

Debating the Changes in India's Child Labour Laws

With India's Union Cabinet recently approving amendments to the Child Labour Prohibition and Regulation Act (CLPRA), 1986, a debate has started over the effectiveness of the said Act in curbing and controlling child labour in our country. One of the most controversial amendments include allowing minors, under 14, to work in certain family enterprises or industries, provided they are not hazardous occupations and the work is done beyond school hours. These amendments, however, ban all other child labour, irrespective of sector, up to age 14. The idea is to align the law with the RTE Act which makes it obligatory for the state to ensure free and compulsory education to children from 6 to 14.

The amendments specifically prohibit the employment of children under 14 in three hazardous occupations and processes including mining, inflammable substances and hazardous processes under the Factories Act, 1948 from the earlier 83. They also regulate the conditions of work of children in all others. This simply means that children can, *inter alia*, now work in chemical mixing units, cotton farms, battery recycling units and brick kilns. In fact, even the ones listed as hazardous can be removed, according to Section 4 of the Act by government authorities at their discretion.

The amendments, in effect, allow children to be employed in all kinds of unsafe processes by legitimising child labour. Under the garb of family enterprises, children can be made to work in brick kilns, slaughter-houses, carpet, zari and bidi units, mica or diamond cutting, handling e-waste, scavenging or as domestic help, which critics feel would severely compromise their health and educational interests. It has been suggested that a majority of the 5,254 children rescued by the Bachpan Bachao Andolan in the last five years had been working in 30 occupations that the amended Bill proposes to remove from the hazardous list. It has also been pointed out that that even under the previous Act, only 157 cases were registered in 2015. The situation shall only deteriorate after dilution of the Act.

According to the amendment, children below the age of 14, cannot be employed anywhere, except in non-hazardous family enterprises or the entertainment industry. The latter includes working as an artist in an audio-visual entertainment industry, advertisement, films, television serials or any such other entertainment or sports activities, except the circus. The amended Act, however, prescribes stricter punishment for employers for violation of the Act as a deterrent and the offense of employing children or adolescents has been made into a cognisable offense, allowing the police to arrest or investigate a possible offense without a warrant.

The amendments, though, have relaxed the penal provisions for parents or guardians, who were earlier subjected to the same punishment as the employer. In case of parents being repeat offenders, they may be penalised with a monetary fine up to Rs 10,000. However, employers would be penalised even for the first offence. In case of first offence, the penalty for employers has been increased up to two and half times from the existing up to Rs 20 thousand to up to Rs 50,000 now and imprisonment for a term not less than six months but which may extend to two years.

In case of a second or subsequent offence of employing any child or adolescent in contravention of the law, the minimum imprisonment would be one year which may extend to three years. Earlier, the penalty for second or subsequent offence of employing any child in contravention of the law was imprisonment for a minimum term of six months which may extend to two years. A new definition of adolescent has also been introduced in the amendment and employment of adolescents (14 to 18 years of age) has also been prohibited in hazardous occupations and processes.

However, the critics have said that the amendments partially legitimise child labour. The bill has been criticised for taking away basic protections for some of the most vulnerable workers. They question the methodology of ensuring about the child working in a non-hazardous family enterprise and that he/she would be doing so only after school hours. The proposal also provides for the setting up of a Child and Adolescent Labour Rehabilitation Fund for one or more districts for rehabilitation of children or adolescents rescued. Thus, the Act itself will provide for a fund to carry out rehabilitation activities which is a progressive measure.

The proposal has drawn flak from children's rights activists who say the exemption would open the doors for employing children in industries such as matchbox manufacturing, footwear and carpet making and would further the slow progress in eradicating child labour. Since most of India's child labour work in caste-based work, the poor families continue being trapped in inter-generational debt bondage. The clause is also dangerous as it does not define the hours of work as it simply states that children may work after school hours or during vacations.

Be it noted that Article 24 of the Indian Constitution prohibits employment of children below the age of 14 in factories, mines, and other hazardous employment. Article 21A and Article 45 promise to provide free and compulsory education to all children between the ages of 6 and 14. In 2009, India passed the Right of Children to Free and Compulsory Education

Act (RTE). But the amendments in the new law make it practically impossible to implement the RTE. Its clauses put such a burden on poor low-caste families that instead of promoting education, the Act actually increases the potential for dropouts.

A number of laws have also addressed what to include and omit in the list of hazardous occupations. In 1986, the Child Labour (Prohibition and Regulation) Act had prohibited the employment of children below the age of 14 in hazardous occupations identified in a list by the law. After much discussion and expansion, the list included 83 occupations. The National Policy on Child Labour of 1987, implemented in 1988, adopted a gradual approach that combined the strict enforcement of laws on child labour with development programmes to address the root causes of child labour like caste and poverty. It focussed on the rehabilitation of children working in hazardous occupations.

Not only do the new amendments reverse the gains of the 1986 Act, but actually contradict the Juvenile Justice (Care and Protection) of Children Act of 2000 that makes it punishable for anyone to procure or employ a child in a hazardous occupation. They also contravene the International Labour Organisation's (ILO) Minimum Age Convention and UNICEF's Convention on the Rights of the Child, to which India is a signatory. According to UNICEF, a child is involved in child labour if he or she is between 5 and 11 years, does at least one hour of economic activity, or at least 28 hours of domestic work in a week. And in case of children aged between 12 and 14, 14 hours of economic activity or at least 42 hours of economic activity and domestic work per week is considered child labour.

The devastating health consequences of the new Act may be the worst blow on India's poor yet. There are 33 million child labourers in India, according to UNICEF. As per the 2011 census, 80 per cent of them are Dalits and 20 per cent are from the Backward Classes. This law will restrict these children to traditional caste-based occupations for generations. It is suggested that if the amendments intended to preserve Indian art and craft by enabling parents with traditional skills to pass them on to their children, the same should have been done through reform and investment in education. Slashed budgets should be restored, mid-day meals should be reinstituted and secure housing should be provided through the Sarva Shiksha Abhiyan boarding schools to homeless children. Artisans should be hired as teachers to pass on traditional knowledge and skills to the next generation.

However, many observers feel that amendments are in sync with the ground realities given the fact that parents often find it difficult to take care of their children once they were withdrawn from work. The said anomaly has been removed and the amendments strike better balance among child labour and their various needs than earlier. However, it would be advisable to ensure stricter punishment of the offenders under the Act and proper rehabilitation of the children rescued from time to time.

Salient Points

- Recent child labour amendments attempt at aligning law with RTE Act which makes it obligatory for the state to ensure free and compulsory education to children from 6 to 14.
- The amendments prohibit employment of children under 14 in three hazardous occupations and

processes including mining, inflammable substances and hazardous processes under the Factories Act, 1948 from the earlier 83.

- A new definition of adolescent has also been introduced in the amendment and employment of adolescents (14 to 18 years of age) has been prohibited in hazardous occupations.
- The bill has been criticised for taking away basic protections for some of the most vulnerable workers by legitimising child labour.
- The amendments, in effect, allow children to be employed in all kinds of unsafe processes.
- According to the amendment, children below the age of 14, cannot be employed anywhere, except in non-hazardous family enterprises or the entertainment industry.
- The proposal provides for setting up of a Child and Adolescent Labour Rehabilitation Fund for rehabilitation of children or adolescents rescued.
- The amendment is dangerous as it does not define hours of work as it simply states that children may work after school hours or during vacations.
- The amendments make it practically impossible to implement the RTE.
- Not only do the new amendments reverse the gains of the 1986 Act, but actually contradict the Juvenile Justice (Care and Protection) of Children Act of 2000 that makes it punishable for anyone to procure or employ a child in a hazardous occupation.
- If the amendments intended to preserve Indian art and craft by enabling parents with traditional skills to pass them on to their children, the same should have been done through reform and investment in education.
- Many observers find amendments to be in sync with ground realities given the fact that parents often find it difficult to take care of their children once they are withdrawn from work.

Glossary

Hazardous: dangerous

Discretion: freedom to decide in a particular situation

Dilution: making something weak in force or value

Contravention: violation

Vulnerable: exposed to the possibility of being harmed

Juvenile: relating to young people

Anomaly: deviation from standard or normal