
LABOUR AND HEALTH LAWS IN INDIA

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ABSTRACT

In this article law related to labour and their health has been reported. In India there are many laws pertaining to these people but all of these does not constitute for the betterment of this sector. Many of these contradict with each other and result in unwanted downfall of them. In this article I have discussed the laws which are contributives in the betterment of society as well as labour. Also my own perception of how law can be perfectly implemented for their goodwill. Along with this, health related laws and issues have also been stated with direct context to labour. In its most comprehensive sense, labour law includes social security and disability insurance. Unlike the laws of contract, tort, or property, the elements of labour law are less homogeneous. Labour law has won recognition as a distinctive branch of the law within the academic legal community.

INTRODUCTION

Labour law refers to the law influencing the matters of the working class in the society i.e.employment, wages, conditions of work, labour unions, and labour-management relations etc. during the 19s labour law were regulated by the British government.Workers & trade unions who raise their voice against dicrimination were supressed. Articles which were included in the provisions were:

1. Indian Slavery Act, 1843
2. Societies Registration Act, 1860
3. Co-operative Societies Act, 1912
4. Indian Trade Unions Act, 1926
5. The Trades Disputes Act, 1929

After independence the constitution of India formed a new fundamental law for the labour which protected their rights and especially the right to join and take actions in trade unions and have an equal space in the workplace. Above all these the scope of law was limited to most developed workers and important industries only. Thus now the legislature had made the law specifically intended to target the area of protection of labour which is classified into two categories: the protection of the worker as the weaker party in the employment relationship, and the regulation of the relations between organised interest groups (industrial relations).

CHILD LABOUR

Child labour is very major issue in India. Usually weaker sections of the society who fail to possess enough income to feed the family, force their child for work and earn some penny amount for the family.According to the 2011 Census, total child population was 259.6 million out of which 10.1 million are either working as main worker or as marginal workers.

Industry	Diamon d industry	Fireworks manufactur e	Silk manufactur e	Carpet weaving	Domesti c labour	Mining 10
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Year of the report which provides for the number of child labour in India	1999	2002	2012	—	—	2013
State	—	Tamil Nadu	Karnataka	—	—	Meghalaya
No. of child labour employed	In 1997, child labour involved in the diamond industry was between 10,000 to 20,000 out of 1.5 million total workers.	An exact estimate was not provided but child labour was significant in Tamil Nadu's fireworks industry.	15,000 children working in 1,100 silk factories in 1998.	20% of carpets manufactured in India could involve child labour.	Official estimates - More than 2,500,000 NGO's estimates - around 20 million.	This state using child labour were discovered and exposed by international media.

In the context of children, our Indian government is very strict in rules and regulations with respect to severe punishments. Since 1933, various laws have been made in India to control child labour. These laws include:

1. **Minimum Wages Act, 1948:** The State Government fixes minimum wages that are to be provided to the workers/labourers including the child labourers. The government fixed wages according to the type of work and according to the class of workers.
2. **The Plantation Labour Act, 1951:** This Act prohibits the employment of children below the age of 12 years, but a child above the age of 12 years can be employed only when the appointed doctor issues a fitness certificate to that child.
3. **The Mines Act, 1952:** This Act provides that no child should be present where the work of mining is going on and no child should be employed for such work.
4. **The Merchant Shipping Act, 1958:** Except for a training ship, this Act does not allow the employment of children below the age of 14 years in a ship. Also, a person under the age of 18 years cannot be appointed as trimmers under this Act. They can only be appointed under some specific conditions mentioned in this Act.
5. **The Apprentices Act, 1961:** Unless a child attains the age of 14 years and satisfies the standard of education and physical fitness test, he cannot undergo apprenticeship training.
6. **The Indian Factories Act, 1948:** No child below the age of 14 years shall be employed in a factory. Also, there are rules that a factory has to follow if they employ pre-adults that are between 15-18 years of age.
7. **The Child Labour (Prohibition and Regulation) Act, 1986:** No child who is less than 14 years of age shall be employed in any hazardous occupations that are provided in a list by law. This list is explained further in the article. This list was amended not only in 2006 but also in 2008.
8. **The Juvenile Justice (Care and Protection) of Children Act, 2000:** If any person employs a child in any of the hazardous work or uses the child as a bonded labour then that person will be punishable under this Act.

9. **The Right of Children to Free and Compulsory Education Act of 2009:** Free and compulsory education must be provided to each and every child below 14 years of age. In fact, to follow this Act efficiently, 25% of seats are also reserved in every private school for children who belong to the disadvantaged group and for children who are physically challenged.

Constitutional Provisions for Child Upliftment

Various constitutional provisions have been provided for the child upliftment such as:

Article 21A: Right to Education

Article 21A of the Indian Constitution states that free and compulsory education must be provided to each and every child who is between the age of 6 to 14 years. Free and compulsory education must be provided in a manner laid down by the State and in a manner law determines.

Article 24: Prohibition of employment of children in factories, etc.

Article 24 of the Indian Constitution states that no child who is less than 14 years of age shall be employed in any hazardous factories or occupations or industries.

Article 39: The State shall, in particular, direct its policy towards securing

Article 39(e) of the Indian Constitution states that the factories or industries in which labourers are employed, the employer should not abuse the health and strength of the workers be it man, woman or children of tender age. It also provides that citizens due to their economic necessity should not be forced to enter into any employment that is unsuited to their age, health or strength.

BONDED LABOUR

Bonded labour also known as debt bondage unexposed form of slavery in today's date and in respect to this it is mostly used for repaying of debt. Literal meaning of this is basically, people who are unable to pay their debts are forced to be slavery or any type of labour through which they can repay the owner without any form of consideration.

In India, the government has prohibited the practice of bonded labour by saying it is in violation of **Article 21 and 23** of the constitution. A specific law to prohibit the practice was legislated only in 1976 known as the Bonded Labour System (Abolition) Act.

Even though there are several punishments for the act but irrespective of that many places it has been practised. In context of this government has implemented several provisions to stop this.

The Indian Penal Code recognizes the offence of unlawful compulsory labour and imposes a punishment of imprisonment for a term extendable to 1 year or with a fine or both.

- The Minimum Wages Act 1948 sets the minimum wage for certain enumerated occupations and requires that overtime be paid to whoever is working beyond the ‘normal working day.’
- Similarly, the Bonded Labour System (Abolition) Act 1976 prescribes imprisonment for a term upto 3 years as well as a fine upto Rs. 2000/-. This punishment is for whoever compelling a person to render their service under bonded labour and whoever advances the bonded debt. Every offence under the Act is cognizable and bailable.
- In the case of **Neerja Chaudhury v. State of Madhya Pradesh**¹, the Supreme Court ruled – “It is the plainest requirement of **Articles 21 and 23** of the Constitution that bonded labourers must be identified and released and on release, they must be suitably rehabilitated... Any failure of action on the part of the State Government[s] in implementing the provisions of [the Bonded Labour System (Abolition) Act] would be the clearest violation of Article 21 and Article 23 of the Constitution.” **People’s Union for Democratic Rights v. Union of India**², the Supreme Court of India delivered the judgement stating – “Where a person provides labour or service to another for remuneration which is less than minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the word ‘forced labour’...”

The Supreme Court in the Writ Petition - **Public Union for Civil Liberties Vs State of Tamil Nadu & Others**³ - requested the NHRC in 1997 to get involved in the monitoring of the implementation of the Bonded Labour System (Abolition) Act, 1976. Since then, the NHRC has been focusing on States where bonded labour is prevalent. During 2011, it took stock of

¹ AIR 1984 SC 1099, 1984 (2) Crimes 511 SC, 1984 LabIC 851, 1984 (1) SCALE 874, (1984) 3 SCC 243

² 1982 AIR 1473, 1983 SCR (1) 456

³ 5 May, 2004

the situation and the following charter of activities have been taken up by the Commission on the issue of Bonded Labour.

HAWKERS

Hawkers are the people who sell goods in roadside areas for a living. It is the oldest type of occupation in India. According to **Article 19(1)(g)**⁴ every citizen has a right to carry on any lawful trade or business. It is this right vested in the citizens that the hawkers exercise while engaging themselves in the trade. The right to carry on trade is a fundamental right of the vendors and hawkers but it doesn't mean that street trading is a right as such without any restrictions. Hawkets cannot be permitted to carry on their trade on every road in the city. Hawking is not permitted in those areas where the road is not wide enough to accommodate traffic.

Article 19(1)(g) of the Constitution guarantees to every citizen the right to practise any profession or to carry on any occupation, trade or business. Likewise, hawkers have the fundamental right to carry on trade or business of their choice. But it is subjected to reasonable restriction imposable under **Article 19(6)**⁵ of Indian Constitution. The court must balance freedom of trade under **Article 19(1)(g)** and freedom of inter-State trade and commerce under Article 301 against the national interest. In **South Calcutta Hawkers, Association vs. Govt. of West Bengal**⁶, the court observed that " Street trading being a fundamental right has to be made available to the citizens but subject to **Article 19(6)** of the Constitution. It is within the domain of the State to make any law imposing reasonable restrictions in the interest of the general public on such a right." The court also observed that proper regulation is essential as otherwise the very object of laying out roads to facilitate traffic may be defeated.

Section 201⁷, 1988 penalises anyone who obstructs the flow of traffic on the public highway. It is specially designed for avoiding unnecessary traffic block and is applicable to both motorised and non-motorised vehicles. **Section 15**⁸ permits the arrest of anyone about to commit any cognizable offence without orders from a Magistrate and without a warrant,

⁴ Indian constitution

⁵ Indian constitution

⁶ AIR 1997 Cal 234, (1997) 1 CALLT 453 HC

⁷ Motor Vehicles Act

⁸ Criminal Procedure Code, 1973

however, the person cannot be detained in the police custody for more than 24 hours from the time of his/ her arrest.

Many provisions in the Indian Constitution were quoted in the litigation in order to stress the rights of street vendors. They are

- **Article 14:** Equality before law and equal protection;
- **Article 19(1)(g):** Freedom to practice any profession;
- **Article 21:** Protection against the deprivation of life and personal liberty.

The Supreme Court, in the case **Bombay Hawkers Union v. BMC & Others**⁹, for the first time upheld the right to livelihood of the street vendors and went on to observe that unreasonable restrictions and conditions cannot be imposed on street vendors.

In **Gainda Ram v. MCD**¹⁰, the Supreme Court observed that the fundamental right of hawkers, just because they are poor and unorganised cannot be left in a state of limbo nor can it be left to be decided by the varying standards of a scheme which changes from time to time under the orders of the Court.

Section 14, Section 15, Section 16 and Section 17 lays down certain duties to be followed by street vendors. Section 14 says that where a street occupies a particular vending place on a time-sharing basis, he shall remove the wares and goods every day at the end of that specified time.

Section 15 mandates every street vendor to maintain hygiene and cleanliness. This section consists of ambiguous provisions and it paves way for many authorities to harass them based on this. Because it didn't clearly mention what would constitute cleanliness and personal hygiene. As per Section 16, every street vendor has the duty to maintain public property in a good condition and should not cause any damage or destruction to it.

Section 17 of this Act imposes a monetary burden to street vendors. It obligates a street vendor to pay a periodic maintenance charge to the civic amenities.

⁹ 1985 AIR 1206, 1985 SCR Supl. (1) 849

¹⁰ 8 October, 2010

Hawkers are still being hounded by police and municipal authorities three years after the adoption of the Street Vendors Act. The presence of an exorbitant lower bureaucracy that sustains its own power exactly through such informal discussions essentially means that hawkers' lives will be dominated by 'political' negotiations with police and municipal authorities for a long time. It is apparent, though, that the tone of the discourse has shifted. While vendors continue to negotiate with police officers and lower-level bureaucrats on a local level, street vendor organisations are busy planning innovative national campaigns, tracking the act's implementation across the country, responding quickly to violations, hosting periodic workshops for vendors, and organising and participating in conferences with other national and international organisations (NASVI 2017a, b, NASVI 2017c, NASVI 2017d, NASVI 2017e).

HEALTH & SAFETY OF LABOUR

The health, safety, and welfare category of labour law includes general matters such as occupational health and accident prevention regulations and services; special regulations for hazardous occupations such as mining, construction, and dock work; and provisions concerning health and safety risks such as poisons, dangerous machinery, dust, noise, vibration, and radiation. The efforts of organised safety movements and the advancement of occupational medicine have resulted in comprehensive occupational health and accident-prevention services and regulations that cover the full range of dangers posed by modern industrial processes, rather than just a few particularly acute risks. Greater worry over the widespread use of chemicals, as well as increased provision for welfare services associated with employment, such as food, rest, leisure, and transportation, are two major trends.

The Code on Wages, enacted in 2019, also amalgamated four relevant labour laws. The Four new Labour Codes were supposed to be effective from 01 April 2021. Considering the rise in COVID cases and the potential impact of the new Codes on per employee costs for enterprises, the Government has delayed implementation of new Codes. The new legal provisions will be effective only, once notified.

The Occupational Safety, Health and Working Conditions Code (OSH) is a bill, currently under consideration for enactment by the Indian Parliament. The proposed OSH Code repeals and replaces 13 labour laws relating to health, safety and working conditions. It must be noted that the OSH code does not apply to self-employed persons working from private houses. The draft OSH Code (2019) states that an employer/occupier must ensure the provision and maintenance

of plants and systems of work that are safe and without health risks. The Code also specifies that there should be accommodation for separate latrines and urinals for male, female and transgender employees.