

Proposed Legal Changes in Laws Pertaining to Child Labour and Rehabilitation

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Abstract: *This paper analyses various amendments to laws which directly or indirectly concern child labour. It mainly looks at the proposed amendments to the laws regarding the Child Labour (Prohibition and Regulation) Act and the Juvenile Justice Act (JJA).*

The proposed changes are first outlined and then their implications are identified. Later the paper suggests some additional changes to build upon the positive aspects of the proposed amendments and to overcome some of the negative aspects.

Key-words: *JJA: Juvenile Justice Act, RTE: Right of Children to Free and Compulsory Education Act*

I. Introduction

The government has proposed some changes to the Child Labour (Prohibition and Regulation) Act and the Juvenile Justice Act (JJA). Some of the provisions in the latter have implications for child labour. This paper analyses various amendments to laws, which directly or indirectly, concern child labour.

It mainly looks at the proposed amendments to the laws regarding the Child Labour (Prohibition and Regulation) Act and the Juvenile Justice Act (JJA).

The proposed changes are outlined in section 2. The implications of the changes are discussed in Section 3. In the same section the paper also suggests some additional changes to build upon the strengths of the proposed amendments and to overcome some of the limitations. Section 4 presents the conclusions.

II. Proposed Changes

There are proposed amendments to both, the Juvenile Justice Act (JJA) and the Child Labour (Prohibition and Regulation) Act. Some of the features of the proposed amendments affect the way the legal system deals with the problem of eradicating child labour.

1. *Amendments to the Juvenile Justice Act:* The bill to amend the Juvenile Justice Act (Care and Protection of Children) Act, 2000 [1] has been passed by the Lok Sabha and is pending before the Rajya Sabha. These are the major proposed changes [2]:

a. The age of juvenile who has been accused of crimes such as rape and murder has been lowered to 16 from 18 years.

b. Juvenile Justice Board to decide whether a minor will be tried in a regular court or sent to a correctional centre.

c. The convicted juveniles may face a jail term but will not be awarded life sentence or death penalty.

d. Clarity in the role and procedures of statutory structures such as Child Welfare Committees and Juvenile Justice Boards.

e. Offences such as corporal punishment, ragging and using a child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug added.

f. Faster adoption procedures and setting up of foster care homes as well as better norms regarding inspection of such homes.

g. Strengthening measures for adoption, including providing statutory status to the Central Adoption Resource Authority (CARA).

h. Section 27 in chapter IV is a very important change from the previous section 22 in chapter II of the JJA, 2000. The new Section 27 states:

“(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge of a child in conflict with law who has run away from a special home or an observation home or a place of safety or from the care of a person or institution under whom the child was placed under this Act.

(2) The child referred to in sub-section (1) shall be produced, within twenty four hours, preferably before the Board which passed the original order in respect of that child, if possible, or, to the nearest Board where the child is found.

(3) The Board shall ascertain the reasons for the child having run away and pass appropriate orders for the child to be sent back either to the institution or person from whose custody the child had run away or any other similar place or person, as the Board may deem fit: Provided that the Board may also give additional directions regarding any special steps that may be deemed necessary, for the best interest of the child.

(4) No additional proceeding shall be instituted in respect of such child.”

2. *Amendments to the Child Labour (Prohibition and Regulation) Act:* The important proposed amendments to the Child Labour (Prohibition and Regulation) Act include the following [3];

a. A distinction is made between “child” and “adolescent”.

b. Children are allowed to do non-hazardous work in family enterprises after school/ during vacations. Section 3 states, “No child shall be employed or permitted to work in any occupation or process:

Provided that nothing in this section shall apply where the child helps his family after his school hours or helps his family in fields, home-based work, forest gathering or attends technical institutions during vacations for the purpose of learning, but does not include any help or attending technical institutions where there is subordinate relationship of labour or work which are outsourced and carried out in home.”

c. Children are allowed to work in audio-visual entertainment industry (except circuses), provided it doesn’t affect the school education.

d. Employing a child will be a cognisable offence, so arrests may be made without a court order.

e. News reports have stated that a first offence by parents will not attract a penalty in view of their poverty.

f. It is illegal for adolescents to work in hazardous employment, but the term hazardous has not been defined. Section 3A states, “No adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule.”

g. Punishments for child labour have been increased. Section 14 (1) has been restated to increase the imprisonment from the earlier 3 months - 1 year to 6 months - 2 years and fine from Rupees 10000-20000/- is proposed to be increased to Rupees 20,000- 50,000/-

h. Periodic inspection of the places at which the employment of children is prohibited and hazardous occupations or processes are carried out.

III. Implications of the Proposed Changes

There are various implications of the amendments which are discussed here.

1. *Implications of proposed changes to the JJA.*

First we consider the proposed amendments to the JJA. Only those implications are discussed, which have a bearing on child labour.

Reducing the age of the juvenile for serious crimes from 18 to 16 years creates a conflict with many other acts like the Prohibition of Child marriage Act, 2006 and the Immoral Traffic (Prevention) Act, 2012. The RTE Act [4] also assumes that a child is someone below 14 years of age; the proposed changes to the Child labour Act identify a child as someone below 14 years and an adolescent as someone above 14 years, but below 18 years of age.

While people have focussed on the fact that the JJA amendment allows older juveniles to be treated as adults in cases of serious crimes, less attention has been focussed on the fact that the provision for escaped juveniles has been changed. The juveniles must be presented before a Juvenile Justice Board, which will determine the cause for running away. They will not automatically be sent back to the same institution from which they have escaped, which is a great improvement. This will prevent children’s homes from being places of horror that they are today [5] [6].

There are also many more regulations regarding the registration, inspection (at least 2 per month) and supervision of institutions for children. Similarly, faster adoption procedures, (assuming there are adequate regulations to prevent trafficking in the guise of adoption), can give a new family to those children whose biological parents only use them as a source of income. If followed in the spirit of the law, the system for rehabilitating children will be improved to the extent that the children placed in children’s homes may not feel the need risk life and limb in order to escape, as happens nowadays.

2. *Implications of proposed changes to the Child Labour (Prohibition and Regulation) Act.*

- a. A distinction is made between “child” and “adolescent”. The division of non-adults into children and adolescents creates a legal and ethical quagmire. This conflicts with the definition of child as per the Factories Act, 1948. Also the conflict with other Acts as discussed above continues to exist. As long as there is no uniform age for children and adolescents, people could challenge other provisions of the act.
- b. Children are allowed to do non-hazardous work in family enterprises after school/ during vacations. The definition of non-hazardous requires greater clarity than definition of the Factories Act, 1948. This also creates a loophole, where every child employer may claim to be an uncle or relative who is also the guardian of the child labourer. So this can increase child labour. Finally, even if the children are really helping their families, their studies will be adversely affected. Unfortunately there is no way to analyse this under the provisions of the RTE.
- c. Children are allowed to work in audio-visual entertainment industry (except circuses), provided it doesn't affect the school education. However, there is no way of checking whether the education is being affected, so this is merely a sinecure. Often child actors are made to work for 11/2 – 2 shifts (12-16 hours) and sometimes exposed to age-inappropriate behaviour and habits. The law should make a mandatory provision for tutors whenever child actors are employed and set a limit of maximum time a child shall spend on the set on any given day and even over a year.
- d. Employing a child will be a cognisable offence, so arrests may be made without a court order. This may be open to misuse by police. It may merely become a means to harass owners of small businesses and force them to pay bribes. Giving more power in the hands of officials has inevitably led to increased corruption.
- e. A first offence by parents will not attract a penalty in view of their poverty. Though media has reported this, I failed to find the relevant clause. If true, this is a welcome step, because police often book children and parents wrongly. However, there should be a continuous follow up to ensure that the child is registered in a school and also attends regularly.
- f. It is illegal for adolescents to work in hazardous employment, but the term hazardous has not been clearly defined. Once again, the division of non-adults into children and adolescents is fundamentally wrong. However, the government argues that it fits in with the age of children in line with the requirements of compulsory education as per the RTE. This is a legally sound answer, but the government must also ask itself about the moral soundness of the clause.
- g. Punishments for child labour have been increased. While the increase in punishments in terms of jail term is a clear increase, the financial penalty may actually have decreased in real terms (due to inflation over the years). Anyway, merely increasing the penalties is not a solution, increasing the conviction rate is more essential.
- h. Periodic inspection of the places at which the employment of children is prohibited and hazardous occupations or processes are carried out. This is a good step, but the clause goes on further to state that the appropriate government shall make or cause to be made, periodic inspection at such intervals as it thinks fit. This may enable the relevant DM to be lax regarding inspections. The intervals should be defined by law.
- i. This act also has certain drawbacks. Mainly it doesn't cover issues like child trafficking, or the rehabilitation of street children and orphaned children. The government states that this is dealt with in other laws so duplication is not required. However, the issue of child labour cannot be dealt with without talking of rehabilitation.
- j. Similarly, the will of the child is not considered important. If the child wishes to live with the parents and not in a children's home, then that wish should be respected. The parents should be made to comply with rules and educate their child, rather than exploit the child financially. There should be inspectors from a child welfare committee for the purpose of visiting the homes and schools of such children to ensure their welfare.

IV. Conclusions

This paper outlines the various proposed changes to the JJA and the Child Labour (Prohibition and Regulation) Act as well as their implications in relation to child labour. It opines that some of the proposed changes are regressive, while others are progressive. Finally the most important suggestion is that the wish of a rescued child regarding stay in a children's home or with parents should be paramount. Regular inspections of the home and school of the child should ensure that the child is getting the right kind of upbringing a child should get, which is the real purpose of the Act rather, rather than punishing child employers.

References

- [1] GoI (2000), *Juvenile Justice (Care and Protection) of Children Act, 2000.*
- [2] GoI, *The Juvenile Justice (Care and Protection of Children) Act, 2014.*
- [3] GoI, *The Child Labour (Prohibition and Regulation) Amendment Bill, 2012*, (Ministry of Labour and Employment, 2015).
- [4] GoI, *The Right of Children to Free and Compulsory Education Act, 2009.*
- [5] Human Rights Watch, *Police abuse and killings of street children in India* (Children's rights project, Human Rights Watch/Asia, 1996).
- [6] GoI, *Study on Child Abuse: 2007* (Ministry of Women and Child Development, 2007).