



PROTECTION OF WORKING CHILDREN UNDER ORISSA LOCAL ACTS AND RULES

**DR. SOUMITRA
KUMAR
CHATTERJEE**

LECTURER, MADHUSUDAN LAW COLLEGE (UTKAL UNIVERSITY)
STATION ROAD, CUTTACK – 753003, ODISHA

ABSTRACT

For the protection of working children in India, there are several constitutional provisions and other legislations. At national and international level also various attempts have been made to curb the menace. Besides this, each state has its own local Acts and rules in this regard. This article mainly highlights the local Acts and rules of the State of Odisha relating to working children.

KEYWORDS : Child, Minimum age, Shops and Commercial establishments, Working children.

INTRODUCTION

Law is an instrument of social change. It aims at rendering social justice to all the citizens of the land by protecting the interests and rights of each individual. Hence for the welfare of the children; to protect them from the present exploitative set up; to eradicate child labour from the society; in India, not only a number of legislative enactments and constitutional safeguards are there, but also United Nation's declaration on the 'Rights of the Child', ILO conventions and recommendations relating to children etc. have much impact on Indian labour legislations. However, this article is a micro research on the topic and mainly intends to discuss the provisions relating to protection of working children under the Orissa local Acts and Rules.

PROVISIONS FOR PROTECTION OF WORKING CHILDREN IN ORISSA

The State of Orissa lies in the tropical belt of the eastern region of India and divided into 30 districts. Like various other states of India, the working children of this State are also engaged mainly in the unorganized sector like agricultural operations, beedi rolling, garage and motor cycle/cycle repairing workshops, hotels, restaurants and dhabas, weaving units, brick kilns, band party groups, bakery and confectionaries, household works, agarbati making, rickshaw/trolley pulling, begging, road side business, flesh trade, beetle shops, carpentry, construction works, stone crushing units, cracker making units, manufacturing processes, tailoring shops, forest collections, rag picking, shops and commercial establishments, printing press, cashew processing, stone / brass utensils making, kendu leaf plucking, fishing, envelop making, shoe making / polishing and repairing, cane / horn works, train coach/platform cleaning, hawking and also in many other fields. The extent of protection available for the children under various local laws of the State of Orissa may be presented as follows :

(a) The Children Act, 1982¹

The Children Act, 1982 which extends to the whole State of Orissa,² mainly aims at the proper care protection, welfare, education and rehabilitation of neglected children seeking the state to provide all these facilities.³ It defines a 'child' as a boy below the age of sixteen years and a girl who has not attained the age of eighteen years.⁴ Section 49 of this Act provides about the exploitation of child employees which speaks that "whoever ostensibly procures a child for the purpose of any employment and withholds the earnings of a child or uses such earnings for his own purposes shall in conviction, be punishable with fine which may extend to one thousand rupees."

(b) The Orissa Factories Rules, 1950⁵

As per the provisions provided under the Orissa Factories Rules, 1950 a child must be over fourteen years of age.¹⁶⁷ The notice of periods of work for children as prescribed under section 72(3) of the Factories Act, 1948 shall be in Form No.13⁶ and the register of child workers prescribed under sub-section 2 of section 13 of the Act, shall be in Form No.14.⁷ According to the Rule

87-A and 14(2), the Certifying Surgeon who is entitled to issue the certificate of fitness to the qualified children or adolescents for undergoing employment in any factory after examination or re-examination⁸ shall issue such certificate in Form No.5. The Orissa Factories Rules, 1950 also prescribes the facilities like drinking water,⁹ latrine,¹⁰ urinal,¹¹ washing,¹² first-aid,¹³ ambulance room,¹⁴ canteens,¹⁵ dining hall,¹⁶ shelter, rest room and lunch room¹⁷ etc. along with the provision of leave with wages (as prescribed under section 83 and 112) for the workers.

(c) The Orissa Minimum Wages Rules, 1954¹⁸

Rule 24 (1)(b) of the Orissa Minimum Wages Rules, 1954 declares that the number of hours of work which shall constitute a normal working day shall be four and half hours in the case of a child. In no circumstances he/she shall be employed or permitted to work for more than this on any day,¹⁹ which seems that no child shall be allowed for overtime and according to Rule 23, every worker, which automatically includes the child as well, shall be allowed weekly holidays.

(d) The Orissa Shops and Commercial Establishments Act, 1956²⁰

As there is no Central Act to regulate the working conditions of workers in the shops and commercial establishments, every state is therefore empowered to pass its own Act to regulate the working conditions of workers in this sector. Accordingly, the Orissa Shops and Commercial Establishments Act, 1956 was passed with an intention to achieve that goal²¹ which extends to the whole of the State of Orissa.²² This Act strictly prohibits the employment of children below the age of twelve years in any establishment,²³ but allows the employment of a child above this age as an apprentice who is employed, whether on payment of wages or not for the purpose of being trained in any trade, craft or employment in any establishment.²⁴ This Act is not applicable to other offices, establishments etc.²⁵

So far as working hour is concerned, no child is allowed to work in any establishment for more than five hours a day.²⁶ He/she is neither required nor allowed to work whether as an employee or otherwise in any establishment during night.²⁷

According to section 12(1) of the Act, every establishment shall remain closed for one day in the week. It is illegal in the part of the employer to engage any employee, including apprentices, in any type of work in connection with the business of his establishment on a weekly holiday or on a day on which such establishment remains closed. But if the local custom so requires, an establishment may remain open for business on any such day and the employee shall be given equivalent leave in lieu of such holiday or holidays within that year as per the provision of section 12(3) and no deductions shall be made from the wages of any employee in any establishment on account of the holiday given to him under section 12 (1).²⁸

Further, every employee who has worked for a period not less than two hundred and forty days in an establishment during a year shall be allowed during the subsequent year, leave with wages for a number of days calculated at the rate of one day for every fifteen days of work performed by him during the previous year if the employee is a child.²⁹ As per section 14(3), every employee which includes the apprentice above the age of twelve years as well, are entitled for sickness leave in any year not exceeding fifteen days in addition to any other leave granted by the Act, only after continuous employment for a period of one year. Also an employee who is a child above the age of twelve years and has been allowed leave for not less than five days before his leave begins, be paid the wages due for the period of leave allowed.³⁰

For the welfare of the employee, the Act prescribes under section 40 that the provision of the Workmen's Compensation Act, 1923 (VIII of 1923) and the rules made there under shall apply to each employee including the apprentices of a shop or commercial establishment. Section 35(1) of the Act provides that on contravention of the provisions of sections 4, 5, 7, 11, 12 and 14, directly and indirectly relating to the welfare of employed children, the person on conviction shall be punishable with fine which for the first offence shall not be less than twenty five rupees and for the second subsequent offence shall not be less than fifty rupees and may extend to five hundred rupees. Further, whoever contravenes any of the provisions of sections 8, 16, 22, 23, 33 and 38 (directly and indirectly related to the welfare of the employed children) shall on conviction, be punishable with fine, which shall not be less than fifteen rupees and may extend to fifty rupees.

PRACTICAL DIFFICULTIES BEHIND THE EXISTENCE OF THE PROBLEM

It is a fact that each and every enactment and constitutional mandates meant for the protection of working children are violated throughout India including Orissa and the employers are used to employ the children below 14 years of age and also try to exploit them to the optimum level. It has become possible in their part as most of the employers have not registered their establishments; rather some of the employers argue that if they will register their establishments, then they will come under the legal mandates by which they shall not be benefited and thus by not registering their establishments they blatantly violate all the legal safeguards meant for the protection of working children and escape from the eye of law. Various researches and judicial decisions have also revealed that in the registered establishments, there is no official record anywhere regarding employment of children below the prescribed age, but non-officially they employ the children confidently. In this case, it is really difficult to prosecute the employer and to prove the case of child labour in the establishments.

On the other hand, the implementing authorities under different laws for granting protection to child labourers are inadequate in number and handicapped with various infrastructure facilities. Moreover lack of interest, paucity of time besides other humanitarian considerations etc. have contributed for non-implementation of different labour legislations meant for the protection of the working children.

CONCLUSION

In conclusion, this much can only be said that the local Acts and Rules available in the State of Orissa are very few and therefore it is required to enact some more local Acts and Rules with an intention to protect these working children in every possible manner, as they are our future. Unless and until we will not recognize their problems and difficulties and reflect it in our enactments with proper remedies, till that date they will go on suffering.

FOOT NOTES

1. Orissa Act 24 of 1982, published in the *Orissa Gazette*, Extra Ordinary, No.1713, dated 30.11.1982.
2. Section 1(2).
3. See Preamble of the Act. Also see Statement of Objects and Reasons as published in *Orissa Gazette*, Extra Ordinary, No.1284, dated 30.9.1981.
4. Section 2(d).166. Published in the *Orissa Gazette*, Extra Ordinary, and No. 189 of 1950.
5. Rule 87-B (1).
6. Rule 86.

7. Rule 87.
8. Rule 87-C (i).
9. See Rule 34,35,36,37 and 39.
10. Rule 40.
11. Rule 44.
12. Rule 63.
13. Rule 64.
14. Rule 65.
15. Rule 66.
16. Rule 67.
17. Rule 73.
18. Published in the *Orissa Gazette*, Part III, No.17, dated 23.4.1954, PP497-513; vide Notification No.2227-VL-145/ 52 Lab., dated 20.4.1954.
19. Rule 24(6).
20. Orissa Act 30 of 1956.
21. For Statement of Objects and Reasons in detail, See *Orissa Gazette*, Extra Ordinary, dated, 5th September, 1956, P.25.
22. Section 1(2).
23. Section 22.
24. Section 2(1).
25. Section 3.
26. Section 7(2).
27. Section 23.
28. Section 12(3).
29. Section 14(1) (ii).
30. Section 16.