

# Protection of Rights of Child under the Factories Act, 1948: A Commentary

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## Abstract

Children are future of tomorrow and they should be educated and not exploited. Exploitation comes in form of child labour, which may have been part of tradition in agriculture as helping hand initially, but today it extends to different sectors including hazardous industries. The Constitution of India provides various provisions for the protection of children. The Supreme Court of India, time to time, have been framed important guidelines for the protection and development of children's rights. The Child and Adolescence Labour (Prohibition & Regulation) Act, 1986 in Various establishments and process. Beside, this specific laws the Factory Act, 1948 covers various instances of protection of rights of children in the factories. This paper seeks to examine those provisions of Factory Act 1948 which specifically deals with the protection of child in the sector factory.

**Keywords:** Children, Adolescent, Hazardous Industry, Rights.

## Introduction

In 1950, the Constitution of India was promulgated. Article 24 reads, "No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment." This is considered a Fundamental Right, guaranteed in part 3 of the constitution. Part 4 sets out non-justifiable Directive Principles of State Policy. These include directives that "the tender age of child are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength"; "that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment"; and that the state shall endeavor to provide "free and compulsory education for all children until they complete the age of 14 years" within ten years. In 1993, many years after the ten-year period had elapsed, the Supreme Court, in a landmark decision, declared free education to age fourteen to be a Fundamental Right. In 2002, the Constitution was shall provide free and compulsory education to all children of the age of 6-14 years in such manner as the state may, by law, determine." This was accompanied by the inclusion of Article 51A (k), which makes it "the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward of the age of 6 and 14 years."<sup>1</sup> Giving the effect to the mandates of the Constitution of India, the Factory Act 1948 makes various provisions for the protection of rights of children.

## Aims of the Study

1. To examine about the major categories of child labor under the factories Act, 1948
2. To analyze the legal provisions for prohibition of Child Labour under the factories Act, 1948
3. To highlight prone areas for working the children in Industries.
4. To grasp the remedies for children under the factories Act, 1948

## The Factories Act, 1948- Rights of Children

The law relating to the regulation of labour employed in factories in India embodied in the Factories Act, 1934 Prior to The Factories Act, 1948. Experience of the Working of Act had revealed a number of defects and weaknesses which hamper effective administration. Although the Act has been amended in certain respects in a piecemeal fashion whenever some particular aspect of labour safety or welfare assured urgent importance, the general framework some particular aspect of labour

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provisions for the safety, health and welfare of workers are generally found to be inadequate and unsatisfactory and even such protection as is provided does not extend to the large mass of workers employed in work places not covered by the Act. In view of the large and growing industrial activities in the country, a radical overhauling of the Factories law is essentially called for. The Factories Act, 1948 differs materially from the Factories Act, 1934 in several respects. Some of the important features are herein mentioned. Working hours, holidays lighting and ventilation should be extended to all work places in view of the unsatisfactory state of affairs not prevailing in unregulated factories. Further, the present distinction between seasonal and perennial factories which has little justification has been done away with. The minimum age of employment for children has been raised from 12 to 13 and their working hours reduced from 5 to 4.5 with powers to provincial Governments to prescribe even a high minimum age for employment in hazardous undertakings. The present Act is very general in character and leaves too much to the rule making powers position on the whole is not quite satisfactory. The defect is sought to be remedied by laying down clearly in the Bill itself the minimum requirements regarding health including Cleanliness, ventilation and temperature, dangerous dusts and fumes, lighting and control of glare etc. Safeties such as eye protection control of explosive and inflammable dusts and general welfare of workers (washing facilities, first-aid, canteens, shelter room screeches, etc.) amplifiers where necessary, by rules and regulations to be prescribed by Provincial Governments. Further, the present Act leaves important and complex points to the discretion of inspectors placing heavy responsibility on them, In view of the processes employed in the factories it is too much to expect Inspectors to possess and expert knowledge of all these matters. The detailed provisions contained in the Bill will go a long way in lightening their burden<sup>2</sup>.

This is an Act which intends to consolidate and amend the law regulating labour in factories. It is expedient to consolidate and amend the law regulating labour in factories.<sup>3</sup>

#### **Definitions of Adult, Child and Young Person**

This Act says "adult" means a person who has completed his eighteenth year of age<sup>4</sup>, "adolescent" means a person who has completed his fifteenth year of age but has not completed his eighteenth year<sup>5</sup> and "child" means a person who has not completed his fifteenth year of age.<sup>6</sup> Further the Act says that "young person" means a person who is either a child or an adolescent.<sup>7</sup>

#### **Work on or Near Machinery in Motion**

The Act prohibits that no woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or

adjustment thereof would expose the woman or young person to risk of injury from any moving part either of that machine or of any adjacent machinery.<sup>8</sup>

#### **Employment of Young Person on Dangerous Machines**

The Act directed that<sup>9</sup> - (1) No young person shall be required or allowed to work] at any machine to which this section applies, unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and- (a) has received sufficient training in work at the machine, or (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

(2) Sub-section (1) shall apply to such machines as may be prescribed by the State Government, being machines which in its opinion are of such a dangerous character that young person's ought not to work at them unless the foregoing requirements are complied with.

#### **Prohibition of Employment of Women or Children near Cotton Openers**

This Act further directed that no woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work: Provided that if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.<sup>10</sup>

#### **Facilities of Crèches in the factory**

The Act mandates that<sup>11</sup> - (1) In every factory wherein more than thirty women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

(2) Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

(3) The State Government may make rules- (a) prescribing the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms to be provided under this section; (b) requiring the provision in factories to which this section applies of additional facilities for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing; (c) requiring the provision in any factory of free milk or refreshment or both for such children; (d) requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

#### **Prohibition of Employment of Young Children**

Chapter VII of the Factory Act deals with employment of young person in the factory

The Act Says no child who has not completed his fourteenth year shall be required or allowed to work in any factory.<sup>12</sup>

**Non-Adult Workers to Carry Tokens**

A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless- (a) a certificate of fitness granted with reference to him under section 69 is in the custody of the manager of the factory, and (b) such child or adolescent carries while he is at work a token giving a reference to such certificate.<sup>13</sup>

**Certificates of Fitness**

The Act clarifies that<sup>14</sup> (1) A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by a manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.

(2) The certifying surgeon, after examination, may grant to such young person, in the prescribed form, or may renew- (a) a certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards and that he is fit for such work; (b) a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his fifteenth year, and is fit for full day's work in a factory: Provided that unless the certifying surgeon has personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he shall not grant or renew a certificate under this sub-section until he has examined such place.

(3) A certificate of fitness granted or renewed under sub-section (2) (a) shall be valid only for a period of twelve months from the date thereof; (b) may be made subject to conditions in regard to the nature of the work in which the young person may be employed, or requiring re-examination of the young person before the expiry of the period of twelve months.

(4) A certifying surgeon shall revoke any certificate granted or renewed under sub-section (2) if in his opinion the holder of it is no longer fit to work in the capacity stated therein in a factory.

(5) Where a certifying surgeon refuses to grant or renew a certificate or a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate, or the renewal thereof, state his reasons in writing for so doing.

(6) Where a certificate under this section, with reference to any young person is granted or renewed subject to such conditions as are referred to in clause (b) of sub-section (3), the young person shall not be required or allowed to work in any factory except in accordance with those conditions.

(7) Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young person, his parents or guardian.

**Effect of Certificate of Fitness Granted to Adolescent**

The emphasizes that<sup>15</sup> - (1) An adolescent who has been granted a certificate of fitness to work in a factory as an adult under clause (b) of sub-section (2) of section 69 and who while at work in a factory carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapters VI and VII;

(1A) No female adolescent or male adolescent who has attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 a.m. and 7 p.m.: Provided that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories,- (i) vary the limits laid down in this sub-section so, however, that no such section shall authorize the employment of any female adolescent between 10 p.m. and 5 a.m.; (ii) grant exemption from the provisions of this sub-section in case of serious emergency where national interest is involved.

(2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under the aforesaid clause (b) shall, notwithstanding his age, be deemed to be a child for all the purposes of this Act.

**Working Hours for Children**

The act makes following provisions for working hours of children<sup>16</sup>- (1) No child shall be employed or permitted to work, in any factory- (a) for more than four and a half hours in any day (b) during the night. Explanation.-For the purposes of this sub-section "night" shall mean a period of at least twelve consecutive hours which shall include the interval between 10 p.m. and 6 a.m.

(2) The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each; and each child shall be employed in only one of the relays which shall not except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.

(3) The provisions of section 52 shall apply also to child workers, and no exemption from the provisions of that section may be granted in respect of any child.

(4) No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.

(5) No female child shall be required or allowed to work in any factory except between 8 a.m. and 7 p.m.]

**Notice of Periods of Work for Children**

The provides that<sup>17</sup> (1) There shall be displayed and correctly maintained in every factory in which children are employed in accordance with the provisions of sub-section (2) of section 108 a notice of periods of work for children, showing clearly for

every day the periods during which children may be required or allowed to work.

(2) The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the methods laid down for adult workers in section 61, and shall be such that children working for those periods would not be in contravention of the provisions of section 71.

(3) The provisions of sub-sections (8), (9) and (10) of section 61 shall apply also to the notice required by sub-section (1) of this section.

#### **Register of Child Workers**

The Act includes<sup>18</sup>- (1) The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the Inspector at all times during working hours or when any work is being carried on in a factory showing- (a) the name of each child worker in the factory, (b) the nature of his work, (c) the group, if any, in which he is included, (d) where his group works on shifts, the relay to which he is allotted, and (e) the number of his certificate of fitness granted under section 69.

(1A) No child worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of child workers.

(2) The State Government may prescribe the form of the register of child workers, manner in which it shall be maintained and the period for which it shall be preserved.

#### **Hours of Work to Correspond with Notice under Section 72 and Register under Section 73**

No child shall be employed in any factory otherwise than in accordance with the notice of periods of work of children displayed in the factory and the entries made before hand against his name in the register of child workers of the factory.<sup>19</sup>

#### **Power to Require Medical Examination**

The provides that- Where an Inspector is of the opinion- (a) that any person working in a factory without a certificate of fitness is a young person, or (b) that a young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein,- he may serve on the manager of the factory a notice requiring that such person or young person, as the case may be, shall be, examined by a certifying surgeon, and such person or young person shall not, if the Inspector so directs, be employed, or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be, under section 69, or has been certified by the certifying surgeon examining him not to be a young person.<sup>20</sup>

#### **Power to Make Rules**

The State Government may make rules<sup>21</sup>- (a) prescribing the forms of certificate of fitness to be granted under section 69, providing for the grant of duplicates in the event of loss of the original certificates, and fixing the fees which may be charged for such certificates and renewals thereof and such duplicates; (b) prescribing the physical standards to

be attained by children and adolescents working in factories; (c) regulating the procedure of certifying surgeons under this Chapter; (d) specifying other duties which certifying surgeons may be required to perform in connection with the employment of young persons in factories and fixing the fees which may be charged for such duties and the persons by whom they shall be payable.

#### **Certain Other Provisions of Law not Barred**

The provisions of this Chapter shall be in addition to, and not in derogation of, the provisions of the Employment of Children Act, 1938 (26 of 1938).<sup>22</sup>

#### **Conclusion**

In 2003, the government of India, by resolution, adopted a National Charter for Children that include a clause concerning protection of children from economic exploitation and from performing tasks hazardous to their wellbeing: "The state shall move towards a total ban of all forms of child labour." In 2005, India enacted the Commissions for Protection of Child Rights Act. The preamble to the 2005 act invokes the 2003 charter along with the UN Convention on the Rights of the Child and the document titled "A World Fit for Children," which emanated from the UN General Assembly Special Session on Children held in May 2002. This act came into effect on January 20, 2006, and the commission has been set up and a chairperson appointed. The first chairperson, Shantha Sinha, is founder of the M.V. Foundation, a child rights organization working for the protection of children and the abolition of child labor.<sup>23</sup>

Law and policy have begun to veer toward formal abolition of child labor since the "right to education" was declared a fundamental right by the Supreme Court in 1993 and the prime minister's statement in 1994. There has been a spurt of activity intended to give content to the right to education for all persons between the ages of six and fourteen years, and a link has been forged in law and policy between child labor and school going. The question of whether all work done by children should fall within the definition of child labor has been resolved by presuming all children out of school as labor-force constituents. The practice of employment of child labor has not yet shown any discernible decline, though. The route to enforcing the ban on all forms of child labor is still being chalked out.<sup>24</sup>

In view of the health hazard involved in the manufacturing process, every worker including children, if employed, should be insured for a minimum amount of Rs.50,000 and the premium should be paid by the employer and the incidence should not be passed on to the workman. The implementation of the scheme within the state in an effective manner would require to be supervised by an independent external agency. The Tamil Nadu State Legal Aid & Advice Board can be entrusted with this responsibility. A three year period of such supervision, in our opinion, would meet the requirement and at the

end of such period the scheme is expected to become effectively operative. We, therefore, require the Tamil Nadu Board to undertake the super.<sup>25</sup>

Lastly it is concluded with the version of the Supreme Court of India that children should not be employed in hazardous jobs in factories for manufacture of match boxes and fireworks, and positive steps should be taken for the welfare of such children as well as for improving the quality of their life.<sup>26</sup>

25. *Rajangam, Secretary, District Beedi Workers Union v. State of Tamil Nadu* (1992) 1 SCC 221
26. *M.C.Mehta v. State of T.N.* (1991) 1 SCC 283

#### References

1. *Quoted from Usha Ramanathan, Evolution of the Law On Child Labor In India 8 (International Environmental Law Research Centre) available at <http://ielrc.org/Content/a0905.pdf>*
2. *Statement Of Object And Reasons, The Factories Act, 1948, (Act No. 63 of 1948)*
3. *Preamble, The Factories Act, 1948, (Act No. 63 of 1948)*
4. *Section 2(a), the Factories Act, 1948*
5. *Section 2(b), Ibid.*
6. *Section 2(c), Ibid*
7. *Section 2(d), Ibid*
8. *Section 22 (2), Ibid*
9. *Section 23, Ibid*
10. *Section 27, Ibid*
11. *Section 4, Ibid*
12. *Section 67, Ibid*
13. *Section 68, Ibid*
14. *Section 69, Ibid*
15. *Section 70, Ibid*
16. *Section 71, Ibid*
17. *Section 72, Ibid*
18. *Section 73, Ibid*
19. *Section 74, Ibid*
20. *Section 75, Ibid*
21. *Section 76, Ibid*
22. *Section 76, Ibid*
23. *Supra note 1 at 4.*
24. *Ibid*