

The Union Government Ban on Child Labour and its Links to Tourism

EQUATIONS
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The Ministry of Labour and Employment, Government of India, issued a notification amending the Child Labour (Prohibition and Regulation) Act 1986 on 1st August 2006. The Amendment makes the employment of children below 14 years as domestic servants or in the hospitality sector a punishable offence. This paper provides a review of the Amendment and its objective. Although supporting the Amendment, EQUATIONS raises concerns on inadequate rehabilitation mechanisms for children and the lack of attention to how the Amendment will be implemented.

What does the new Amendment state?

The Centre has prohibited:

- Employment of children below 14 years as domestic servants.
- Also, employment of children in hospitality industry, which includes:
 - o Dhabas
 - o Roadside eateries,
 - o Restaurants,
 - o Hotels,
 - o Motels,
 - o Teashops,
 - o Resorts,
 - o Spas or
 - o And other recreational centres.
- The Notification makes employment of children in any form, in these sectors, an offence.
- The ban, under the Act will be effective from 10th October 2006.

What is the primary objective of the new Amendment?

- The primary objective is recognition of the above forms of child labour under the "hazardous" category.
- The Notification is recognition by the Government that child labour exists in these sectors and these children are exploited, both physically and mentally.
- No longer does civil society have to appeal to people's conscience for not employing children at homes, teashops, dhabas, eating joints along highways, roadside shack kiosks and eateries, restaurants, hotels spas or any similar business. Now it is completely illegal to do so.
- The restriction of not employing children in homes and hospitality industry applies not only apply to government employees but to all. (Government employees were already banned from employing children for domestic help by a previous notification passed by the Ministry of Labour and Employment).

Context:

- Children employed in homes and the hospitality industries are subjected to physical, mental and sexual abuse.
- Activists have been campaigning for years to include these forms of child labour also under the "hazardous" category to protect children who are subjected to physical violence, psychological trauma and even sexual abuse.
- Abuse of children in these occupations most often goes unnoticed and un reported as they take place within the confines of homes or restaurants.
- In February 2006, responding to a petition filed by Shantha Sinha of M.V. Foundation in connection to an already pending Public Interest Litigation (PIL) by environmentalist and lawyer M.C. Mehta, the Supreme Court issued notice to the Centre, the states and the Union Territories, seeking a complete ban on child labour.
- The petitioners had contended that the existing legislations were not completely prohibiting child labour in all occupations and processes.
- The initial Act prohibited employment of children only in certain specified hazardous occupations and processes and regulated the working condition in others.

Penalty for Violation

According to the recent Notification, penalty for flouting the law is:

- Imprisonment ranging from three months to two years with or without Fine ranging from 10,000 to Rs. 20,000/-

Links to Tourism

Work damages a child's physical, mental, social, and psychological development in the context of tourism?

Research studies¹ show that:

- Most children involved in tourism activities run the risk of being sexually exploited. due to constant exposure and involvement with adults
- Children employed in roadside eateries and highway dhabas are highly vulnerable to sex and drug abuse as they come in contact with both locals as well as tourist. As a result they are also directly vulnerable to HIV/AIDS.
- Because of economic and physiological vulnerability many children end up being caught up in a life of servitude, suffering sexual as well as physical exploitation and these odd jobs keep them away from schooling on the one hand and do not provide the opportunity for meaningful vocational training either – so growth and development is affected.
- In spite of the Act being passed in 1986, since employment in hospitality industry was not within the category of "hazardous occupation". Employers in the Hotel, Catering and Tourism sector continued to employ children.
- The economic cause being that children can be and are employed for lower wages. This very reason increases the incidence of children being employed and trafficked for such employment.
- Children labour is also very common in family based small enterprises where children are engaged by their family to sell trinkets nuts, tea etc on the beaches and roadside shacks and small restaurants. These children are also vulnerable to similar exploitation.

Some concerns with respect to the Notification

EQUATIONS supports such a move by the Government, particularly in the context of the need for stern and unambiguous measures to stop exploitation of children. However, we also share the concerns raised by other Civil Society groups² in the implementation mechanism needed in order to demonstrate serious intent to tackle the issue of child labour in these sectors.

- Is the Government prepared itself to deal with the consequences of such a notification, which is sure to leave many children without a source of income from October 10 and beyond, leaving them to struggle for survival on the streets? What are the measures to see that they do not enter beggary or organised crime gangs but are enrolled into school? What are the alternatives for families which were dependent on the income from children? Points to the larger question of solving the urban unemployment crisis itself.
- Rehabilitation Policy for the rescued children (The rehabilitation Policy must be holistic and must not inflict more hardship than benefit on the already precarious existence of these children). For more details on the rehabilitation³.
- Are there any plans to consult children while chalking out rehabilitation options acceptable and appropriate for them? A serious intent towards implementation would imply that the plans for the rehabilitation should look into rehabilitation of the families of the children, who have been forced by their families to work? Unless these root causes are addressed holistically and progressively, this ban will be treating just the symptoms, not the causes of the problem.
- We are concerned about the trauma on the child – who is already exploited and traumatised while being employed as domestic labour and in the hospitality industry. The government should frame adequate rules and regulations to impose responsibility of psychological counselling and rehabilitation of these children to adequate Authorities. Moreover, the government should form Committees comprising of representatives from the Civil Society (those who work on the issues related to child welfare) and certified medical councillors and medical practitioners to examine and review the working of these designated Authorities.
- What is the preventive measure taken by Government to prohibit children who are self-employed, like selling trinkets; nuts, tea etc in the beaches and roadsides.
- What is the government's strategy to ensure that children themselves are adequately informed of this ban, which will have a tremendous impact on their lives in the near future?
- How has the government equipped itself in implementing this ban? How will this ban be any different from the numerous other banned occupations and processes that continue to break the law by enslaving millions of children in subhuman working conditions?

- Is there a detailed strategy plan for identification of child labour in these sectors? In all these sectors, there is a danger of rendering children even more invisible and vulnerable, if the identification process and subsequent follow up is poorly executed.
- There are also a significant number of young people in the age group of 14-18 years who are employed in these sectors under equally harsh situations. Our concern is that this legislation take cognisance of them and ensure that their rights are not violated as well

Therefore we feel that civil society organization must play a key role in implementing this notification and making government accountable in its functioning. We the members of Civil Society need to play a proactive role to check and monitor Government policies and plans and their implementation and ensure that the issues / concerns are addressed at each level of governance. Right to Information Act is one of the tools to check and monitor the implementation of the Notification by the government and its agencies.

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End Notes

1 Refer research studies like, "Quick Money-Easy Money? A Report on Child Labour in Tourism" Christine Pluss, SDC Working paper 1/99, Berne, Switzerland, May 1999 & "Towards Strengthening Rights of Minors and Adolescents in Tourism", 2004 by EQUATIONS with support from UNIFEM and USAID

2 Concerns raised by "The Concerned for Working Children (CWC)", Karnataka and other Civil Society Organizations

3 Refer research study "Rescuing child Labourers: An analysis of the operations undertaken to rescue children trafficked to labour in the jewellery units in Karnataka", 2004, by EQUATIONS and APSA with support from UNIFEM, South Asia regional Office and USAID