



Guardians of innocence: Navigating the legal landscape for child labor regulation in India

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Abstract

This paper critically examines the intricate legal landscape governing child labour regulation in India, with a particular focus on the Guardians of Innocence – the regulatory mechanisms tasked with ensuring the protection and welfare of the nation's children. The study delves into the multifaceted framework that comprises legislative acts, conventions, shaping the country's approach to eradicating child labour.

India's legal response to child labour is analysed in-depth, exploring the effectiveness of existing measures and identifying areas for improvement. The legislative acts form the backbone of the Guardians of Innocence, providing the legal foundation for eradicating exploitative labour practices involving children. International conventions also play a pivotal role, guiding India's commitment to align its policies with global standards for child rights and protection.

Enforcement strategies are scrutinized to assess their efficacy in curbing child labour and ensuring compliance with existing regulations. Challenges such as enforcement gaps, social and economic factors, and the need for comprehensive rehabilitation mechanisms are explored to offer a holistic understanding of the existing legal landscape.

This research contributes to the ongoing discourse on child labour by providing insights into the strengths and limitations of India's legal framework. The findings aim to inform policymakers, legal practitioners, and advocacy groups, fostering a collective effort to bolster child labour regulation in India and fortify the Innocence in their mission to safeguard the ingenuousness and well-being of the nation's youth.

Keywords: Child labour, legal framework, regulation, child right

Introduction

India has all along followed a pro-active policy in the matter of handling problem of child labour. The Constitution of India, both in the Directive Principles of State Policy and as a part of Fundamental Rights, has laid down that the state shall direct its policy towards securing 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 vocations unsuited to their age or strength^[1].

The children must be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity^[2]. Childhood and youth are to be protected against exploitation, and no child below the age of 14 years shall be employed to work in any factory, mine or much hazardous employment. The framers of the Indian Constitution incorporated relevant provisions in the directive principles of constitution to secure compulsory universal elementary education.

Since the enactment of the Indian Constitution, many rules and regulations have been framed for protecting the children and the youth of our country.

This chapter discusses the laws and regulations framed by the government, the amendments for labour laws and regulations, the action plan of the Centre and State governments and other recent developments to tackle the problem of child labour. The study makes an humble attempt to highlight some of the recent developments and activities pertaining to child labour to focus on the scope, applicability and limitations of various rules and regulations.

Constitutional Provisions and Protection of Children

One of the major areas of protection relating to children is child laws. The main objectives of our Constitution is the protection of children from adverse, effects of their employment on their physical and mental development.

Article 15(3)^[3] enables the State to make special provisions for women and children. Women and children require special treatment on account of their very nature. This Article empowers the state to make special provisions for them.

Article 21 Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law. The Constitution (86th Amendment Act) 2002, (w.e.f. 1.4.2010) proposed a new clause Article 21A after Article 21 of the Constitution which provided - —The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such a manner as the State may, by law determine.

Article 23(1) Prohibition of traffic in human beings and forced Labour:

(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence punishable in accordance with law. —Traffic in human beings' means selling and buying men and women like goods, and it also includes immoral traffic in women and children for depraved or other purposes. This Article protects the individual not only against the State but also private citizens. It imposes a positive obligation on the State to take steps to abolish evils of —traffic in human beings and forced labour in all its forms wherever they exist. It also prohibits the system of —bonded labour because it is a form of forced labour within the meaning of this Article.

Article 24 Prohibition of employment of children in factories, etc: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. This provision is certainly in the interest of public health and safety of life of children. This Article however, does not prohibit their employment in any harmless job or work.

Article 39 Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing –

- a. That the citizens, men and women equally, have the right to an adequate means of livelihood; (b) That the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;
- b. That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
- c. That there is equal pay for equal work for both men and women.
- d. 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.
- e. 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.

Thus, Article 39(e) makes it a duty of the state to prevent the children from entering jobs unsuited to their age. It seeks to prevent health and strength of workers and tender age of children being exploited. Article 39 (f) recommends the protection of childhood and youth against exploitation, moral and material abandonment. It also affirms to make sure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.

Article 39A Equal Justice and free legal aid: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Article 41 Right to work, to education and to public assistance in certain cases – The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 42 Provision for just and humane conditions of work and maternity relief: The State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 43 Living wage, etc., for workers: The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage,

conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas. Article 43 ensures the State to try to secure by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. It refers to a living wage‘ instead of a minimum wage’. The concept of living wage includes in addition to the bare necessities of life, such as food, shelter and clothing, provision for education of children and insurance etc.

Article 45 Provision for free and compulsory education for children: The State shall endeavour to provide within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Article 46 Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections: The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Article 23 is also relevant for present purposes. It says that traffic in human beings and beggar and other similar forms of forced labour are prohibited. Any contravention of this provision is an offence punishable in accordance with law thus, Article 23 confers a fundamental right against certain forms of exploitation. The provisions of the Indian Penal Code provide the punishment for such exploitation and Article 23 gives a constitutional sanction to punishments.

Articles 42 and 43 also provide for securing just and humane conditions of work and hold out a promise that the State shall endeavour to secure, by suitable legislation, or economic of work, ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, etc. The ‘abuse’ and ‘exploitation’ under Article 39 (e) and 39 (f) respectively indicate that these articles are wider in social content than Article 42 which relates only to working class.

This will not apply to cases where a self-employed man takes the help of his family members including children, for gainful activity because of economic pressure. This problem can be solved only by a faster rate of economic growth and social justice. Hence, as per Article 24 of the Constitution, no child below the age of 14 years is to be employed in any factory, mine or any hazardous employment. Further, Article 39 requires the States to direct its policy towards ensuring that the tender age of children is not abused and that they are not forced by economic necessity to enter avocations unsuited to their age or strength. Recently, with the insertion of Article 21-A, the State has been entrusted with the task of providing free and compulsory education to all the children in the age group of 6-14 years.

Consistent with the Constitutional provisions, Child Labour (Prohibition and Regulation) Act was enacted in 1986, which seeks to prohibit employment of children below 14

years in hazardous occupations and processes and regulates the working conditions in other employments. In the last 10 years, the number of hazardous processes listed in the schedule or the Act has increased from 18 to 57 and occupations from 7 to 13.

Laws and Regulations regarding Child Labour

In terms of statutory prescriptions, India has, by and large evolved a wide range of laws seeking to protect and promote the rights of child. There are more than 250 central and state Laws in India, applicable to children in various spheres of life, which are regulatory, protective or correctional in nature, to mention some of them –

The first protective legislation for child labour was enacted in 1881. The Indian Factories Act of 1881 introduced by the British, restricted the employment of children. This Act imposed an age of seven years as a minimum to join work force. In 1920s and 1930s a series of Acts were passed for the protection of children. The Factories Act which was amended in 1922, raised the age limit to fifteen years^[4]. Similarly, the Indian Mines Act of 1923 raised the minimum age of employment in mines to thirteen years. The Royal Commission on Labour, appointed in 1933, examined the practice of parents pledging the labour of their children by taking advances in return of bonds. The Government of India had not banned the pledging of child labour by parents, but it had eliminated the system of indenture, under which adults pledge their own labour on contract.

The Employment of Children Act, 1938 was the first Act introduced to regulate child labour. This Act enumerates the occupations and processes in which children could be employed. They were later incorporated into the 1986 legislation.

In addition to the Central Government Acts, State Governments also passed Acts regulating the conditions of work for young people in restaurants, hotels and shops, setting age limits ranging from twelve to fifteen. In response to a United Nations Assembly resolution proclaiming 1979 as the International year of the child, the Government of India appointed a committee on child to review existing legislation. The committee concluded that the minimum age for entry into any employment should be fifteen years, that existing laws be consolidated and that the ministry should enforce legislation relating to the employment of children. But, the Government rejected the recommendation that the minimum age of entry into employment be fifteen years.

The Factories Act, 1948 The Act extends to whole of India except the State of Jammu and Kashmir. It applies to establishments employing 10 or more workers with power or 20 or more workers without power. The Act prohibits the employment of children below the age of 14 years. An adolescent aged between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorized medical doctor. The Act also prescribes four and a half hours of work per day for children aged between 14 and 18 years and prohibits their working during night hours. A Child' under the Act, is defined as a person who has not completed the fifteenth year of age. A young person' is defined as either a child or an adolescent, who has completed his fifteenth year but not eighteenth year. Thus, —young persons may be divided into three categories^[5].

As per this Act, children below the age of 14 were prohibited to work in hazardous conditions or environment. Hazardous process, means any process or activity in relation

to an industry specified in the first schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, by products, wastes or effluents thereof would

1. cause material impairment to the health of the persons engaged in or connected therewith, or 2. result in the pollution of the general environment.

(A) Those who are under fourteen years of age – Sec. 67 provides that no child who has not completed his fourteenth year shall be required or allowed to work in any factory. They are totally prohibited by this Act from entering into employment in factories. It was held that the prohibition is absolute and not restricted to employment in one of manufacturing process; thus a child employed as a sweeper to clean the floor of a factory is in contravention of the provisions of the section, even though he is not employed in any of the manufacturing process. Persons who are between 14 and 15 years: They can be employed under the following restrictions provided under sections 68, 69 and 71 to 75 of the Act^[1]

1. Such persons should have a certificate of fitness issued by a surgeon and should carry a token of such certificate.
2. The certifying surgeon should follow the procedure laid down in section 69.
3. They should not work at night i.e., twelve consecutive hours including the period from 10.00 p.m. to 6.00 a.m.
4. They should work not more than four and a half hours a day.
5. The period of work is to be limited to two shifts.
6. The shifts should not overlap.
7. Each child has to be employed in one relay.
8. The spread over is not to exceed five hours and should also not change except once in 30 days. 9) They should not be employed in two separate factories on the same day.
9. The employer should display a notice regarding the periods of work for such children.
10. The manager of the factory should maintain a register in respect of such child-workers.
11. No such child be employed except in accordance with the notice of Periods of work displayed and the entries against his name in Register of child workers.
12. Section 75 empowers the inspectors to require any such person for reexamination by Surgeon and he may prohibit the employment till the examination is made.

The Mines Act, 1952

This Act also defines child as a person who has not completed his fifteenth year. This Act not only prohibits the employment of children in mines, but also prohibits the presence of children in any part of a mine that is below ground or in any open cast working in which any mining operation is being carried on. Even an adolescent is not allowed to work in part of a mine, which is below ground. Unless he has completed his 16th year and he has a medical certificate of fitness for work. A certificate is valid only for 12 months.

The Act also says that adolescent is allowed to be employed in any mine except between 6 a.m. and 6 p.m. Like the Factories Act the provisions of canteen, wholesome food and rest shelters, etc. have also been made under this Act.

The Plantation Act, 1951

This Act covers all tea, coffee, rubber, cinchona and cardamom plantations, and using areas 10.117 hectares or more, in which 30 or more persons are employed. The Act prohibits the employment of children less than 12 years. An adolescent between 15-18 years cannot be employed for work unless he is certified fit for work by a surgeon. Such certificate is valid only for one year. Use of a false certificate of fitness is punishable by imprisonment, which may extend to one month, or with fine or both. This Act is, however, more comprehensive in the sense that this act alone makes the provisions for education as a responsibility of the employer and so is for the housing and medical and recreational facilities. Perhaps the legislators were moved to make all these provisions in this Act because of the fact that Plantation is commonly known as family as against individual child.

The Merchant Shipping Act, 1958

This Act applies to ships registered in India. The Act prohibits the employment of children under 15 subject to certain exceptions. It also prohibits the employment of young persons under 15 as trimmers and stokers except under certain specific conditions. Such persons, if employed, are required to produce a certificate of fitness. Further the Act empowers the Government to make necessary rules regarding employment of young person's as and when the occasion demands.

Motor Transport Workers Act, 1961

This Act applies to the whole of India; it covers every motor transport undertaking employing five or more transport workers. The State Governments are authorized to apply all or any of the provisions of this Act to any motor transport undertakings employing less than five workers. This Act also prohibits the employment of children less than fifteen years in any capacity in the motor transport undertaking. The adolescents are prohibited to work unless a certificate of fitness is granted, which is valid only for 12 months. An adolescent can work only for 6 hours including a rest interval of half an hour and between 10 a.m. and 6 p.m. only.

The Children (Pledging of Labour) Act, 1933

The Act declares an agreement, oral or written, to pledge the labour of children, whereby the parent of the guardian of a child, in return of any payment or benefit to be received, undertakes to cause or allow the services of a child to be utilized in any employment, to be void. Child means, under this Act, a person who has not completed the age of 15 years. The penalty provided for the breach of the Law is a fine up to Rs. 200/- on the employer and Rs. 50/- on the parents.

The Employment of Children Act, 1938

This Act is also applied to the whole of India. It prohibits the employment of children under 15 in any occupation connected with the transport of passenger, goods or mails by railways or connected with the port authority within the limit of any port. With the exception of children employed as apprentices or trainees, no child between the ages of 15-17 can be employed or permitted to work in these occupations unless he is allowed a rest interval of at least 12

consecutive hours in a day. The period of rest is to include at least 7 consecutive hours between 10 p.m. to 7 a.m. as may be prescribed by the appropriate Government. The Act further prohibits the employment of children below the age of 14 in workshops connected with beedi making, carpet weaving, cement manufacturing including bagging of cement, cloth printing, dyeing, weaving, manufacturing or matches, explosives and fire work, mica cutting and splitting, shellac manufacturing, soap manufacturing, tanning and wool cleaning.

These provisions, however, do not apply to workshops where work is done with the help of occupier's family or to any school established, aided or recognized by any State Government. State Governments are empowered to extend the scope of the Act to cover any other employment. The Act also required the Railway and port authorities to maintain registers showing names, date of birth, rest intervals, etc. of children under 17.

The Apprentices Act, 1961

The Act extends to the whole of India and provides for the regulation and control of training of apprentices in trades and for matters connected therewith. The Act provides that no person shall be qualified for being engaged as an apprentice or to undergo apprenticeship training in any designated trade unless he is at least 14 years of age and satisfies such standard of education and physical fitness as may be prescribed. If he is a minor, his guardian is required to enter into a contract of apprenticeship with the employer and it should be registered with the Apprenticeship Advisor.

Prohibition of woman and child employment near cotton openers (Section 27)

No woman and child would be employed in any part of a factory for crossing cotton in which a cotton opener is at work. However, if the feed end of a cotton opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the inspector may in any particular case specify in writing. Woman and children may be employed on the side of the partition where the feed end is situated.

Creches (Section 48)

In every factory where more than 30 workers are ordinarily employed they should be provided with suitable rooms for the use of their children below six years of age. Adequate accommodation along with adequate light and ventilation should be provided in such rooms. The employer is liable to maintain such rooms in clean and sanitary condition.

Indian Penal Code, 1860 The code provides certain provisions to protect the interest of child considering their tender age.

Act of a child under seven years of age: Nothing is an offence which is done by a child under seven years of age^[7]. Act of a child above seven and under twelve of immature understanding Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion^[8].

Child napping and maiming a minor for purpose of begging: (1) whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of minor, in

order that such minor may be employed or used for the purpose of begging shall be punished with imprisonment of either description of term which may extend to ten years and shall also be liable to fine ^[9]. Indian Penal Code provides that whoever maims any minor in order that such minor may be employed and used for the purpose of begging shall be punished with imprisonment of life, and shall also be liable to fine.

Indian Penal Code further provides that where any person, not being the lawful guardian of a minor, employs or uses such minor for the purpose of begging, it shall be presumed, unless the contrary is proved, that such childnapper otherwise obtained the custody of that minor in order that the minor might be employed or used for the purpose of begging. —begging can be defined as-soliciting or receiving alms in a public place, where under the pretence of singing, dancing, fortune telling, selling articles or otherwise; entering on any private premises for the purpose of soliciting or receiving alms; exposing or exhibiting with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal; using a minor as an exhibit for the purpose of soliciting or receiving alms. For the above said purpose —minor means-

1. In the case of a male, a person under sixteen years of age, and
2. In the case of a female, a person under eighteen years of age.

Prosecution of minor girl: Whoever by any means whatsoever, includes any minor girl under the age of eighteen years to go from any place or to do any act which intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine ^[10].

Importation of girl from foreign country: Whoever imports into India from any country outside India or from any State of Jammu and Kashmir any girl under the age of twenty one years with intent that she may be or knowingly it to be likely that she will be force or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine ^[11]. childnapping or abducting child under ten years with intent to steal from its persons —Whoever kidnaps or abduct any child under the age of ten years with the intention of taking dishonestly any moving property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine ^[12].

Selling minor for purpose of prostitution etc: Whoever sells, lets to hire or otherwise disposes of any person under the age of eighteen years with the intent that such person shall at any age be with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punishable with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine ^[13]. When a female under the age of eighteen year is sold, let for hire, or otherwise disposed of to a

prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution. —illicit intercourse means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognized by the personal laws or custom of the community of which they belong, or where they belong to different communities, of both such communities, as constituting between them a quasi-martial relation ^[14].

Unlawful compulsory labour: Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Code of Criminal Procedure, 1973

On the basis of reasonable restrictions and in view of special protection certain provision are provided in this Code for protection and separate treatment to the children which are as under:- Order for maintenance of wives, children and parents —In short this provision is made for maintenance of minor child (legitimate and illegitimate) whether married or not unable to maintain itself and even after attaining majority (except in case of a married daughter) where such child is by reason of physical or mental abnormality or injury unable to maintain itself ^[15].

Police officer's power to require attendance of witnesses: Criminal Procedure Code provides a proviso clause that no male person under the age of fifteen year or women shall be required by any police officer making investigation to attend as witness at any place other than the place in which such male person and woman resides ^[16].

When bail may be taken in case of non-bailable offence:

The proviso clause provides that in case of a person under the age of sixteen years or a women or sick or infirm, provision has been made for releasing him/her on bail, even when there are grounds to believe that he/she has been guilty of an offence punishable with death or life imprisonment and even if he/she is a previous convict of an offence punishable with death or life imprisonment or imprisonment for seven years or more, or when he/she has been previously convicted twice or more for a non-bailable and cognizable offence ^[17].

Conclusion

The legal regulation of child labor in India is a critical imperative for safeguarding the well-being and future of the nation's youth. Through robust legal frameworks, proactive enforcement, and sustained advocacy, India can strive towards creating a society where every child is protected from exploitation and given the opportunity to grow in a nurturing environment. 'Guardians of Innocence' underscores the ongoing commitment required from lawmakers, stakeholders, and society at large to ensure the effective implementation and evolution of regulations that champion the rights and dignity of every child in the workforce."

References

1. Article 39 (e) of the Constitution of India.
2. Article 39 (f). of the Constitution of India
3. Article 15 (3) of the Constitution of India lays down that, —Nothing in this Article shall prevent the State from making any special provision for women and children‘
4. The Factories (Amendment) Act, 1922
5. Factories Act, 1948.
6. Sec 68- Non-adult workers to carry tokens. A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless— (a) a certificate of fitness granted with reference to him under section 69 is in the custody of the manager of the factory, and (b) such child or adolescent carries while he is at work a token giving a reference to such certificate. Sec 69. Certificates of fitness. (1) A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory
7. Section 82 of the Indian Penal Code.
8. Section 83 of the Indian Penal Code
9. Section 363 (A) of the Indian Penal Code.
10. 8Section 366A of the Indian Penal Code
11. 9Section 363B of the Indian Penal Code.
12. Section 369 of the Indian Penal Code.
13. Section 372 of the Indian Penal Code.
14. Section 374 of the Indian Penal Code
15. 3Section 125 of the Criminal Procedure Code
16. Section 160 of the Criminal Procedure Code
17. Section 437 of the Criminal Procedure Code.