

**Campaign Against Child Labour (CACL)**  
Position on  
**Child Labour (Prohibition and Regulation) Amendment Act (CLPRAA), 2016**

In July 2016, the Parliament passed the Child Labour (Prohibition and Regulation) Amendment Bill, 2016. Rajya Sabha passed it on 19th July and Lok Sabha on 26th July 2016, which got the President's assent on 29<sup>th</sup> July 2016. Government of India published it in the Gazette as the Child Labour (Prohibition and Regulation) Amendment Act, 2016 (CLPRAA, 2016) and the Act came into force on 01 September 2016. The CLPRAA, 2016 amends the Child Labour (Prohibition and Regulation) Act, 1986, which prohibited employment of children below 14 years in 83 hazardous occupations and processes, and apparently bans employment of children below 14 in *all occupations and enterprises*.

Key Aspects of the CLPRAA, 2016

The Amendment, reportedly, was to align Indian Child Labour law with (i) ILO's Minimum Age Convention and Worst Forms of Child Labour, (ii) United Nation's Convention on the Rights of the Child and (iii) with amendment to India's Constitution (Article 21A and Article 45) making education a fundamental right to all children.

Section 3(1) of the Act prohibits employment of children below 14 in *all occupations and enterprises*. However, Section 3(2) makes two exclusions; the prohibition is not applicable where the child,—

“(a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;

(b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed:

Provided that no such work under this clause shall effect the school education of the child.”

The CPLRAA, 2016 inserts a new Section 3A which says, “No adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule”

The Amendment brings in substantial changes to the 1986 Act.

It introduces term ‘adolescent’ into the Child Labour (Prohibition and Regulation) Act and defines it as a person who has ‘completed his fourteenth year of age but has not completed his eighteenth year;’ and prohibits (Section 3A) employment of adolescents in certain hazardous occupations and processes. Here it does three things, one, takes away the distinction between hazardous occupations and processes (Schedules A & B of 1986 Act) and substitute it with one

Schedule; two, the substituted Schedule just lists three items (1) mines, (2) inflammable substances or explosives and (3) hazardous process instead of instead of 18 occupations and 65 processes in 1986 Act; three, the substituted Schedule explains that ‘hazardous processes’ has the meaning assigned to it in clause (cb) of the Factories Act, 1948.

This change to the Act is in contradiction with the Juvenile Justice (Care and Protection of Children) Act, 2015, which defines child as a person who has not completed eighteen years of age. As opposed to an adolescent, a ‘child’, according to the amendment, ‘means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more’. The amended Act says that child labour has been prohibited in *all occupations and enterprises, except those run by his or her own family, provided that education does not hampered*. The exceptions make the prohibition meaningless.

The amendment offers explanations to three critical terms, which are part of the exclusions: it says, (a) “family” in relation to a child, means his mother, father, brother, sister and father’s sister and brother and mother’s sister and brother;  
(b) “family enterprise” means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;  
(c) “artist” means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2).”

#### CACL’s position

CACL considers that these steps are retrograde and will encourage and legalise child labour instead of its purported objective of prohibition of child labour from all occupations and processes. It legalises family and family-based occupations, removes the restrictions on hours of work in such occupations and excludes such occupations from the original schedule of hazardous occupations / processes.

The 1986 Act had in the Schedules several occupations and processes that would have been managed by families or as family enterprises. Among such establishments where child labour was prohibited included agarbati making, gem cutting, fabrication, foundry, automobile workshops and repairs, slate pencil making, lock making, soldering, electronics, polishing, potteries, welding, zari making, processing, dhabas, plastic making, handlooms, etc.. The Amendment, despite its stated objective, in effect allows child labour in all such and more establishments rationalising that these are run by families.

The CLPRAA, 2016 reduces the list of hazardous occupations in the schedule to mines, explosives and those in the schedule of the Factory Act. Many children employed in various hazardous occupations will therefore go un-recognised as child labourers. Moreover, many of the family based enterprises are hazardous, but will escape official scrutiny.

The CLPRAA, 2016 allows child labour in such establishments under the presumption that children can work and study. This presumption is a grand generalisation of exceptions and legalising those generalisations. The right to education is a fundamental right under Article 21A of the Constitution through the 86th Constitutional Amendment of 2002. The Section 3 of the amended Act does not even specify the hours of work. It simply states that children can help after school hours or during vacations. The amendment contradicts the UN Convention on the Rights of the Child as it neglects to define the number of hours children can work.

Allowing children to work will affect the retention rate of children in schools and increase drop outs of children from the marginalized sections. It will also prevent children from getting time for doing home work and for play and leisure which too are rights recognized by UNCRC, ratified by India. The Act provides loopholes to put children to work even during school hours as there is no way that it can be monitored.

The amendment has expanded the definition of family to include not only parents and siblings but also the siblings of either parent, in effect, expanding the possible enterprises where children can work and increasing the chances of children being exploited. Given the context of weakening labour inspection machinery, it may be difficult to determine whether an enterprise is owned by a family or some person has employed the whole family to run the enterprise.

The amendment extends the freedom to engage children as artists and in audio-visual industry including advertisement, at a time when there are no ground rules evolved to protect children engaged in such activities. CACL considers this a serious lapse in the context of increasing commercialisation of audio-visual industry.

In India, generally, traditional family occupations are caste based occupations and enterprises. Legally allowing children to be engaged in family or family-based occupations, will entrench caste based social structure and caste based occupations in the country. It will bind children especially the poor children belonging to low caste to traditional caste-based occupations for generations or such children will be denied the freedom of choice in the pursuance education, as well as in the acquisition of knowledge and in the diversification of skills.

More than half of India's child workers labour in agriculture and over a quarter in manufacturing—embroidering clothes, weaving carpets, making match sticks or brick kilns. restaurants, in domestic work. In India, overwhelmingly, child labourers are those from

vulnerable Dalit, Adivasi and Muslim backgrounds. CACL is extremely concerned that they will be the worst affected by the CLPRAA, 2016. Children from the vulnerable communities will be forced work in many employments, in hazardous conditions, for long hours abdicating their right to schooling and education. Further, it will extoll the virtue of caste-based occupations, deny the freedom of choice to those of those who engaged in such occupations and indirectly communicate that education is the privilege of a chosen few. The employment of girl children, already invisible will become more insidious and exploitative.

CACL acknowledges that the 2016 Act makes child labour a *cognizable offence*. Employing children below 14 years will attract a jail term between 6 months to two years (earlier 3 months to 1 year) or a penalty between Rs.20,000 to Rs.50,000 or both for the first time. Repeat offenders will attract imprisonment between 1 year to 3 years (6 months to 2 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.

CACL feels that such steps do not have much meaning after legalising child labour in family and family-based occupations, reduction in the instances of prosecutions against perpetrators of child labour and the policy induced lethargy in the labour administration machinery.

Campaign Against Child Labour (CACL) proposes **Child Labour System (Abolition, Prevention and Rehabilitation) Bill, 2017** for complete eradication of child labour up to 18 years of age in line with UNCRC and National Policy for Children, 2013. This will enable us to attain the Sustainable Development Targets 4.1 (By 2030, ensure that all girls and boys complete free, equitable and quality primary and **secondary education** leading to relevant and effective learning outcomes) and 8.7 (Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 **end child labour in all its forms**)

\* \* \* \* \*