

Critical Analysis of law relating to Employment of Children and its effect on Poverty, Education and Future of the Country

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Abstract: The Paper will focus on the recent changes in the Child Labour Act, that has led to many criticism and less then no appreciations. The paper seeks insight about the Amendments and its Practicality. Since every story has two sides of it and this does too, in this case the Government has adopted a very different and practical approach it has left many international organisation and country to think about such approach. which didn't go well to the ideal thought of many. The paper seeks to research such phenomena of both the sides of amendments and its effect on Poverty, Education and Future of our Nation.

India is a developing country and like any other developing country in the world its also facing the one of the major issue that is POVERTY and due to which there are many issues that are developing in this developing economy. One such issue is Child Labour, and for this the Indian Government, the Child Labour (Prohibition and Regulation) Act 1986. The Act set out to define a child as a person who not yet completed age of 14 years. The Part 2 of the Act talks about the Prohibiting Children from working in any occupation listed in Part A of the Schedule like construction worker, industries... The Act also prohibits children from working in places where certain processes are being undertaken, as listed in Part B of the Schedule like, beedi making, soap manufacture. Part 3 of the Act outlines the conditions in which children may work in occupations in not listed in the schedule. The act also has set out the limit for the working in these kind of establishments, and no child can work beyond the Prescribed limit, as of now children are not allowed to work more than 3 hours at a stretch in an establishment and have to provided with breaks of an hour, further children can't be employed beyond 6 hours at stretch in total including their interval, and cant be employed during the hours of 7:00 PM to 8:00 AM. The child has to receive at least 1 holiday every week. The Act is not only giving the direction for setting out employment to these young mind but is also complying the employer to send a notification to an inspector about a child working in their establishment and keep register of all children employed for inspection, hence making him accountable for the acts.

Further the Child Labour Act talks about the loophole in the age of the child, since majority of the people are below poverty line there may a situation where the Parents aren't aware of the date of birth or they are aware about the Regional Calendar for the date of birth or they don't remember, or they don't have the documents to prove his date of birth. In Such situation the employer take benefit of such situation and actually employ him as a teenager and there by employing him in Hazardous Industries. In India a Landmark case of Sivakasi, where in this many of the children were employing them as workers which clearly the law doesn't permit. As Per the International Labour Organisation (ILO)² had done a research and according to that research it had brought a report stating that the Firecracker Industry was not only one where the children were present in significant number. The reason behind this is clearly the high demand of the consumers and the growing Population. It's not only we as the consumers to be blame alone but also the Government authorities for not taking proper steps to eradicate this situation. Now in this situation the act states that if there is dispute regarding the age of the child, the inspector can submit the child for a medical exam to determine his/her age when the Birth Certificate is not available.

The Child Labour Act also talks about the working conditions of the Children in the establishment of employment, for which the act cover the various rules as to the cleanliness, light, disposal of waste and effluents, drinking water, etc..

The Act also state about the Serious Penalty the employer will face if found guilty in the Section 4 of the Act. Also along with this each and every state is free to make any necessary department for the implementation of the act

Coming back to issue in Hand is the Amendment that has got more Lime-Light for its Negative Effect to the Indian.

Lets Analysis the at the Amendments for which we have received more criticism and less appreciations.

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² <https://www.mapsofindia.com/my-india/india/child-labour-in-sivakasi-fireworks-industry>

The Amendments that took place are as follows.

SUBSTITUTION OF NEW SECTION FOR SECTION 3:

“3. (1) No child shall be employed or permitted to work in any occupation or process.

(2) Nothing in sub-section (1) shall apply where the child,—

(a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;

(b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed:

Provided that no such work under this clause shall effect the school education of the child.

Explanation.—For the purposes of this section, the expression,

(a) ‘family’ in relation to a child, means his mother, father, brother, sister and father’s sister and brother and mother’s sister and brother;

(b) ‘family enterprise’ means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;

(c) ‘artist’ means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2).’.

If we analysis the above the section, we find that there is a loophole in the new sections as on one hand we are not allowing any of the children to work in any process or any occupations and on other hand we are allowing them to work in those enterprise where the family enterprise are involved after his school hours. The world has criticised this section immensely since we because we are allowing the children to work in those “FAMILY” enterprise. Also one view is that if a child in his early years is more focus on the making money or helping the family with financially then it might be difficult that child will study in their school as effectively as compared to other children who don’t have financially responsibility on their tender shoulder from such small age. This move also isn’t practical as though we are allowing the kids to work on their FAMILY ENTERPRISE there is “LACK of Proper **MACHINERY / SYSTEM that wil ensure that those STUDENTS will go to school regularly**”

In case of Sub part (b) we have not clearly identified the situation of those children who are employed in Entertainment industry those who are children who employed other place then their admission in school. The law is silent in those situation, the situation in modern era is that the there more viewer and due to which it leads to more channels and more shows. We see more channels coming up kids Reality show whether it might be dancing singing or just sitcoms, ad kids are taking part in these sows and running those shows, what here we lack is again a proper machinery / system that helps keep a tab on these situations.

On one hand in India is making Compulsory and Free Education Article 21 A and on the other we are allowing small children to work, the reason? well lets have look at the other side of the coin. The Answer its simple India as we know it’s a developing country and as a developing country along with the populations factor we are also growing in poverty. According the recent Ranking in the International Food Policy Research Institute ³, India has a “SERIOUS” hunger problem and ranks 100th out of 119 countries on the Global Hunger Index, we are behind North Korea, Bangladesh.

So we fell from 97th to 100th that’s a huge problem for a country that more then 100 millions of People living in it. Lets Understand why I took the Global Hunger Index as support of my argument.

The Global Hunger Index , now in its 12th years, ranks countries based on 4 key indicators-

1. Undernourishment
2. Child Morality
3. Child Wasting
4. Child Stunting

According to the Global Hunger index , “India’s high ranking on the GHI again this year bring to the fore the disturbing reality of the country’s stubbornly high Proportions of Malnourished Children, More than one-fifth of the Indian children under 5 weigh too little for their height and over a third are too short for their age”⁴ now one might say poverty and hunger are both different issues,

³ http://www.huffingtonpost.in/2017/10/12/india-ranks-100th-on-global-hunger-index-trails-north-korea-bangladesh_a_23241949/

⁴ http://www.huffingtonpost.in/2017/10/12/india-ranks-100th-on-global-hunger-index-trails-north-korea-bangladesh_a_23241949/

yes they are but they are deeply inter-related the reason why many families are failing to provide is that because they are poor , if they have money they can provide for the basic necessity FOOD. Secondly we can just have LAW that ignoring the reality that going on the ground Level of every street of every village, Every City and Every State of India. We made a radically changes in law in this act, so the Children can support their family as little as they can, making laws for the international Standards making country look good that's not the objective of law , one of the objective of the law is also to help people in need , sport them in their need of time. According to me the only reason why we have allowed the children to work in Family Business or Entertainment industry is that because it might help their family survive.

Now let's Analyse the other sections that have also impacted the Child Labour Act.

After section 3 of the principal Act, the following section shall be inserted, namely:—

“3A. No adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule:

Provided that the Central Government may, by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under this Act.”.

On one hand the Government is not permitting the children to work in the hazardous industry which is really a good move much appreciated but on the other hand the Government is kind of bias in such sense though a child is strictly not allowed to work in the Industry but its permitting an adolescent to work in a non-hazardous environment which is also good but the mistake may lie here leaving the state government of the individual state to decide as to what can be included in such criteria. It would have been much more uniformity if the Central Government had decided this portion as well but it didn't. There is also a reason for me to believe that is India is wide country with more than 29 states and each of these have their specialisation in Trade and commerce, so there may not any one specific criteria as to which can be applied to a vast country like ours.

Further with the amendments that have come along in this Act, the rules have got much sticker, with Harsh liabilities to be faced by the employer if found guilty which was really needed at this point of time. But a new amendment that has also created a difference is the creation of the “CHILD and ADOLESCENT LABOUR REHABILITATION FUND” under the new inserted section of 14A.

14A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence committed by an employer and punishable under section 3 or 2 of 1974. section 3A shall be cognizable.

14B. (1) The appropriate Government shall constitute a Fund in every district or for two or more districts to be called the Child and Adolescent Labour Rehabilitation Fund to which the amount of the fine realized from the employer of the child and adolescent, within the jurisdiction of such district or districts, shall be credited.

(2) The appropriate Government shall credit an amount of fifteen thousand rupees to the Fund for each child or adolescent for whom the fine amount has been credited under sub-section (1).

(3) The amount credited to the Fund under sub-sections (1) and (2) shall be deposited in such banks or invested in such manner, as the appropriate Government may decide.

(4) The amount deposited or invested, as the case may be under sub-section (3), and the interest accrued on it, shall be paid to the child or adolescent in whose favour such amount is credited, in such manner as may be prescribed.

Explanation:— For the purposes of appropriate Government, the Central Government shall include the Administrator or the Lieutenant Governor of a Union territory under article 239A of the Constitution.

14C. The child or adolescent, who is employed in contravention of the provisions of this Act and rescued, shall be rehabilitated in accordance with the laws for the time being in force.

14D. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the District Magistrate may, on the application of the accused person, compound 2 of 1974. any offence committed for the first time by him, under sub-section (3) of section 14 or any offence committed by an accused person being parent or a guardian, in such manner and on payment of such amount to the appropriate Government, as may be prescribed.

(2) If the accused fails to pay such amount for composition of the offence, then, the proceedings shall be continued against

such person in accordance with the provisions of this Act.

(3) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(4) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought in writing, to the notice of the Court in which the prosecution is pending and on the approval of the composition of the offence being given, the person against whom the offence is so compounded, shall be discharged

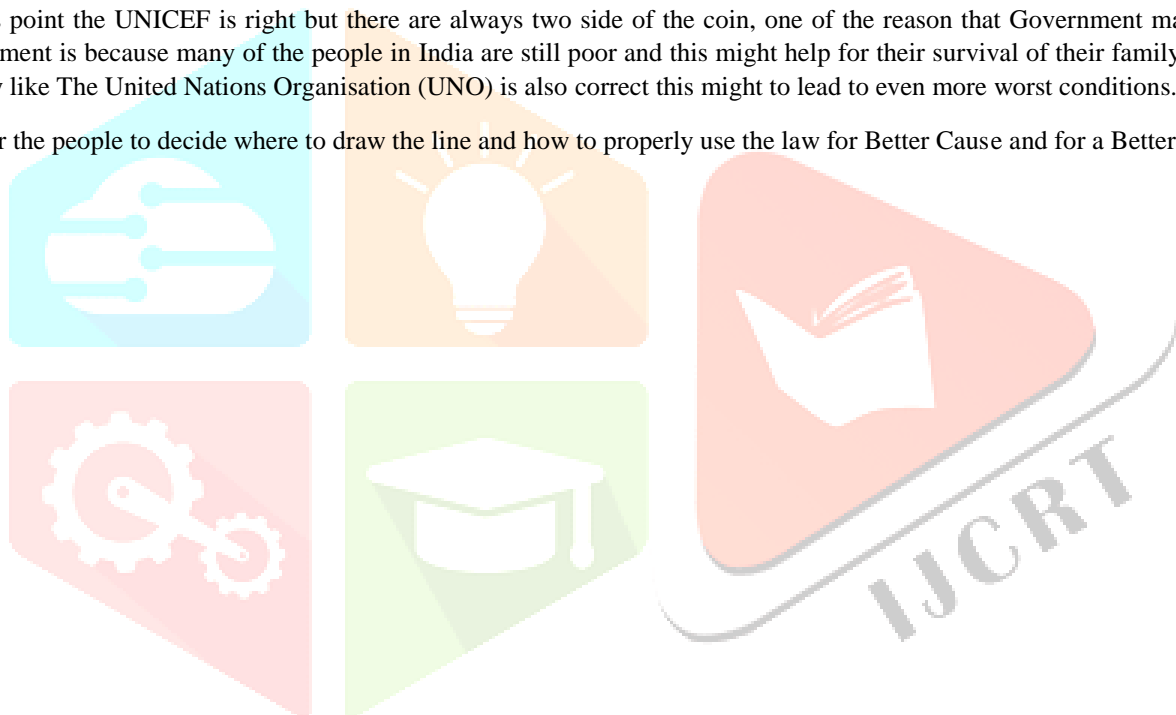
The creation of the fund will lead to better prospects for the child since the Fine collect through the employer, the interest from that amount will only go towards his Up-liftmen. This move of the government was wildly appreciated as well.

Even though the government has done many amendments in the Child Labour Act but still we are far behind as compared to other nations as they have much sticker law on child labour.

The United Nations Organisation has particular criticised the New amended section 3 by the UNICEF. The UN agency said the provision will impact children + from poorer families and legitimize family, thus causing further disadvantage to them as there is a lot of outsourced work carried out. "Under the new Child Labour Act, the more invisible forms of child labour+ and exploitation may go unseen and the most vulnerable and marginalized children may end up with irregular school attendance, lower levels of learning," said Euphrates Gobina, UNICEF chief of education in India.⁵

At this point the UNICEF is right but there are always two side of the coin, one of the reason that Government may made have amendment is because many of the people in India are still poor and this might help for their survival of their family, on the other agency like The United Nations Organisation (UNO) is also correct this might to lead to even more worst conditions.

It is for the people to decide where to draw the line and how to properly use the law for Better Cause and for a Better Future.



⁵ <https://timesofindia.indiatimes.com/india/Child-labour-bill-passed-Unicef-voices-concern/articleshow/53406863.cms>