

# HR Law Hotline

November 23, 2016

## INDIA'S LAW ON CHILD LABOUR PROHIBITION REVAMPED

- Employing children (below 14 years) has been prohibited in all occupations and processes, with certain limited exceptions.
- Children are now allowed to help family or family enterprises in non-hazardous occupations after school hours or during vacations.
- Children are also allowed to work in the audio-visual entertainment industry, subject to compliance with prescribed conditions.
- Employing adolescents (between 14 and 18 years) has been prohibited in hazardous occupations and processes.
- Employing children or adolescents in contravention of the law has been made a cognizable offence.
- Punishment for employers has been enhanced. Punishment for parents/ guardians have been relaxed.

India's law on child labour has been amended to ensure that (i) education of children between the age group of 6 - 14 years is not compromised and (ii) the law is brought in line with the Right to Free and Compulsory Education Act, 2009 ("**Right to Education Act**"). As a result of the enactment of the Child Labour (Prohibition and Regulation) Amendment Act, 2016 ("**2016 Amendment Act**")<sup>1</sup>, the Child Labour (Prohibition and Regulation) Act, 1986 is now re-titled as the 'Child and Adolescent Labour (Prohibition and Regulation) Act, 1986' ("**Child Labour Act**"), in order to reflect its expanded scope and coverage.

India is a signatory to the 'United Nations Convention on the Rights of the Child' which aims at protecting the interests and rights of children.<sup>2</sup> Although, the International Labor Organization has enacted Conventions such as the Minimum Age Convention, 1973 and Worst forms of Child Labour Convention, 1999 with the objective of eliminating child labour, India has not yet ratified the aforementioned conventions<sup>3</sup>.

### Important Features

The important revisions to the Child Labour Act as a result of the 2016 Amendment Act are as follows:

1. *Definition of 'child'*: The 2016 Amended Act has brought the law in sync with the Right to Education Act by amending the definition of '*child*' to mean a person who has not completed 14 years or such age as specified under the Right to Education Act, whichever is higher. *This definition however continues to remain different from the definition of 'child' as per the Factories Act, 1948.*
2. *Definition of 'adolescent' introduced*: 'Adolescent' has been defined to mean a person who has completed his 14<sup>th</sup> year but not completed his 18<sup>th</sup> year. *This definition is however slightly different from the definition of 'adolescent' as per the Factories Act, 1948.*
3. *Prohibition of child labour*: A complete ban has been imposed on employing children, except in the following two cases:
  - Children are allowed to help in his/her family or family enterprise(s) provided that (i) such enterprise is not involved in hazardous processes and (ii) the work is carried out after school hours or during vacations.
  - Children are allowed to work in the audio-visual entertainment industry including advertisement, films, television serials or any such other entertainment or sports activities except circus subject to (i) compliance with prescribed conditions and adoption of safety measures, and (ii) the work does not affect the school education of the child.
4. *Prohibition on employment of adolescents*: New provision prohibiting employment of adolescents in hazardous occupations and processes introduced.
5. *Child labour made a cognizable offence*: Any offence committed by an employer which is punishable under the Child Labour Act has been made a cognizable offence. Accordingly, the authorities can file a first information report and commence investigations into the offence without a court order and can arrest without a warrant.
6. *Punishments for contravention enhanced*: While the punishment for employers has been significantly enhanced, the punishment for parents / guardians has been relaxed. *Please see the table below for a comparative on the punishment before and after the 2016 Amended Act.*

OFFENCE	CHILD LABOUR ACT	AMENDED CHILD LABOUR ACT
	PENALTY	PENALTY
Employment of a child or permitting a child to work in any occupation or process in contravention to the statute	Imprisonment: 3 - 12 months	Imprisonment: 6 months - 2 years
	Fine: Rs.10,000 (approx. USD 150) - Rs. 20,000 (approx. USD 300)	Fine: Rs.20,000 (approx. USD 300) - Rs. 50,000 (approx. USD 750)
	OR both	OR both
Employment of an adolescent or permitting an adolescent to work in hazardous occupations or processes.	<i>Not prescribed</i>	Imprisonment: 6 months to 2 years
		Fine: Rs.20, 000 (approx. USD 300) - Rs.50, 000 (approx. USD 750) OR both

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both.		
Second or subsequent offence   Imprisonment: 6 months - 2 years   Imprisonment: 1 - 3 years		
of employing any child or adolescent in contravention of the statute		
<div><div>1. <i>Punishment for parents/guardians relaxed:</i> There shall not be any punishment in case of a first offence by parents/guardians. In case of a second and subsequent offence, the penalty prescribed is a maximum fine of Rs. 10,000 (approx. USD 150).</div><div>2. <i>Powers of District Magistrate:</i> Powers have been vested with the District Magistrate to ensure that the provisions of the amended law are properly enforced.</div><div>3. <i>Constitution of Child and Adolescent Labour Rehabilitation Fund:</i> Provision has been made for constitution of a special fund by the appropriate government in every district or two or more districts, for rescue and rehabilitation of children and adolescents.</div><div>4. <i>Compounding of offences:</i> Provision has been made for compounding of offences on application made by the accused to the District Magistrate.</div><div>5. <i>Inspection and Monitoring:</i> Provision has been made for periodic inspection and monitoring by the appropriate government of places where employment of children is prohibited and hazardous occupations or processes are carried out.</div></div>		
<b>Analysis</b>		
<p>India has taken a significant step towards prohibition and eradication of the social evil of child labour which has consumed the society to a large extent. The 2016 Amended Act has now been brought in sync with the Right to Education Act. Although the amended law instills some amount of hope and confidence in those vouching for the betterment of children, the impact and reach of the law is yet to be witnessed. Given the magnitude of the problem and the complexities involved, proper enforcement of the law will have to be ensured by the authorities. Mere enactment of the law would not suffice unless it is accompanied by a range of other measures and conducive conditions to eradicate child labour. At the outset, the 2016 Amended Act poses <i>inter alia</i> the following challenges:</p> <div><div>1. In a move to strike a balance between the need for education of children and the reality of socio-economic conditions in India, the government has carved out certain exceptions to the ban on engaging/employing children by allowing children to help family or family run enterprises. Such an exception could lead to exploitation of children in industries where the activities may be outsourced to home-based units. Hence the exception paves way for employers to take advantage of “family enterprises” to employ child workers. In other words, prohibited activities could occur under the guise of ‘permitted exceptions’. Thus the exceptions permitting certain occupations outside school hours may have potential loopholes which could increase the vulnerability of child workers.</div><div>2. Although the amended law states that children may be permitted to work in family or family run enterprises only ‘outside school hours’, there is no authority to check nor has a mechanism been devised to ensure that these permitted activities are not hindering or affecting the education of children.</div><div>3. The 2016 Amended Act has significantly reduced the list of hazardous occupations for children from 83 to include only (i) mining, (ii) explosives and (iii) other occupations mentioned in the Factories Act, 1948. Hence, various works including work in chemical mixing units, cotton farms, battery recycling units, brick kilns, have been dropped from the list of hazardous activities and there does not seem to be valid justification for removal of any of these activities.</div><div>4. Instead of imposing stricter penalties and enforcing punitive actions, the amendment has relaxed the provision with respect to punishment for parents and guardians who contravene the law, which earlier, was the same as that for employers.</div><div>5. The amendment does not provide for any steps/measures to sensitize employers, parents and society to ensure accountability in case there are violations.</div></div> <p>Hence, to summarize, the outcome of the amended law would not just depend on the existing legislative framework, but also on various other factors such as the reforms and measures that the government subsequently adopts to address the issue and the speed at which such steps are implemented/enforced. A holistic approach will have to be adopted to address all the direct and indirect factors that contribute to the social evil. Multiple ministries, agencies and private sector stakeholders will have to join hands together to combat this social evil.</p>		
<p>— <b>Preetha S &amp; Vikram Shroff</b></p> <p>You can direct your queries or comments to the authors</p>		
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