

HR Law Hotline

May 19, 2015

INDIA'S LAW ON CHILD LABOUR PROPOSED TO BE REVAMPED

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

INTRODUCTION

In a move to overhaul the existing child labour law of India, the Union Cabinet has approved amendments to the Child Labour (Prohibition and Regulation) Amendment Bill, 2012 ("**Child Labour Bill**")¹ on May 13, 2015. The objective of the proposed amendments is 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**").

The Child Labour (Prohibition and Regulation) Act, 1986 ("**Child Labour Act**"), once amended by the Child Labour Bill, will be titled as the 'Child and Adolescent Labour (Prohibition and Regulation) Act, 1986' to reflect the expanded scope. For the Child Labour Bill to become law, it will have to be passed by both the houses of the Parliament and receive the assent of the President of India.

LEGISLATIVE TIMELINE

- December 2012** The Child Labour (Prohibition And Regulation) Amendment Bill, 2012 was introduced in the Rajya Sabha, the upper house of the Indian Parliament. The Child Labour Bill was also referred to the Standing Committee on Labour by the Speaker of Lok Sabha (the lower house of the Indian Parliament) in consultation with the Chairman of Rajya Sabha for examination.
- February 2013** The Standing Committee invited representatives of the Ministry of Labour and Employment and representatives of stakeholders, for expressing their views / suggestions on the proposed amendments.
- December 2013** Report of the Standing Committee was presented in the Lok Sabha.
- June 2014** The Ministry of Labour and Employment annotated comments to the Report of the Standing Committee and invited further comments and suggestions from the public on the proposed amendments in its office memorandum.
- May 2015** The Union Cabinet chaired by Prime Minister Mr. Narendra Modi approved amendments to the Child Labour Bill.

IMPORTANT FEATURES

The important features of the Child Labour Bill (as amended by the Union Cabinet) include:

1. **Definition of 'child':** The Child Labour Bill proposes to sync the law on child labour 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 14th year but not completed his 18th year. *This definition is however slightly different from the definition of 'adolescent' as per the Factories Act, 1948.*
3. **Prohibition of child labour:** The Child Labour Bill imposes a complete ban on employing children, except in the following two cases:

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Scope of judicial interference and

■ Children allowed to help in his 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 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.²

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:* Offence of employing a child or adolescent in contravention of the law by an employer to be 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 under the Child Labour Act and the Child Labour Bill:

OFFENCE	CHILD LABOUR ACT PENALTY	CHILD LABOUR BILL 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 Fine: Rs. 10,000 (approx. USD 150) - Rs. 20,000 (approx. USD 300) OR both	Imprisonment: 6 months - 2 years Fine: Rs. 20,000 (approx. USD 300) - Rs. 50,000 (approx. USD 750) 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.
Second or subsequent offence of employing any child or adolescent in contravention of the statute	Imprisonment: 6 months - 2 years	Imprisonment: 1 - 3 years

7. *Punishment for parents/guardians relaxed:* 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).

8. *Powers of District Magistrate:* Powers to be vested with the District Magistrate to ensure that the provisions of the amended law are properly enforced.

9. *Constitution of Child and Adolescent Labour Rehabilitation Fund:* A special fund has been proposed to be created for rehabilitation of rescued children and adolescents.

ANALYSIS

For the first time, India is moving towards a complete ban on employment of children below 14 years in all occupations. The current law prohibits employment of a child in 18 occupations and 65 processes, and regulates the conditions of work of children in other occupations and processes. The Right to Education Act was legislated to ensure free and compulsory education to all children in the age group of 6 - 14 years. The amendments have been proposed after recognizing the possible inconsistency between the Child Labour Act and the Right to Education Act and the deviation from the International Labour Organisation (ILO) Conventions on the subject.

However, it appears that in a move to strike a balance between the need for education of children and the reality of socio-economic conditions prevailing in India, the Union Cabinet has carved out certain exceptions by allowing children to help their family or family enterprise and permitting children to work in the entertainment industry and sports (except circus); with the pre-condition that they may be employed to do such jobs only after the regular school hours or during vacations. The proposed amendments do not address the possible exploitation of children in industries where the activities may be outsourced to home-based units.

– Preetha S & Vikram Shroff

You can direct your queries or comments to the authors

¹ <http://pib.nic.in/newsite/PrintRelease.aspx?relid=121636>

² <http://pib.nic.in/newsite/PrintRelease.aspx?relid=121636>

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