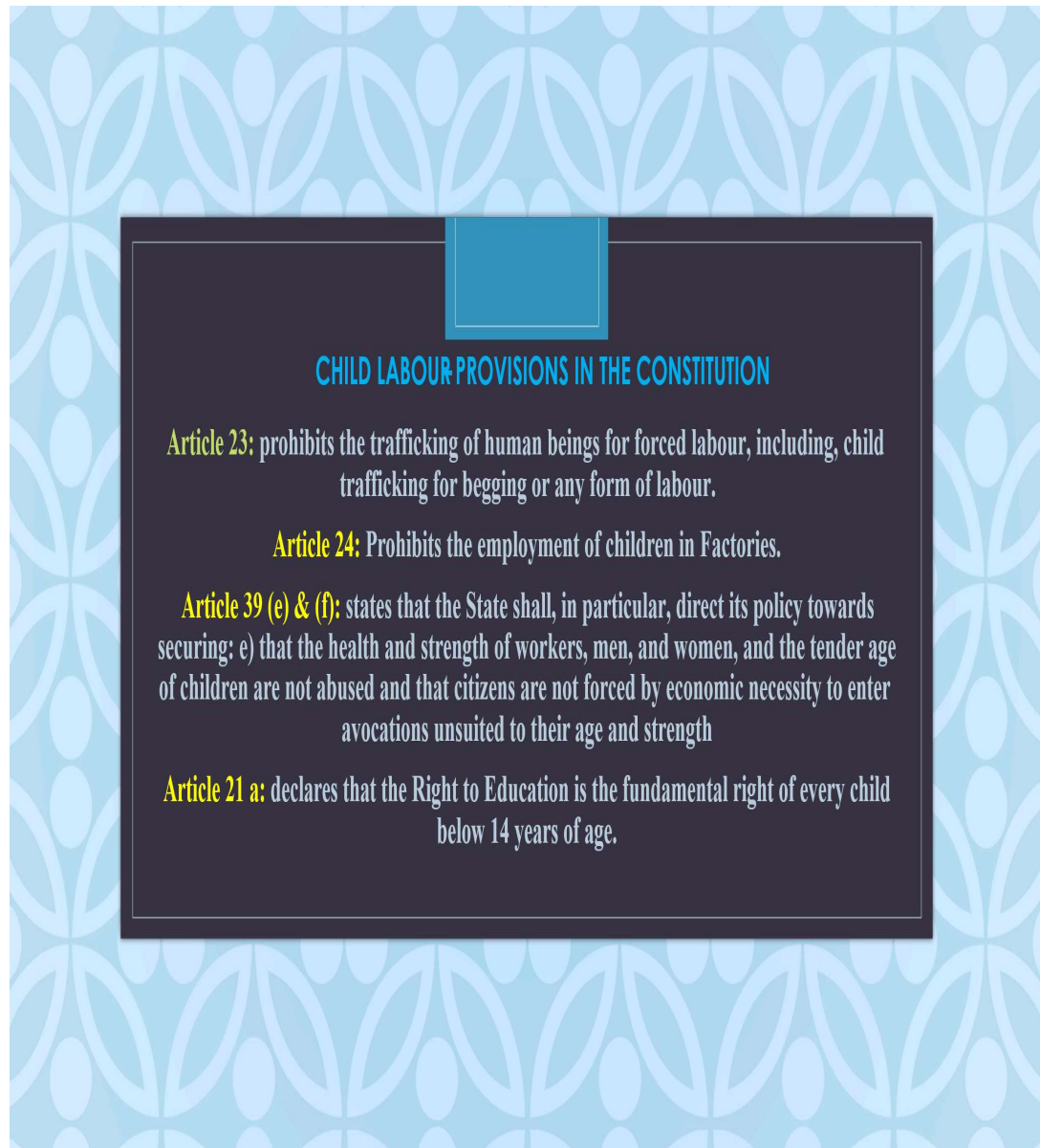


## Child Labour / Child Trafficking - For Labour



The term “*child labour*” is often defined as work that deprives children of their childhood, their potential, their

*education, and their dignity and that is harmful to physical and mental development.*

The International Labor Organization states that not all work done by children should be classified as child labour that is to be targeted for elimination. Children's or adolescents' participation in work that does not affect their health and personal development or interfere with their schooling is generally regarded as something positive. This includes activities such as *helping their parents around the home, assisting in a family business, or earning pocket money outside school hours and during school holidays.* These kinds of activities contribute to children's development and to the welfare of their families; they provide them with skills and experience, and help to prepare them to be productive members of society during their adult life.

**THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986 –**

was the initial Act that came into force in 1986 defined a child as a person below 14 years of age and prohibited the employment of such children only in **Hazardous Occupations** as listed in the Rules framed under the ACT.

Unfortunately, in all other occupations, children under 14 could be employed full-time at the expense of denying their right to education. Although certain regulations were established for non-hazardous occupations, they were hardly enforceable. The act was silent about workers between the ages of 14 and 18.

Subsequent to amending the Constitution of India in the year 2009, the **Right to Education was declared as a fundamental right of every child below 14 years of age or up to the class of 8<sup>th</sup> standard (ARTICLE 21A)**, certain critical amendments were brought into the Child Labour Act in the year 2016, known as - ***THE CHILD AND ADOLESCENT LABOUR (PROHIBITION AND REGULATION) ACT, 1986***.

### **The Child Labour (Prohibition and Regulation) Act of 1986 (amended 2016) -**

The above Act classifies labour performed by a **child under 14** as '**Child Labour**' and labour performed by a young person who has completed 14 but has not completed 18 as '**Adolescent Labour**'.

As per this current Act, no child below the age of 14 could be employed by any third-party employer, either full-time or part-time, except for two exceptions given under this Act.

**Exception 1:** A child could help his own family by working in a family-run occupation, provided it is not **hazardous**, and that too **only after school hours or on holidays**. (Family is defined in the ACT)

**Exception 2:** A child is allowed to work as an **artist** – as an actor, singer, or sports person provided the child's right to education is taken care of. Rules to be framed under the ACT that are to be followed by the **audio, television, and film media**, while using a child in their productions.

- **Child Labour in all other sectors is totally prohibited.**

### **Legal protection for adolescent workers:**

The other positive aspect is that the amended Act covers adolescents between 14 and 18 years of age, as a considerable number of them are part-time or full-time workers in this country. The act prohibits the employment of such persons in hazardous occupations that are listed in the Rules and regulates. The working hours and working conditions in such occupations that are not declared as hazardous are also to be spelt out in the Rules laid down by respective State Governments.

- Any employment of a child contrary to this Act is a cognizable offense, and the punishment is more severe if the employer is a third party other than the child's own family.
- State Governments to list out the hazardous occupations where employment of adolescent employees is prohibited.
- Rules are framed to regulate working hours and other conditions of employment while employing adolescent workers.

## **MODEL RULES: Child who helps in family occupation**

*2B. Child to help his family without affecting education.-*

*(1) Subject to the provisions of section 3, a child may, without affecting his school education, in any manner, –*

*(a) help his family in his family enterprise, subject to the condition that such help, -- (i) shall not be in any hazardous occupation or process listed in Part A and Part B of the Schedule to the Act;*

*(ii) shall not include work or occupation or process at any stage of the manufacturing, production, supply or retail chain that is remunerative for the child or his family or the family enterprise;*

*(iii) shall only be allowed to help in his family, or in a family enterprise, where his family is the occupier;*

*(iv) shall not perform any tasks during school hours and between 7 p.m. and 8 a.m.;*

*(v) shall not be engaged in such tasks of helping which hinders or interferes with the right to education of the child, or his attendance in the school, or which may adversely affect his education including activities which are inseparably associated to complete education such as homework or any extracurricular activity assigned to him by the school;*

*(vi) shall not be engaged in any task continuously without rest which may make him tired and shall be allowed to take rest to refresh his health and mind, and a child shall not help for more than three hours excluding the period of rest in a day; II (i) 11*

*(vii) shall not include in anyway substitution of the child for an adult or adolescent while helping his family or family enterprise; and*

*(viii) shall not be in contravention to any other law for the time being in force;*

*(b) aid or assist his family in such manner which is not incidental to any occupation, work, profession, manufacture or business, or for any payment or*

*benefit to the child or any other person exercising control over the child, and which is not detrimental to the growth, education and overall development of the child.*

*Explanation 1.- For the purposes of this rule, only – (a) biological brother and sister of the child; (b) brother or sister of the child through lawful adoption by parents of the child; and (c) biological brother and sister of parents of the child, shall be included for comprising the family of a child.*

*Explanation 2.- For the purposes of*

*Explanation 1, it is hereby clarified that preliminarily, any doubt as to whether a person is a biological brother or sister, may be removed by examining the pedigree of such person issued by the concerned Municipality or Panchayat, as the case may be, or any other legal document issued by concerned authority of the appropriate Government.*

*(2) Where a child receiving education in a school remains absent consecutively for thirty days without intimation to the Principal or Head Master of the school, then, the Principal or Head Master shall report such absence to the concerned nodal officer referred to in clause (i) of sub-rule (1) of rule 17C for information.*

## **RULES: Child When works as an artist**

*2C. Child to work as an artist.- (1) Subject to the provisions of section 3, a child may be allowed to work as an artist subject to the following conditions, namely: –*

*(a) no child shall be allowed to work for more than five hours in a day, and for not more than three hours without rest;*

*(b) any producer of any audio –visual media production or any commercial event involving the participation of a child, shall involve a child in participation only after obtaining the permission from the District Magistrate of the district where the activity is to be performed, and shall furnish to the District Magistrate before starting*

*the activity an undertaking in Form C and the list of child participants, consent of parents or guardian, as the case may be, name of the individual from the production or event who shall be responsible for the safety and security of the child, and ensure that all screening of his films and television programmes shall be made with a disclaimer specifying that if any child has been engaged in the shooting, then, all the measures were taken to ensure that there has been no abuse, neglect or exploitation of such child during the entire process of the shooting;*

*(c) the undertaking referred to in clause (b) shall be valid for six months and shall clearly state the provisions for education, safety, security and reporting of child abuse in consonance with the guidelines and protection policies issued by the Central Government from time to time for such purpose including –*

*(i) ensuring facilities for physical and mental health of the child;*  
*(ii) timely nutritional diet of the child;*  
*(iii) safe, clean shelter with sufficient provisions for daily necessities;*  
*and*

*(iv) compliance to all laws applicable for the time being in force for the protection of children, including their right to education, care and protection, and against sexual offences;*

*(d) appropriate facilities for education of the child to be arranged so as to ensure that there is no discontinuity from his lessons in school*



*and no child shall be allowed to work consecutively for more than twenty-seven days;*

*(e) one responsible person be appointed for maximum of five children for the production or event, so as to ensure the protection, care and best interest of the child;*

*(f) at least twenty per cent, of the income earned by the child from the production or event to be directly deposited in a fixed deposit account in a nationalised bank in the name of the child which may be credited to the child on attaining majority; and*

*(g) no child shall be made to participate in any audio visual and sports activity including informal entertainment activity against his will and consent.*

*(2) For the purposes of clause (c) to the Explanation to sub-section (2) of section 3, the expression —such other activity|| contained therein, shall mean – 12 THE GAZETTE OF INDIA : EXTRAORDINARY [PART II—SEC. 3(i)] (i) any activity where the child himself is participating in a sports competition or event or training for such sports competition or event; (ii) cinema and documentary shows on television including reality shows, quiz shows, talent shows; radio and any programme in or any other media; (iii) drama serials; (iv) participation as anchor of a show or events; and (v) any other artistic performances which the Central Government permits in individual cases, which shall not include street performance for monetary gain.’*



- The act makes **child labour** a **cognizable offence**. Employing children below **14 years** will attract a jail term between **6** months to **2** years or a penalty between twenty-thousand to fifty thousand rupees or both for the first time.
- Repeat offenders will attract imprisonment between **1** year to **3** years. In case, the offender is a parent, it provides a relaxed penal provision and proposes a fine of Rs.10,000 for repeat offence committed by parent.

### • Child Trafficking for labour

**Sections 137; 139; 141; 146 of the Bharatiya Nyaya Sanhita - (358 to 364 and 374 of IPC) ;**

- **Protection of adolescent employees from being employed in hazardous occupations:**

Persons above 14 years and have not completed 18 years are prohibited from being employed in mining, production of inflammable, explosive substances, Metallurgical Industries and other hazardous processes under the Factories Act.

***The ACT and the Rules spell out lots of powers and responsibilities on the District Magistrate and the Labour Department officials in enforcing this law. Implementations of this Act are with State Governments.***

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❏ THE CHILD AND ADOLESCENT LABOUR (PROHIBITION AND REGULATION) ACT, 1986

[https://www.indiacode.nic.in/bitstream/123456789/19582/1/the\\_child\\_and\\_adolescent\\_labour\\_\(prohibition\\_and\\_regulation\)\\_act,\\_1986\\_no.\\_61\\_of\\_1986\\_date\\_23.12.1986.pdf](https://www.indiacode.nic.in/bitstream/123456789/19582/1/the_child_and_adolescent_labour_(prohibition_and_regulation)_act,_1986_no._61_of_1986_date_23.12.1986.pdf)

Author: INDIA CODE

❏ REVISED NCLP GUIDELINES

[https://labour.gov.in/sites/default/files/revised\\_nclp\\_guidelines\\_from\\_01.04.2016.pdf](https://labour.gov.in/sites/default/files/revised_nclp_guidelines_from_01.04.2016.pdf)  
<file:///D:/ARC%20CHILD%20LABOUR%20REVISED%20GUIDELINE.pdf>

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❏ CHILD LABOUR ISSUES AND CHALLENGES

<https://pmc.ncbi.nlm.nih.gov/articles/PMC3425238/>

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❏ CHILD LABOUR LAWS IN INDIA

<https://blog.ipleaders.in/laws-related-child-labour-india/>

LAW SIKHO