

RGICS

RAJIV GANDHI INSTITUTE FOR CONTEMPORARY STUDIES
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RGICS ISSUE BRIEF (June 01, 2017)

**Draft of the Child Labour (Prohibition and
Regulation) Amendment Rules 2017**

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KEY MESSAGES

- By allowing child labour in family enterprises, the draft rules will indirectly aggravate the problem of child labour.
- Allowing children to participate in audio visual and sports activity by saying consent will be given by the child herself is a specious argument as it is not legally considerable, as consent of a child is represented by the legal guardian.
- The draft rules are inconsistent with International Labour Organization Convention, C182, Worst Forms of Child Labour Convention, 1999, which was ratified by Government of India on March 2017.
- The draft rules will constrain the effective implementation of the Right to Education Act 2009.
- Intergenerational poverty will never be resolved unless we are able to stop child labour completely.

Draft of the Child Labour (Prohibition and Regulation) Amendment Rules 2017

PART I. INTRODUCTION

According to International Labour Organization (ILO), Asia and the Pacific still have the largest number of child labourers (almost 78 million or 9.3 percent of child population), but Sub-Saharan Africa continues to be the region with highest incidence of child labour¹. In India 14.4 percent children between age 10 and 14 years are employed in child labour, in Bangladesh 30.1 percent, in China 11.6 percent, in Pakistan 17.7 percent, in Turkey 24 percent, in Cote D'Ivoire 20.5 percent, in Egypt 11.2 percent, in Kenya 41.3 percent, in Nigeria 25.8 percent, in Senegal 31.4 percent, in Argentina 4.5 percent, in Brazil 16.1 percent, in Mexico 6.7 percent, in Italy 0.4 percent and in Portugal 1.8 percent. The figures only give part of the picture as no reliable figures of the child workers below 10 years of the age are available, though they comprise a significant amount of children in the unorganized workforce. Moreover, it is difficult to obtain such a figure, as there is no clear-cut definition of child labour according to international law².

According to Census 2011, 33 million children in age group 0-18 years are categorized as child labour in India, which at an average is one in eleven children who are working to fulfill the economic role that should be played by adults. An analysis of Census 2001 and 2011 data by Child Rights and You (CRY) reveals that the number of working children in the age group 5-14 years has been decreasing at a mere 2.2 percent per year over the last decade, contrary to popular perception of its substantial reduction (Ganotra, 2016). However, while the decade of 2001-11 saw an overall 30 percent reduction (about 3.2 million) in working children in the age group of 10-14 years, the number of working children within the 5-9 years age group increased by 0.68 million, which means an increase of 37 percent from 2001. The number of working boys grew by

¹ Child Labour, Facts and Figures <http://www.ilo.org/global/topics/child-labour/lang--en/index.htm>

² http://shodhganga.inflibnet.ac.in/bitstream/10603/8530/15/15_chapter%207.pdf

Draft of the Child Labour (Prohibition and Regulation) Amendment Rules 2017



154 percent (an increase of 2,20,214) whereas the number of working girls grew by 240 percent (an increase of 2,00,791) from 2001 (Ganotra, 2016).

Considering the alarming condition of child labour in India, Ministry of Labour and Employment, has proposed draft rules on April 20th 2017, to amend the Child Labour (Prohibition and Regulation) Rules, 1988, in exercise of the Central Government's powers conferred by Section 18 of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. The two key issues covered by the draft rules are fixing working conditions for children working in the family enterprise and for child artists.

Draft of the Child Labour (Prohibition and Regulation) Amendment Rules 2017

PART II: Implication

- **Child labourers in Family Enterprises**

According to the National Sample Survey Organization's (NSSO), 68th round of employment and unemployment survey, the largest numbers of child labourers belong to families that are self-employed, followed by families of casual labourers. It is therefore a matter of concern that the draft rule clearly mentions that a child can help his family without affecting education. Some important implications of this provision are discussed below.

Misuse of this Provision: According to the draft rules and also the previous Acts and Amendments on child labour, a family includes not just the child's parents and siblings, but also siblings of the child's parents and a family enterprise includes any work, profession or business in which any family member works along with other persons. The only difference between the present draft rules, the Child Labour (Prohibition and Regulation) Amendment Act 2016 and the principle Act of 1986 is the focus on school education. Although, the Government has clearly mentioned that a child can help his family without hampering the school education, the clear fallout of this proviso is that, instead of ending child labour, it might actually legalise large scale use of child labour. The misuse of this provision by contractors to disguise child labourers as simple assistants to adult family members in most outsourced works cannot be ruled out. The definition of family in the draft has actually been misused in many different forms, viz. the enterprise that any of these family members own, where any of these family members are employed or wherein any of these family members have subcontracted work. So this may practically include all occupations. Moreover, it will also increase the scope of trafficking. In

Draft of the Child Labour (Prohibition and Regulation) Amendment Rules 2017

practice, in most cases of trafficking of children, the perpetrator is a close family member or a community member.

Perpetuation of Occupation-based caste System: Allowing children to work in family enterprises tends to perpetuate the occupation-based caste system and binds children to their traditional family occupations. It does not give them adequate opportunities to learn new, employable trades as part of their education. Around 35 percent of the working children in India (5–14 years) belong to the socially disadvantaged groups (Ganotra, 2016). These amendments create the scope of an environment that is not conducive to their retention in schools, receiving quality education through the years and are ultimately contrary to creating equal opportunities.

The definition of family enterprise does not include the size of the enterprise: The draft rule also did not mention the size of the family enterprise, which then allows for a broad interpretation and therefore exploitation of children in the name of the family enterprise. Here the government fails to recognize that family enterprises can also prove to be exploitative and oppressive for children. ‘Family enterprises’ fall in the unorganized sector and making them an unstructured legal category those are hard to regulate. Further, as is well known in the Indian context it is the girl child who tends to be pulled out of school and into reducing the family’s economic or care givers burden, these draft rules will perpetuate this condition and ultimately deny them the joys of a normal childhood.³ This will also constrain the effective implementation of Prime Minister’s Beti Bachao Padhao campaign to ensure education of the girl child.

³ Right of a Child, May 16, 2015, The Hindu. Available At: <http://www.thehindu.com/opinion/editorial/editorial-on-approval-of-amendments-to-child-labour-prohibition-and-regulation-act-1986/article7211095.ece>

Draft of the Child Labour (Prohibition and Regulation) Amendment Rules 2017

- **Fixing rules for Child Artists**

According to the draft rules, no child artist shall be allowed to work for more than five hours in a day and they will not work for more than three hours without rest. . Under the proposed rules, at least 20% of the income earned by the child artist will be required to be deposited in a fixed deposit account in a nationalized bank. When the child or adolescent completes the age of eighteen years then as soon as may be possible forthwith or within a period of three months, the total amount credited, deposited or invested in favour of the child along with interest accrued thereon including the interest remaining in the bank or remaining so invested shall be transferred to the bank account of the child or adolescent.

The draft mentions that no child shall be made to participate in any audio visual and sports activity against his will and consent. But the “will and consent” of a child is open to manipulation and is also not legally considerable as the consent of a child is represented by the legal guardian of the child. Making such rules which considers the consent of a child with its underlying issues as mentioned earlier, is really a case of having no rules to protect such child from exploitation.

Draft of the Child Labour (Prohibition and Regulation) Amendment Rules 2017

PART III: Probable Fallout of the Draft

- **Unequal Childhood**

Permitting child labour in family enterprises is not only a question of hampering school education, which are theoretically addressed by the draft rules, but it is also about the normal growth of a child with all the requirements of a childhood, like other extracurricular activities etc. There might be many different types of barriers in the life of a child despite being enrolled in school. As for example, undernourishment, lack of confidence due to first-generation learners and exhaustion due to work in the family enterprise, all of which are not considered by the draft rules, which will severely impact the present and future capabilities of the child.

- **Cycle of Poverty**

The long-held argument regarding child labour is that, it is inevitable as long as the problem of poverty is not solved. Only after parents escape from poverty will their children be able to enter school. But another long term and overwhelming problem is the reverse of the relationship between poverty and child labour is that child labour is actually a major cause of persisting poverty. If a child is trapped in labour instead of being able to attend fully to her schooling, she will never be able to escape the poverty experienced by her parents. The child of a sanitation worker, rag-picker, domestic worker or casual labourer is likely to be trapped in the professions of her parents unless she is able to access quality education.

- **Not aligned with the Right to Education Act, 2009**

The present draft rule and also previous other Bills on child labour do not consider the educational needs of adolescents. According to the draft, a child is someone who is below the age of 14 years, while an adolescent is one who is between 14 and 18 years. The Standing Committee Report on the Child Labour (Prohibition and Regulation) Amendment Bill 2012

Draft of the Child Labour (Prohibition and Regulation) Amendment Rules 2017

observed that the definition of adolescent is not aligned with the Right to Education Act, 2009, because the focus under the 2009 Act is to provide elementary education to all irrespective of age. The Child Labour Amendment Bill was brought primarily to align itself with the Right of Children to Free and Compulsory Education (RTE) Act, 2009, and one of its stated objectives was to ensure that all children between the ages of 6 and 14 years are in schools rather than at workplaces. The draft rule does aim to synchronize the two laws in principle, making it seem to be ideal for children up to the age of 14 years. But the clause 4 of the RTE Act states that a child who may have missed school and hence could not complete elementary education by age 14 shall be entitled to free education till the completion of her elementary education even after she completes 14 years of age. Allowing children above 14 years of age to work may push those who have not yet completed elementary education to leave school and start working. This is in contradiction with the constitutional mandate to provide elementary education to all children.

Moreover, the draft rule mentions that the school education should not be affected due to the child helping his or her family. But there is no monitoring mechanism to monitor which child is helping her family without hampering her school education, as it is difficult to keep a check on children working in their homes or working to supplement the family income.

- **Definition of Adolescents and their vulnerabilities:**

Moreover, the rights enshrined in United Nation Convention of the Right of the Child 1990 should be ensured to all children in the country considering that India has ratified the convention. And the definition of child, according to this Convention is “A child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.” The Worst Form of Child Labour Convention of ILO (No.182) of 1999 also defines the child labour to as a person of age less than 18 years. India has approved its ratification of ILO convention 182 and 138 in March 2017.

Draft of the Child Labour (Prohibition and Regulation) Amendment Rules 2017

The Sustainable Development Goals (SDGs) also includes some norms for decent work. The target 8.7 of SDGs mentions that child labour in all its form should end by the year 2025. For this purpose, SDGs also defines a child as a person between the age group of 5 to 17 years, and the draft rules for child labour in India are not in keeping with this definition.

- **No improvement in Grievance Redressal**

The draft rules also mention that the school teachers, representatives from school management committee, child protection committee, Panchayat or Municipality can file a complaint if any student in their respective school is employed in contravention to the provision of the Act. But the Act does not propose that these people are responsible or own any contravention of the provision of the Child and Adolescent Labour (Prohibition and Regulation) Act.

The draft has mentioned about some periodical inspection and monitoring by labour inspector in the places at which the employment of children is prohibited. But unless there is a role or responsibility given to the third party, as the past evidences show this provision of periodical inspection may lead to increased corruption and benefit the industry owner without children being protected.

The UN Convention of Right to Child 1990 clearly mentions the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate in cultural life and the arts. Although India is a signatory of the Convention, with the present draft rules, these rights of children will be difficult to protect.

On the other hand, considering the seriousness of open defecation problem in India which has serious health implication, Governments initiatives to change the behaviour of people in terms using toilet is commendable. The Government is so anxious to solve the problem of open defecation that in different part of the country it has been introducing numbers of squads with different tasks to solve the problem of open defecation. As for example, Indore Municipal Corporation (IMC) officials idea of 'roko-toko' and 'dabba gang'; deputation of 28 live mascots

Draft of the Child Labour (Prohibition and Regulation) Amendment Rules 2017

by New Delhi Municipal Council (NDMC), good morning squads of Pimpri Chinchwad Municipal Corporation (PCMC) in slums and villages of Navi Mumbai and also the initiatives taken by country's Smartest city Bhubaneswar to turn empty walls of public lavatories into canvases for paintings, urging people to stop open defecation etc. have made the Swachh Bharat Mission a war against open defecation instead of a campaign.

But considering the seriousness of the problem of Child labour in India, government has not been taking any practical solution to the problem. In the absence of adequate regulatory and institutional capacity to ensure child welfare, child workers in informal enterprises and family settings could be left unprotected and subject to exploitation.

Draft of the Child Labour (Prohibition and Regulation) Amendment Rules 2017

PART IV. Conclusion

Child labour is a very complex issue in a country like India where over 40% of the population is still living under the poverty line. Therefore, poverty may be identified as the chief cause that forces children to work. It is, in fact, the financial backwardness of the parents that forces them to push their children into work. In a poor family, children are an additional source of income for parents. So it is not possible to completely eradicate the child labour problem if the problem of poverty is not solved. Apart from these, parental ignorance, excessive population, illiteracy, lack of awareness of child rights and proper guidance are also some other causes responsible for child labour in India. Under the circumstances and characteristics of the problem of child labour, when the draft rule was to be revised, the expectation was that the policymakers would take the opportunity to arrive at a strong and well-built legislation to ensure safe childhood for all children. But the draft has left all serious and past apprehensions unaddressed.

Draft of the Child Labour (Prohibition and Regulation) Amendment Rules 2017

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