- Before completing elementary school, no child may be held back, expelled, or made to take a test;
- A pupil who completes elementary school receives a certificate;
- It calls for a predetermined pupil-to-teacher ratio;
- Jammu and Kashmir are not included, although it includes all of India;
- It provides a 25% reserve for class one entrance in all private colleges for economically disadvantaged communities;
- Additionally, it establishes standards for bettering educational quality; the cost is split between the state and the federal government.

Countrywide Child Labor Policy

- The National Policy on Child Labour, published in August 1987, includes an action plan for resolving the issue of child labor. It envisions a legislative action plan. The policy states that general development programs should be coordinated and centered on

children to their advantage. Initiatives to enhance the wellbeing of working children should be started in areas with a high concentration of child labor.

- In order to rehabilitate child labor, the program was introduced in 1988 as a component of the National Child Labour Policy. The program seeks to employ a step-by-step methodology, initially focusing on the rehabilitation of kids involved in dangerous vocations and activities.
- The plan requires that children who are engaged in risky tasks or processes be taken out of such settings and enrolled in special schools until they can be mainstreamed into the regular educational system. It also calls for the identification of additional occupations and practices that are risky for children's health and safety.

National Children's Action Plan, 2005

According to the National Plan of Action for Children, 2005, all children's rights will be upheld until they turn 18 years old. The government should provide all protections and an enabling environment for all children's survival, growth, development, and protection in order to ensure that every child can realize his or her intrinsic potential and grow into a healthy and productive citizen. This calls for collaboration and action from all tiers and branches of government, as well as relationships with families, communities, the volunteer sector, civil society, and the kids themselves.

Important issues

▪ Is working while fewer than 18 prohibited in India?

Except for some family-based jobs, hiring children under the age of 14 for any type of labor is a crime that carries a maximum 2-year prison sentence. Teenagers between the ages of 14 and 18 are not permitted to work in any dangerous jobs.

▪ What age is the minimum for child labor in India?

The use of children in factories is prohibited, among other things, according to Article 24. Children under the age of 14 are not allowed to work in factories, mines, or in any other dangerous jobs.

▪ How has the epidemic affected the threat of child labor?

In the current COVID-19 pandemic scenario, when schools are closed and parents are unable to find employment to feed their family, all efforts to end child labor have been undone. According to UNICEF, more than 1.5 billion children were prevented from attending school as a result of COVID-19 restrictions. As a result, the global labor market has been totally devastated.

▪ What is the ILO's definition of child labor?

Children's physical and mental development is harmed by child labor, which is described by the ILO as "work that deprives children of their youth, their potential, and their dignity."

▪ In India, how many youngsters work as child laborers?

According to the ILO, 12.9 million Indian children between the ages of 7 and 17 are employed. Because they are less

likely to attend class frequently or at all, children who work or perform unpaid labor are kept in a cycle of poverty.

▪ How many youngsters work as child laborers worldwide?

In the last four years, there has been an increase of 8.4 million children working as minors worldwide, and millions more are now in danger due to COVID-19's consequences, according to a new evaluation by the International Labour Organization and UNICEF.

▪ In India, is child labor prohibited?

The Fundamental Rights and the Directive Principles of State Policy in Article 24 of the Indian Constitution forbid the employment of children under the age of 14 in any factory, mine, castle, or in any other dangerous occupation.

▪ What consequences does child labor in India have?

Children who labor are not allowed to go to school, which feeds a vicious cycle of poverty. There are 10.1 million child laborers in India, 5.6 million of whom are boys and 4.5 million of whom are girls, according to census 2011 data.

Case Laws

Court on Its Own Motion v. The State of Jharkhand (2016)

The petitioner in this case expressed concern about the state's policies on child labor. The petitioner addressed the matter and said that the state has not made any disclosures regarding how it intends to address the issue of child labor in the state. In response, the high court ordered the state to publish a report detailing the government's many programmes and initiatives ^[7].

Bachpan Bachao v. Union of India (2010)

The Delhi High Court made a ruling in this case regarding the obligations and liabilities of the committees established to safeguard the interests of children. The Commissions were instructed to hear cases involving harsh workplace environments where children between the ages of 14 and 18 experience both physical and mental abuse. The commissions must also investigate any gaps in the provision of basic necessities like food and medical treatment. Within 30 days of this verdict, the bench ordered these commissions to establish their goals and game plan ^[8].

Bandhua Mukti Morcha v. Union of India (1995)

A Public Interest Litigation (PIL) was brought in this case to safeguard the interests of minors under the age of 14. These kids allegedly were forced to work as child laborers in the carpet industry. The commissions' investigations also revealed that a significant number of youngsters under the age of 14 were working in Uttar Pradesh's industries. The majority of these kids were from Bihar's SCs and STs. The State was ordered by the Court to give these children socioeconomic justice and enough opportunity for personality development ^[9].

Conclusion

India can tackle the problem of child labor if knowledge of the drawbacks of child labor is raised throughout the country and stringent enforcement of the application of existing laws is carried out. Everyone must recognize how

crucial it is for children to develop and learn since they will be the ones who mold the country's future. The provision of the Act has helped in reducing the rate of child employment in India. It has reduced various hazardous risks to which child employees are exposed at the workplace as well as the exploitation by laying down the provisions for maximum number of hours or period of work and various other related issues. The Act has played an important role in reducing hazardous employment for children in India. If it is found that the employer is employing a child in contravention of the provisions of the Act then, such employer will be liable for punishment which includes imprisonment or fine or both. Despite the fact that the Act has decreased the number of child laborers, this evil still exists in our society as a result of socio-economic problems such as poverty and illiteracy. As Justice Subba Rao, the former Chief Justice of India, rightly stated, "Social justice must start with the child," the entire society must take responsibility for ending the evil of child labor. A tender plant has little chance of developing into a robust and valuable tree unless it is properly cared for and fed. Therefore, the welfare of children should be given top priority in the legal system.

References

1. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. [86th Constitutional Amendment 2002]
2. Preventing the use of children as laborers in factories, etc. No child under the age of fourteen may be employed to work in a factory, mine, or in any other dangerous occupation, with the caveat that nothing in this subparagraph shall authorize the detention of any person for a period of time greater than that specified by any law made by Parliament under subparagraph (b) of clause (7), unless that person is detained in accordance with the provisions of any law made by Parliament under subparagraphs (a) and (b) of clause (7).
3. (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
4. [(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years]
5. 47. The State has a duty to improve public health, raise the standard of living, and improve nutrition. In particular, the State shall work to enforce the prohibition of the consumption of intoxicating beverages and drugs that are harmful to health, other than for medicinal purposes. The State shall regard raising the level of nutrition, the standard of living of its people, and the improvement of public health as among its primary duties.
6. (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment
7. on 27 July, 2016
8. [WP (CrI) 75 of 2012]
9. 1984 AIR 802, 1984 SCR (2) 67