



## Law Relating to Minimum Age for Employment of Children

### KEYWORDS

Child, Employment, Minimum age, Prohibition.

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**ABSTRACT** *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, a number of legislative enactments are there besides the constitutional safeguards. But it is a matter of regret that most of the labour class people and rural poor are not aware of these provisions and even do not know the minimum prescribed age for employment of children, for which they have to suffer a lot in their life.*

### INTRODUCTION

UN declaration on the 'Rights of the Child', ILO Conventions and Recommendations relating to children besides the National Policy, Five-year Plans etc. have much impact on Indian labour legislations which seek the protection and welfare of the employed children. Indian Constitution makers realized the need for putting curbs on child labour and thus it carries important expression of the government policies against the abuse of child labour in India. Still, the research findings and reports as well as observational studies reveal that in almost every field the child labourers are exploited to a large extent as they are not aware of their rights and legal provisions meant for their protection. Even most of the working children as well as their parents are ignorant about the minimum prescribed age for employment of children. This article therefore attempts to aware those parents who allow their children to join the labour force at a tender age, which is the age for play and recreation, and let them to suffer from various health hazards.

### MINIMUM AGE FOR EMPLOYMENT

In order to fix the minimum age for employment of children different statutes prescribe different ages depending upon the nature of work. There was no statutory provision regulating the employment of the children in industry till 1881, the year in which first Indian law defining 'child' was passed<sup>1</sup>, besides prescribing prohibitory regulations for employment of children below seven years of age. But its provisions were inadequate to protect child labour and was therefore amended several times to meet the new needs which arose from time to time and specifically with an intention to protect child labour. In 1947, the Government of India framed a Bill for a radical overhaul of the existing law which was passed in to an Act on 23rd September, 1948<sup>2</sup> and was put in to force on 1st April, 1949<sup>3</sup> with an object to ensure adequate safety measures to promote health and welfare of the workers employed in factories.<sup>4</sup> This Act defines a 'child' as a person who has not completed his fifteenth year of age,<sup>5</sup> but the minimum age for employment of children in any factory has been fixed at fourteen.<sup>6</sup>

Under Apprentices Act, 1961,<sup>7</sup> a person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he has completed fourteen years of age<sup>8</sup> where as Beedi and Cigar Workers (Conditions of Employment) Act, 1966,<sup>9</sup> Children ( Pledging of Labour) Act, 1933,<sup>10</sup> Dangerous Ma-

chines Regulation Act, 1983<sup>11</sup> and Motor Transport Workers Act, 1961<sup>12</sup> have totally banned the child labour .

Beedi and Cigar Workers (Conditions of Employment) Act, 1966 envisages that a 'child' means a person below fourteen years of age<sup>13</sup> and under this Act, "no child shall be required or allowed to work in any industrial premises"<sup>14</sup> where any manufacturing process connected with making of beedi or cigar is carried on. But Children (Pledging of Labour) Act, 1933 was passed with an object to prohibit the pledging of labour of the children<sup>15</sup> and accordingly it declares void,<sup>16</sup> an agreement to pledge the labour of 'children' below fifteen years of age,<sup>17</sup> by the 'parent' or 'guardian' of a child in return for any payment or benefit.<sup>18</sup>

Both Dangerous Machines (Regulation) Act, 1983 and The Motor Transports Workers Act, 1961 define a child as a person below fourteen years of age.<sup>19</sup> The former one not only prohibits the employment of any child for the operation of dangerous machines, but also their presence near these machines under section 31(b) where as the Motor Transport Workers Act, 1961 speaks that no child shall be required or allowed to work in any capacity in any motor transport undertaking.<sup>20</sup>

The Minimum Wages Act, 1948<sup>21</sup> defines a 'child' as a person who has not completed his fourteenth year of age<sup>22</sup> which is the minimum age for employment by any child. Mines Act, 1952<sup>23</sup> provides that , no person below the age group of eighteen years shall be allowed to work<sup>24</sup> or to be present<sup>25</sup> in any mine or part thereof. But the apprentices and other trainees not below sixteen years of age , may be allowed to work, under proper supervision , in a mine or part thereof, by the manager<sup>26</sup> and the trainees have to obtain the prior approval of the Chief Inspector or an Inspector before they are allowed to work.

The Merchant Shipping Act, 1958 prohibits the employment of children under fifteen years of age<sup>27</sup> as trimmers or stockers in any ship where as the employment of children below fourteen years of age in any type of plantation has been prohibited<sup>28</sup> by the Plantations Labour Act, 1951.<sup>29</sup>

The Child Labour ( Prohibition and Regulation ) Act, 1986<sup>30</sup> which aims at removing the loopholes of the earlier Acts regarding the protection of child labour and specifically with an intention to prohibit the engagement of children

in certain employments and to regulate the conditions of work of children in certain other employments,<sup>31</sup> also defines a 'child' as a person below the age group of fourteen years<sup>32</sup> and thus prohibits their employment under this age in certain occupations and processes.<sup>33</sup>

### EXCEPTIONS

Though the above statutes have prohibited the employment of children under the prescribed age in different processes of work, still at places they provide some exceptions for entering into the employment or apprenticeship by the children.

Apprentices Act, 1961 clarifies that the minimum qualification for engagement as an apprentice not only depends upon the age, but on the minimum standard of education and physical fitness also, as may be prescribed;<sup>34</sup> provided that different standards may be prescribed in relation to apprenticeship training in different designated trades and for different categories of apprentices'.<sup>35</sup> The minimum educational qualification and minimum standard of physical fitness are 'specified'<sup>36</sup> in Schedule I<sup>37</sup> and II<sup>38</sup> respectively. Further, it provides an exception for the minors who are interested to undergo the apprenticeship training that they may be allowed for the same only after their guardians have entered into a contract with the employer.<sup>39</sup>

The Child Labour (Prohibition and Regulation) Act, 1986 while in its Part II prohibits the employment of children in certain occupations and processes, at the same time lays down the broad regulations of conditions of work of children which are applicable to only permissible occupations and processes of juvenile employment.<sup>40</sup>

In Merchant Shipping Act, 1958 section 109 prohibits the employment of children in first phase, but in the second phase it allows their employment in a school ship or training ship, in accordance with the prescribed conditions or in a ship in which all persons employed are members of the family, or in a home trade ship of less than two hundred tonnes or where such person is to be employed on nominal wages and will be in the charge of his father, or other adult near male relations. Further, it gives permission to the employment of young persons under section 111 requiring the production of the certificate of fitness granted from an authorized surgeon.

Like other statutes, the Plantations Labour Act, 1951 provides that "no child and no adolescent shall be required or allowed to work in any plantation unless:

- (a) a certificate of fitness granted with the reference to him under section 27 is in the custody of the employer; and
- (b) such child or adolescent carries with him while he is at work a token giving a reference to such certificate".<sup>41</sup>

### CONCLUSION

From the above discussion it may be concluded that for the protection of children, specifically regarding their minimum age for employment, although there are several provisions provided under the Central and State Acts and Rules, the provisions provided there under vary from Act to Act. Its main cause is that the definition of a 'child' is not uniform in all these legislations. Due to lack of this reason, i.e. an unanimous definition of the term 'child', they are being exploited in various occasions during their employment and it will continue till the confusion regarding this definition exists in the minds of the legislators, policy

makers, judiciary and executives. Therefore, first of all, the legislations meant for the protection of child labour should have uniform provisions on the above aspect.

### REFERENCES

1. Act No. XV of 1881, which prescribes a person below twelve years of age to be called as a 'child'.
2. Factories Act, 1948 (Act No. LXIII of 1948).
3. Section 1(3).
4. For details, see *Gazette of India*, 1947, part V, pp. 580-581.
5. Section 2(c).
6. Section 67.
7. Act No. 52 of 1961 which came into force on March 1, 1962 vide G.S.R. 246, dated 12. 2.1962 And amended by Acts 52 of 1964; 25 of 1968; 27 of 1973 and 41 of 1986.
8. Section 3.
9. Act No. 32 of 1966, published in *Gazette of India*, Extra. Part II, Section 1, dated 1st December, 1966.
10. Act No. II of 1933.
11. Act No.35 of 1983, published in the *Gazette of India*, Extra, Part II, section 1, and dated 14th December, 1983, pp.1-14.
12. Act. No.27 of 1961.
13. Section 2(b).
14. Section 24.
15. See Preamble of the Act.
16. Section 3.
17. Section 2. Because a 'child' under this Act is defined as a person who is under fifteen years of age.
18. *Ibid.*
19. Section 2(c) and section 3(a) of The Motor Transport Workers Act, 1961 and The Dangerous Machines (Regulation) Act, 1983 respectively.
20. Section 21.
21. Act No. 11 of 1948.
22. Section 2(bb), Ins. by Act No.61 of 1986.
23. Act No. 35 of 1952 as amended upto Act No. 42 of 1983 (w.e.f.31.5.1984).
24. Section 41(1).
25. Section 45.
26. Section 40 (2).
27. Section 109.
28. Section 26.
29. Act No. 69 of 1951 as amended up to Act No. 61 of 1986.
30. Act No. 61 of 1986.
31. See Preamble of the Act.
32. Section 2 (ii).
33. Section 3.
34. Section 3(b).
35. Added by Act No. 27 of 1973.
36. Specified in Apprenticeship Rules, 1991, Vide Notice No. G.S.R. 356, dated July 15, 1992 and published in the *Gazette of India*, Part II, Sec.3 (i), dated 1st August, 1992, PP. 1405-1434, Sl. No. 31.
37. Apprenticeship Rules, 1991, Rule 3.
38. *Ibid.*, Rule 4.
39. Section 4(1).
40. See part III.
41. Section 26.