



International Environmental
Law Research Centre

EVOLUTION OF THE LAW ON CHILD LABOR IN INDIA

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Published in Hugh D. Hindman ed., *The World of Child Labor – An Historical and Regional Survey*
(Armonk, NY: ME Sharpe, 2009), p. 783.

This paper can be downloaded in PDF format from IELRC's website at
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EARLY CHILD LABOR LEGISLATION

Acknowledgment of child labor as a distinct constituent of the workforce has been on India's statute book since at least 1881. The Factories Act of 1881 set the minimum age of employment at seven years, with a maximum of nine hours of work per day. The act also outlawed the "double employment" of child workers in two factories on the same day. In 1891 the Factories Act was amended, increasing the minimum age for employment in a factory to nine years. In 1911, the act was again amended to prohibit the employment of children in certain dangerous processes. The device of a "certificate of fitness" was introduced. This has survived to the present, where a certifying surgeon is entrusted with assessing whether a "young person has completed his 14th year, that he has attained the prescribed physical standards and he is fit for such work."¹

In 1922, it was ILO Convention 5 that prompted raising the minimum age in the Factories Act to fifteen years and restricting working hours for child workers to six hours with a half-hour break after four and a half hours. In 1901, the Mines Act prohibited the employment of a child under twelve years in any mine where the conditions were dangerous to their health and safety. Employment of children was restricted to open-cast mines with a depth of less than twenty feet.

Reporting in 1929, the Royal Commission on Labour, under the chairmanship of John Henry Whitley, had a significant impact on the recognition and legislative treatment of child labor. It reported widespread prevalence of child labor in a range of industries including carpet, bidi, textile, match, and plantations. A series of laws followed. The Indian Ports Act of 1931 set twelve years as the minimum age for handling goods in ports. The Tea Districts Emigrant Labour Act of 1932 provided that no child below sixteen years be employed, or allowed to migrate, unless accompanied by parents. The Factories Act of 1934 prohibited children below twelve years from being employed in factories and restricted work to five hours a day for children between twelve and fifteen. The Mines Act, in 1935, raised the minimum age to fifteen years and required a certificate of fitness for children between fifteen and seventeen years.

The Children (Pledging of Labour) Act, passed into law in 1933, is the first acknowledgment of the problem of child bondage. Enacted because "it is expedient to prohibit the making of agreements to pledge the labour of children, and the employment of children whose labour has been pledged,"² the act defines a child as a person under the age of fifteen. While declaring that an agreement to pledge the labor of a child shall be void, it prescribes punishment for parents or guardians who make an agreement to pledge the labor of a child and for any person who makes such an agreement with the parent or guardian. Punishment may also attach to one who knowingly employs a child bound by such an agreement. This act of 1933 survives, virtually unchanged, leaving even the minuscule penalties of Rs. 50 to Rs. 200 for the various breaches unamended.

1938 TO 1986

In 1938, the Employment of Children Act was the first enactment squarely addressing the issue of child labor. This followed from the twenty-third session of the International Labor Conference, held in 1937, which adopted a special article exclusively on India, recommending that children below thirteen years be prohibited from work in certain categories of employment. The 1938 act set the minimum age of employment in certain industries at fifteen and in the transport of goods on docks and wharves at fourteen.

In 1950, the Constitution of India was promulgated. Article 24 reads, "No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment." This is considered a Fundamental Right, guaranteed in part 3 of the constitution. Part 4 sets out nonjusticiable Directive Principles of State Policy. These include directives that "the tender age of child are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength"; "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"; and that the state shall endeavor to provide "free and compulsory education for all children until they complete the age of 14 years" within ten years. In 1993, many years after the ten-year period had elapsed, the supreme court, in a landmark decision, declared free education to age fourteen to be a Fundamental Right.³ In 2002, the constitution was amended to reflect the supreme court's judicial declaration. Article 21-A reads, "Right to Education. The state

shall provide free and compulsory education to all children of the age of 6-14 years in such man-ner as the state may, by law, determine.” This was accompanied by the inclusion of Article 51-A(k), which makes it “the duty of every citizen of India ... (k) who is a parent or guardian to provide op-portunities for education to his child or, as the case may be, ward of the age of 6 and 14 years.”

Despite the existence of the Employment of Child Act of 1938, the Labour Investigation Com-mittee (1944-1946), also known as the Rege Com-mittee after its chairperson, found that child labor was extensive in bidi making, carpet weaving, glass, and other small-scale industries. There were references particularly to the match industry in South India, the cement industry in Rajasthan, the spinning industry in Cochin, and carpet weaving in Kashmir. The committee found children in large numbers on plantations, “mainly due to the fact that recruitment is on a family basis.” In the case of tea, the committee estimated, “children form about 15% of the total number of workers in As-sam; 20% in Bengal and about 10% in South India. In the case of coffee and rubber, their proportion is 10% and 4% respectively for India as a whole.” In 1969, the National Commission of Labour, chaired by Justice P.B. Gajendragadkar, observed that child labor was “noticed mostly in agriculture, planta-tions and shops.”⁴

In the meantime, the Factories Act of 1948 prohibited a child under fourteen from working in a factory and required that a child between fourteen and fifteen years be given a certificate of fitness before being employed. The Plantations Labour Act of 1951 prohibited the employment of children below twelve, and adolescents between the ages of twelve and eighteen were required to obtain a certificate of fitness. Both laws prohibited night work for children. The Mines Act of 1952, and especially since 1984, has categorically rejected the employment of persons below the age of eighteen years, with the exception of apprentices under the Apprentices Act of 1961, or other trainees un-der proper supervision who may be as young as sixteen years. The Merchant Shipping Act of 1958 prohibits employment of children under fourteen. The Motor Transport Workers Act of 1961 prohib-its employment of children below fifteen “in any capacity in any motor transport undertaking.” The Apprentices Act of 1961 disqualifies a person less than fourteen years from being engaged as an apprentice.

The tobacco industry, where child labor has been rampant and the handling and inhalation of tobacco have been recognized as hazardous, was drawn into the law in 1966, in the Beedi and Cigar Workers (Conditions of Employment) Act. The act prohibits the employment of children under fourteen in any industrial premises, and “young persons” between fourteen and eighteen years were not to be engaged in work except between 6 A.M. and 7 P.M. A significant exception placed “self-employed persons in private dwelling houses” outside the purview of the act. This provision expressly allowed the “assistance of the members of his family living with him in such dwelling house and dependent on him.” This provision, along with the practice of subcontracting to “out-workers” who are paid piece rates for the finished product, has kept a space open for children to be engaged in bidi manufacture.

The Trade Unions Act of 1926 restricts the right of membership to a trade union to persons who have attained the age of fifteen, and it disqualifies a member from becoming an officer of a union if they have not reached the age of eighteen. In the 1990s, these provisions were challenged, unsuccessfully, in the Delhi High Court by Butterflies, a nongovernmental organization working among street and working children.

The Bonded Labour System (Abolition) Act of 1976 was a response to a customary system of usury under which a debtor or his descendants or dependents have to work for little or no wages in order to extinguish the debt. The 1976 act abol-ishes the bonded labor system and extinguishes the liability to repay bonded debt. Identification, release, and rehabilitation of the bonded laborers forms the nucleus of the 1976 act. In the 1980s, the supreme court also struck at the practice of bonded labor.⁵

1986 FORWARD

In 1979, the Gurupadaswamy Committee on Child Labour reported on the status of child labor. The committee noted flagrant violations of the laws, difficulties in regulation, the paucity of prosecution, and the meagerness of penalties prescribed. It recommended a law that would adopt uniformity in defining the child, with regulation of hours of work and conditions of work, and identification of areas of employment where child labor would be prohibited. In 1986, as a prelude to the Child Labour (Prohibition and Regulation) Act, the Sanat Mehta Committee was set up, which reiterated the recommendations of the Gurupadaswamy Committee.

The Child Labor (Prohibition and Regulation) Act (CLPRA) of 1986 prohibits employment of children in a scheduled list of occupations and a scheduled list of processes. The act carves out an important exception where children are permitted to work in any workshop where the process is carried on by the occupier with the aid of his family. This exception made for work within the family has been criticized as providing a loophole through which many law breakers escape. A Child Labour Technical Advisory Committee has been tasked with advising the central government on additions to the list of prohibited occupations and processes. When enacted in 1986, the schedule concentrated on occupations and processes considered hazardous. The list grew from five to thirteen occupations and from eleven to fifty-seven processes between 1986 and 1999. The act provides for the regulation of child labor in those occupations and processes where it is not prohibited. The experience with regulation has not been encouraging, with few prosecutions, fewer convictions, and mild penalties when imposed, which are unlikely to act as a deterrent.

India ratified the UN Convention on the Rights of the Child in December 1992 with a declaration that it would not be “practical immediately to prescribe minimum age for admission to each and every area of employment in India.” This helps to explain why India has not signed and ratified ILO Conventions 138 and 182. The First Periodic Report to the Committee on the Rights of the Child, however, adverted to an assurance that the prime minister had given in 1994, in his speech on Independence Day, that child labor would be abolished in five years and to a scheme for the Elimination of Child Labour in Hazardous Industries that was intended to be “implemented intensively in states and regions where employment of child in hazardous industries is maximum.”

The 1986 act aimed to achieve uniformity in the definition of child labor, prescribing a uniform, age of fourteen years in the definition of a child. In pursuing the objective of uniformity, the 1986 act actually reduced the minimum age for employment in merchant shipping and motor transport from fifteen to fourteen years. Further, the act repealed the prohibition of child labor on plantations. In 2001, the act was amended to restore the minimum age of fifteen in merchant shipping and motor transport and to restore the prohibition of child labor on plantations.

Extension of the law to what had been considered nonhazardous work was initiated by the National Human Rights Commission. Reports of exploitation and abuse of child domestic servants in the homes where they are employed recur with regularity. In 1997 and again in 1999, the National Human Rights Commission urged administrators of the central government, as well as states and union territories, to prohibit government employees from hiring children below fourteen years as domestic help. Subsequently, the central government and many state governments did bring in a change in their rules. Finally, in October 2006, this ban reached beyond government servants when “domestic workers or servants” were added to the list of prohibited occupations in the CLPRA. A companion entry addressed another arena where child labor abounds: “Dhabas (roadside eateries), restaurants, hotels, motels, tea shops, resorts, spas or other recreational centres” are also prohibited venues for employing child labor since October 2006.

THE ROLE OF PUBLIC INTEREST LITIGATION

Public interest litigation has contributed significantly to the development of the law concerning child labor. For example, children under fourteen were found to be among the migrant workers and contract laborers engaged in construction work for the Asian Games. In 1982, the case was taken to the supreme court by a democratic rights organization.⁶ The court found that, at the time, construction was not on the list of prohibited occupations for children. Drawing on the constitutional injunction against children being in hazardous employment, the court held: “There can be no doubt that notwithstanding the absence of specification of construction industry in the schedule to Employment of Children Act 1938, no child below 14 years can be employed in construction work and the Union of India as also every State Government must ensure that this constitutional mandate is not violated in any part of the country.” In 1983, the court reiterated this position when a case concerning child laborers working on a hydroelectric project was brought before it.⁷ The prohibition of child labor in the building and construction industry was included in the CLPRA when it was enacted in 1986.

Employing children in the manufacture of matches, explosives, and fireworks has been prohibited since 1938. Yet child labor has been rampant in these industries. Explosions and accidents are common, and it was one such incident that led the supreme court to require a liability insurance scheme be put in place that would cover the risk of accidents, providing compensation where risk is not averted.⁸ This formula was repeated in a public interest

litigation concerning the tobacco industry.⁹ Unfortunately, there was a certain regression in the court's judgment relating to the match factories in Sivakasi in Tamil Nadu, when it permitted children to be employed in match factories in the process of packing, considering this to be a nonhazardous aspect of an otherwise hazardous industry.

In 1996, there was a discernible change of mood in the supreme court when confronted with the issue of child labor. A survey had identified eighteen child laborers in electroplating units in Delhi. The court ordered substantial fines against employers as penalties for employing the children. This was followed by a "Public Notice to Employers Employing Child Labour" in the New Delhi edition of a national daily on November 25, 1996, where the names and addresses of 230 employers, the names of the children they employed, and the amounts of the proposed penalties were published. The employers included shops, mechanic garages, and tea stalls, which were, at that time, not on the prohibited list in the 1986 act. Confronted by this judicial approach, the formality of the law had to give way to the court's appreciation of what would have been the impact of curtailing the practice of employing child labor.

On December 10, 1996, a three-judge bench of the supreme court revisited the issue of child labor in Sivakasi fireworks factories and issued a land-mark decision. The court had before it the report of a committee of advocates set up to investigate the employment of children in Sivakasi. This committee was constituted following an accident in a fireworks factory in which thirty-nine people had died. Acknowledging the poverty that characterized child labor and the possibility that compulsory education may be the answer to the problem, the court ordered the offending employer to pay compensation of Rs. 20,000 for each child in their employ. This sum would be deposited in a Child Labour Rehabilitation-cum-Welfare Fund, interest from which was to be used only for the concerned child. Further, given the constitutional directive that the state has to help realize the "right to work," the court considered whether the state may have an obligation to ensure that when a child is withdrawn from work, an adult in the child's family is provided employment. Yet, given the large number of child workers, this could strain the resources of the state. Instead, where it is not possible to provide alternative employment to an adult, the court ordered that a "contribution/grant... of Rs.5000 for each child employed in a factory or mine or in any other hazardous employment" be deposited in the Rehabilitation Fund by the government. The child should then be withdrawn from employment and assisted by the Rs. 25,000 fund or the Rs. 20,000 and alternative employment. Assistance was to be halted if the child was not sent to school. As for nonhazardous jobs, the court charged the inspector under the 1986 act with ensuring that children did not work longer than four to six hours a day and that they received "education at least for two hours each day." The "entire cost of education is (to be) borne by the employer." This landmark decision had the effect of placing child labor squarely on the state's agenda.

CONCLUSION

In 2003, the government of India, by resolution, adopted a National Charter for Children that includes a clause concerning protection of children from economic exploitation and from performing tasks hazardous to their well-being: "The state shall move towards a total ban of all forms of child labour." In 2005, India enacted the Commissions for Protection of Child Rights Act. The preamble to the 2005 act invokes the 2003 charter along with the UN Convention on the Rights of the Child and the document titled "A World Fit for Children," which emanated from the UN General Assembly Special Session on Children held in May 2002. This act came into effect on January 20, 2006, and the commission has been set up and a chairperson appointed. The first chairperson, Shantha Sinha, is founder of the M.V. Foundation, a child rights organization working for the protection of children and the abolition of child labor.

Law and policy have begun to veer toward formal abolition of child labor since the "right to education" was declared a fundamental right by the supreme court in 1993 and the prime minister's statement in 1994. There has been a spurt of activity intended to give content to the right to education for all persons between the ages of six and fourteen years, and a link has been forged in law and policy between child labor and school going. The question of whether all work done by children should fall within the definition of child labor has been resolved by presuming all children out of school as labor-force constituents. The practice of employment of child labor has not yet shown any discernible decline, though. The route to enforcing the ban on all forms of child labor is still being chalked out.

NOTES

1. S.69(2)(a), Factories Act, 1948.
2. S.2, Children (Pledging of Labour) Act, 1933.
3. *J.R Unnikrishnan v. State of Andhra Pradesh* (1993) 1 SCC 645.
4. *Report of the National Commission of Labour* (1969) at 34.
5. See, for example, *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161.
6. *PUDR v. Union of India* AIR (1982) Supreme Court 1480.
7. *Labourers Working on Salal Hydro Project v. State of Jammu and Kashmir* (1983) 2 SCC 181 at 191.
8. *M.C. Mehta v. State of Tamil Nadu* (1991) 1 SCC 283.
9. *Rajangam, Secretary, District Beedi Workers Union v. State of Tamil Nadu* (1992) 1 SCC 221.

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