

# CHILDREN AND WORK

## INTRODUCTION

Government of India stands committed to the elimination of child labour in the country. Our Constitution provides for protection of children from involvement in economic activities and avocations unsuited to their age and this is provided for in the Fundamental Rights (Article-24). Directive Principles of State Policy in the Constitution also strongly reiterate this commitment.

## CONSTITUTIONAL PROVISIONS:

### Article 21 A

#### **Right to Education**

The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State, by law, may determine.

### Article 24

#### **Prohibition of employment of children in factories, etc.**

No child below the age of 14 years shall be employed in work in any factory or mine or engaged in any other hazardous employment.

### Article 39

#### **The State shall, in particular, direct its policy towards securing:-**

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Realizing the multifaceted nature of this problem, the Government has embarked on a holistic and multi-pronged approach to eliminate child labour from the country in a phased manner, beginning with children working in hazardous occupations and processes and progressively covering those working in other occupations also. On the one hand, it provides for legal action for enforcement purposes and on the other, focuses on general development programmes for the economic empowerment of the

families of children as well as project based action in areas of high concentration of child labour.

## **NATIONAL CHILD LABOUR POLICY**

Constitutional and legislative provisions providing protection to children against employment has been elaborated in the National Child Labour Policy announced in 1987. The policy addresses the complex issue of child labour in a comprehensive, holistic and integrated manner. The action plan under this policy is multi-pronged and mainly consists of:

- (i) A legislative action plan;
- (ii) Focuses on general development programmes for the benefit of the families of children; and
- (iii) Project-based action plan in areas of high concentration of child labour.

## **LEGAL PROTECTION OF CHILDREN AT WORK**

1. Under the Child Labour (Prohibition & Regulation) Act, 1986 the engagement of children up to 14 years was prohibited in certain hazardous occupations and processes and to regulate the conditions of work of children in other employments. Now, Government has enacted the Child Labour (Prohibition & Regulation) Amendment Act, 2016 which came into force with effect from 1<sup>st</sup> September, 2016. The Amended Act, named as the Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 inter-alia covers complete prohibition on employment or work of children below 14 years of age in all occupations and processes; linking the age of the prohibition of employment with the age for free and compulsory education under Right to Education Act, 2009; prohibition on employment of adolescents (14 to 18 years of age) in hazardous occupations or processes and making stricter punishment for the employers contravening the provisions of the Act. **The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986**

2. Subsequent to the amendment in Child Labour Act, Government has framed the Child Labour (Prohibition & Regulation) Amendment Rules, 2017. The Rules inter alia cover provision for prevention, rescue and rehabilitation and convergence, definition of

“help” in the family enterprises owned by the family of the child and regulation of child artists to ensure their safety and security. The Rules also provides for District Nodal Officer (DNO) and Task Force under the chairmanship of District Magistrate to ensure that the provisions of the Act are properly enforced. **The Child Labour (Prohibition & Regulation) Amendment Rules, 2017**

3. The Act defines the jurisdiction of both Central and State Governments in implementing the Act. The Central Government is the “appropriate Government” in relation to establishments under the control of the Central Government or a railway administration or a major port or a mine or oilfield. In all other cases, the State Government is the “appropriate Government”. The State Action Plan issued by the Ministry enumerates the actions arisen on the part of State Governments/UTs after enactment of the Amendment Act.

4. After amendment in the Act, Government has reviewed the Schedule of hazardous occupations and processes to make it more comprehensive. As per the recommendations of the Technical Advisory Committee (TAC), the Schedule of hazardous occupations and processes of the Act has been divided in two parts namely ‘Part A’ covering a list of hazardous occupations and processes in which adolescents are prohibited to work and children are prohibited to help in family or family enterprises and ‘Part B’ covering an additional list of occupations and processes where children are prohibited to help in family or family enterprises (in addition to ‘Part A’). **The Schedule Of Hazardous Occupations and Processes.**

5. After making suitable amendment in the Child Labour Act, in 2016 India ratified ILO conventions No.138 (minimum age of entry to employment) and 182 (worst form of child labour) on 13.06.2017. The ratification of the Convention No.138 and 182 would move a step ahead in the direction of achieving the goal of eradication of child labour from the country as it would be legally binding to comply with the provisions of the Conventions. By ratifying these two core conventions, India join majority of the countries who have adopted the legislation to prohibit and place severe restrictions on the employment and work of children.

6. Government is also laying lot of stress on the enforcement of the Child and Adolescent Labour (Prohibition & Regulation) Act, 1986. For violation of the provisions under the Act, during the last 6 years (2013-18) about 14.34 lakh inspections were carried out, resulting in approximately 0.10 lakh prosecutions out of which more than 4530 convictions were obtained.

7. The Ministry has framed a Standard Operating Procedure (SOP) creating a ready reckoner for trainers, practitioners and monitoring agencies to ensure complete prohibition of child labour and protection of adolescents from hazardous labour ultimately leading to Child Labour Free India. **Standard Operating Procedure**

8. The Ministry has developed an online portal PENCiL (Platform for Effective Enforcement for No Child Labour) which is functional w.e.f. 26.09.2018. The purpose of this portal is to provide for a mechanism for both enforcement of the legislative provisions and effective implementation of the National Child Labour Project (NCLP). The Portal has the components like Complaint Corner, State Government, NCLP, Child Tracking System, and Convergence. Now, complaint of child labour can be registered electronically on the Portal to the concerned District Nodal Officers (DNOs) for taking prompt action. (**[www.pencil.gov.in](http://www.pencil.gov.in)**)

## **PROJECT BASED ACTION - NATIONAL CHILD LABOUR PROJECT (NCLP) SCHEME**

1. Government had started the National Child Labour Project (NCLP) Scheme in 1988 to rehabilitate working children in the child labour endemic districts of the country. As on date the Scheme is sanctioned in 313 districts of 21 states in the country.

2. The NCLP scheme is a Central Sector scheme. Under the scheme, project societies are set up at the district level under the Chairpersonship of the Collector/District Magistrate for overseeing the implementation of the project. Under the NCLP Scheme, children in the age group of 9-14 years, withdrawn from work are put into Special Training Centers, where they are provided with bridge education, vocational training, mid-day meal, stipend, health-care facilities etc. and finally mainstreamed to the

formal education system. Children in the age group of 5-8 years are directly linked to the formal education system through a close coordination with the Sarva Shiksha Abhiyan (SSA). Adolescent labour identified in the age group of 14 to 18 years working in hazardous occupations /process are provided with vocational training opportunities through existing scheme of skill developments. In addition, efforts are also made to target the families of these children so as to cover them under various developmental and income/employment generating programmes of the Government to raise the economic standard of the family. Further, under the Scheme the Ministry funds awareness generation campaigns against the evils of child labour and enforcement of child labour laws through electronic and print media. At present, there are around 3000 NCLP training centers being run in the country with an enrolment of approximately 1.20 lakh children. Since inception about 13.00 lakh working children have already been mainstreamed to regular education system under the NCLP Scheme.

3. The year-wise budget allocation and expenditure incurred under the scheme during last five years are as under:

(in crores)

Year	Budget Allocation (Final)	Expenditure
2012-13	130.18	128.11
2013-14	111.00	110.73
2014-15	110.87	102.34
2015-16	99.50	93.20
2016-17	105.00	104.73
2017-18	95.17	94.03
2018-19	110.00	57.00 (as on Oct., .2018)

4. To ensure involvement of State Government in implementation and monitoring of the NCLP Scheme and to make awareness generation activities to curb the menace of child labour it has been decided to form State Resource Centre (SRC) in every State/UT under the Chairmanship of State Labour Secretary. The PENCil portal developed by the Ministry connects Central Governments, Districts and all Project Societies. The SRCs will coordinate and monitor the implementation of the NCLP

Scheme in their respective State through PENCiL portal and also update its reports on the portal.

### **Revision of the NCLP Scheme**

5. Government has enhanced the amount of stipend from Rs.150/- to Rs.400/- per month per child, rates of honorarium for volunteers and other parameters of the scheme. Further, the volunteers involved in the scheme would be provided incentive on the basis of their performance. This new initiative would motivate them to improve their quality and efficiency. Government has simplified the guidelines for implementation of NCLP Scheme and decided to expand the coverage of the Scheme in all districts having incidence of child labour. The Ministry of Labour & Employment has issued instructions to State Governments for conducting survey on child labour in such districts where there is a possibility of incidence of child labour.

### **Guidelines of NCLP Scheme**

### **Recent Modifications in the Scheme**

### **Convergence of Government Programmes:**

6. As Child labour is an outcome of various social economic problems such as poverty, economic backwardness, lack of access to basic services, illiteracy etc, the Government is taking very focused and concerted efforts towards the convergence of the on-going developmental schemes at the Central Government, State Government and the District level. Government of India initiatives to bestow certain rights and schemes for Employment Generation and Social Security are all part of the efforts to eliminate child labour. Under the revised NCLP guidelines, much emphasis has been given for its convergence with Serva Siksha Abhiyan (SSA) and other schemes. School uniforms and text books to each child in the NCLP schools (STCs) is sought for under SSA whereas nutritious cooked mid-day meal is ensured through Mid-Day Meal (MDM) scheme of the Government. The provision of primary health care including health check-ups and maintenance of health cards is also provided through School Health Programme under NRHM.

7. The educational rehabilitation of the children is also to be supplemented with economic rehabilitation of their families. The Government is adopting a sequential approach with focus on proper rehabilitation of not only the working children but their

families also through revised NCLP scheme and convergence of various developmental schemes of the Government. Ministry of Women and Child Development is to provide for food and shelter to the children withdrawn from work through their schemes of Shelter Homes, etc as part of the Integrated Child Protection Programme. Ministry of Rural Development is to provide employment opportunities to the parents of the children near their place of residence under MGNREGA. Ministry of Consumer Affairs, Food and Public Distribution is to provide subsidized food grains under the Food Security Act.

### **Re-alignment of NCLP Scheme with RTE Act, 2009**

8. With the enactment of Right to Education Act, 2009, there has been a need for realignment of the NCLP Scheme with the provisions of RTE Act, 2009. Ministry of Human Resource Development vide their letter No. 10-4/2009-EE.4 dated 2.7.2010 intimated that the NCLP Schools can serve as special training centers for un-enrolled and out of school children in accordance with the provisions of Section 4 of the RTE Act and Rule 5 of the Right of Children for free and compulsory education (RTE) Rules, 2010.

### **SUPREME COURT JUDGEMENT ON CHILD LABOUR**

Hon'ble Supreme Court of India has issued various directions to the State Governments from time to time. Some of these directions are:

- completion of survey of children working in hazardous employments;
- payment of compensation amounting to Rs.20,000/- by the offending employer for every child employed in contravention of the provisions of the Act;
- giving alternative employment to an adult member of the child withdrawn from the hazardous occupations or payment of an amount of Rs.5,000/- for each child employed in hazardous employment by the appropriate Government;
- payment of interest on the corpus of Rs.25,000/- (Rs.20,000/- by the employer and Rs.5,000/- by the appropriate Government) to the family of the child withdrawn from work;
- provision of education in a suitable institution for the child withdrawn from work;
- constitution of the Child Labour Rehabilitation-cum-Welfare Fund;
- constitution of a separate cell in the Labour Department of the appropriate Government for the purpose of monitoring.

### **Provision of Child & Adolescent Labour Rehabilitation Fund:**

In order to give the statutory back up for the rehabilitation Fund, the Government has made a provision in the Child Labour (Prohibition of Regulation) Amendment Act, 2016 for constitution of Child & Adolescent Labour Rehabilitation Fund at district level to ensure that child and adolescent is not only rescued but his future is secured by the amount collected in fund for his welfare and education. The amount of fine realized from the employer of the child or adolescent shall be credited in the rehabilitation Fund and an amount of fifteen thousand will also be credited by the appropriate Government for each of the child and adolescents rescued from the work.

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