
EMPLOYMENT OF CHILDREN ACT, 1938

26 of 1938

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SCHEDULE 1 :- LIST OF PROCESSES

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^a[a] For Statement of Objects and Reasons, see Gaz. of Ind., 1938, Part V, p. 284. This Act has been extended to the new Provinces and merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 (1-1-1950) and to the Union Territories of Manipur and Tripura by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 (16-4-1950). Manipur and Tripura are now States See Act 81 of 1971. Vindhya Pradesh to which also this Act was extended by Act 30 of 1950 now forms part of the State of Madhya Pradesh See Act 37 of 1956, S. 9 (1) (e). It has also been extended to States merged In the State of Bombay; see Bom- bay Merged States (Laws) Act, 1950 (IV of 1950), Sch. II, Pt. 1 (30-3-1950) and Bombay Extension of Laws to Non-Scheduled (Partially Excluded) Areas Act, 1954 (LXVIII of 1954), Sch. II (15-11-1954). It now

extends to the Union Territories of Dadra and Nagar Haveli; Pondicherry and Laccadive, Minicoy and Amindivi Islands (now known as Lakshadweep) See Regns. 6 of 1963; 7 of 1963 and 8 of 1965 respectively.

STATEMENT OF OBJECTS AND REASONS (i) "The twenty-third Session of the International Labour Conference adopted a Convention in which a special Article for India was inserted, fixing the minimum age at which children may be employed or may work in the transport of passengers, goods or mails by rail, or in the handling of goods at docks, wharves or quays, at 13 years. This Bill provides for prohibiting the employment of children under 15 in occupations connected with the transport of goods passengers or mails on railway and for raising the minimum age for handling goods in docks from 12, the age fixed by S. 6 (1A) of the Indian Ports Act, 1908, to 14 the age recommended by the Royal Commission on Labour. A simple procedure enabling employers to safeguard themselves against transgressions of the Act by furnishing themselves with or requiring candidates for employment to possess, certificates of age is provided in the Bill." Gazette of India, 1938, Part V, Page 284. Act 48 of 1951. (ii) "The International Labour Conference at its 31st Session held in 1948 adopted a Convention (No. 90) concerning night work of young persons employed in industry. This Convention In Its application to India, prohibits the employment of young persons during the night in factories, mines, railways and ports. The basic provision in the Convention is that young persons between 15 and 17 years of age should not be employed for a period of at least 12 consecutive hours including an interval of at least seven consecutive hours between 10 P. M. and 7 A. M. India has ratified the Convention which will come into force in June, 1951. Necessary action to enforce the provisions of the Convention in mines and factories by amending the relevant laws is being taken separately. The only national law regulating the employment of children in railways and ports is the Employment of Children Act, 1938, and the present Bill amends that Act so as to give effect to the provisions of the Convention in respect of railways and ports. This opportunity Is also taken to amend the Act with a view to completely prohibit the employment of children below 15 years of age in any occupations in port areas." S. O. R., Gaz. of Ind., 1951, Pt. II Sec. 2, page 309. Act 39 of 1978 (iii) The main object of the Employment of Children Act, 1938, is to prevent exploitation of child labour in workshops

and other specified occupations. The Act regulates the employment of children in certain industrial employments. Section 3 of the Act prohibits the employment of a child who has not completed his fifteenth year in certain occupations in railways and in ports. It is proposed to amend the said section to extend the prohibition of employment of such child in other occupations in railway premises, such as cinder picking or clearing of an ash pit or building operation, in catering establishment at a railway station or in occupation relating to construction of a railway station or any other work where such work is done in close proximity to, or between, the railway lines. Section 3E of the Act requires every railway administration and every port authority to display at the place specified therein a notice containing an abstract of Ss. 3 (1) and (2) and S. 4. It is proposed to amend S. 3E so as to bring within its scope also an employer in relation to occupations specified made by the Central Government, as recommended by the Committee on Subordinate Legislation. It is also proposed to amend S. 4 to provide penalty for non-display of notice, as required by S. 3E of the Act. The Bill seeks to give effect to the above. Opportunity is being taken to amend the objects. S. O. R. Gaz. of Ind., 17-5-78 Act for laying, before Parliament, the rules Pt. II, S. 2, Ext., P. 683.

1. Short title and extent :-

(1) This Act may be called THE EMPLOYMENT OF CHILDREN ACT, 1938.

(2) It extends to the whole of India ¹[² [*****]].

1. Words "except the State of Jammu and Kashmir" were substituted for "except Part B States" by Part B States (Laws) Act, 1951 [III of 1951], S. 3 and Sch. (1-4-1951) thereafter

2. Words "except the State of Jammu and Kashmir" were omitted by Act 51 of 1970, S. 2 Sch. (1-9-71).

2. Definitions :-

In this Act

¹[(a)] "competent authority" in respect of a major port, as defined in Ports Act, 1908, ²[or so declared by or under an Act of Parliament] and in respect of a ³[* * *] railway, ⁴[* * *] means the Central Government and in any other case means the ⁵[State] Government;

¹[(b) "occupier" of a workshop means the person who has ultimate control over the affairs of the workshop;

⁷[(bb) "port authority" means a body of port commissioners or other authority administering a port];

(c) "prescribed" means prescribed by rules made under this Act;

(d) "workshop" means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of S.50 of the Factories Act, 1934⁸ [for the time being apply.]

1. Inserted by the Employment of Children (Amendment) Act, 1939 (XV of 1939), S. 2 (w. r. e. f. 1-10-1939).

2. Inserted by A. L. O., 1950.

3. Word "federal" was omitted, by A. L. O., 1950.

4. Words "as defined in the Indian Railways Act, 1890" were omitted, by A. L. O., 1950.

5. Substituted for 'Provincial' by A. L. O., 1950.

7. Inserted by Employment of Children (Amendment) Act, 1951 (XLVIII of 1951), S. 3 (1-9-1951).

8. See now the Factories Act, 1948 (LXIII of 1948), S. 67 and Ch. VII.

3. Prohibition of employment of children in certain occupations :-

¹[(1) No child who has not completed his fifteenth year shall be employed or permitted to work in any occupation

(a) connected with the transport of passengers, goods or mails by railway, or

²[(b) connected with cinder, picking, clearing of an ash pit or building operation, in the railway premises; or

(c) connected with the work in a catering establishment, at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train; or

(d) connected with the work relating to the construction of a railway station or with any other work where such work is done in close proximity to, or between, the railway lines; or]

²[(e)] connected with a port authority within the limits of any port,

(2) No child who has completed his fifteenth year but has not completed his seventeenth year shall be employed or permitted to work in any occupation referred to in sub-section (1), unless the periods of work of such child for any day are so fixed as to allow an interval of rest for at least twelve consecutive hours which shall include at least such seven consecutive hours between 10 p. m. and 7 a. m. as may be prescribed: Provided that nothing in this sub-section shall apply to any child referred to herein while employed or permitted to work in such circumstances and in accordance with such conditions as may be prescribed In any occupation aforesaid either as an apprentice or for the purpose of receiving vocational training therein: Provided further that the competent authority may, where it is of opinion that an emergency has arisen and the public interest so requires, by notification in the Official Gazette, declare that the provisions of this sub-section shall not be in operation for such period as may be specified in the notification.]

⁴[(3) No child who has not completed his ⁵ [fourteenth] year shall be employed or permitted to work, in any workshop wherein any of the processes set forth in the Schedule is carried on: Provided that nothing in this sub-section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family only and without employing hired labour or to any school established by or receiving assistance or recognition from a State Government].

1. Substituted for sub-sections (1) and (2) by the Employment of Children (Amendment) Act, 1951 (XLVIII of 1951), S. 4 (1-9-1951).
2. Clause (b) re-lettered Cl. (e) and Cls. (b) to (d) inserted by Act 39 of 1978, S. 2 (1-3-79).
4. Inserted by the Employment of Children (Amendment) Act, 1939 (XV of 1939), S. 3 (w. r. e. f. 1-10-1939).
5. Substituted for "twelfth" by the Factories Act, 1948 (LXIII of 1948), S. 119 (1-4-1949).

3A. Power to amend the Schedule :-

The ¹[State] Government, after giving by notification in the Official Gazette, not less than three months's notice of its intention so to do, may, by like notification add any description of process to the Schedule and thereupon the Schedule shall have force in the ¹ [State] as if it has been enacted accordingly].

1. Substituted for 'Provincial' by A.L.O., 1950.

3B. 3B :-

¹[(1)] Notice to inspector before carrying on work in certain processes. Before work in any of the processes set forth in the Schedule is carried on in any workshop after the 1st day of October, 1939, the occupier shall send to the inspector within whose local limits the workshop is situated, a written notice containing

(a) the name and situation of the workshop,

(b) the name of the person in actual management of the workshop.

(c) the address to which communications relating to the workshop should be sent, and

(d) the nature of the processes to be carried on in the workshop].

¹ [(2) In its application to State of Jammu and Kashmir, reference to the 1st day of October, 1939, shall be construed as reference to the commencement of this Act in the said State.]

MODIFICATION Pondicherry In its application to the Union Territory of Pondicherry S. 3B of the Act shall have effect as if for the reference to the 1st day of October, 1939 a reference to the date of expiry of one year from the commencement of the Act were substituted. See Regn. 7 of 1963, S. 2 and First Schedule (1-10-1963).

1. Section 3B renumbered as sub-section (1) and sub-section (2) inserted by Act 51 of 1970, S. 2 Sch. (1-9-71).

3C. Disputes as to age :-

If any question arises between an inspector and an employer ¹ [as to the age of any child who is employed or is permitted to work by the employer], the question shall, in the absence of a certificate as to the age of such child, granted by a prescribed medical authority, be referred by the inspector for decision to the prescribed medical authority].

1. Substituted for certain words by Repealing and Amending Act, 1949 (XL of 1949), S. 3 and Sch. II (1-5-1949).

3D. Maintenance of register :-

There shall be maintained by every employer, in respect of children employed or permitted to work in pursuance of sub-section (2) of section 3 in any occupation referred to in sub-section (1) of that

section, a register to be available for inspection by an inspector at all times during working hours or when work is being carried on in any such occupation, showing

(a) the name and date of birth of every child under seventeen years of age so employed or permitted to work;

(b) the periods of work of any such child and the intervals of rest to which he is entitled;

(c) the nature of work of any such child; and

(d) such other particulars as may be prescribed].

3E. Display of notice containing abstract of sections 3 and 4

:-

Every railway administration ¹[every port authority and every employer] shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port ²[or at the place of work], as the case may be, a notice in such Indian language or languages as may be prescribed and in the English language containing an abstract of sub-sections (1) and (2) of section 3 and section 4 of this Act.

Explanation. In this section "railway administration" has the meaning assigned to it in the Indian Railways Act, 1890].

3

(1) Whoever employs any child or permits any child to work in contravention of the provisions of Section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than five hundred rupees or with both which may extend to two thousand rupees or with both.

(2) Whoever having been convicted of an offence under Section 3 for employing any child or permitting any child to work in contravention of the provisions of Section 3 commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years: Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than six months.

4

(3)Penalty.- Whoever- [****5***]

(b) fails to give notice as required by section 3B ; or

(c) fails to maintain a register as required by section 3D or makes any false entry in any such register, ¹[or]

¹ [(d) fails to display a notice containing an abstract of sub-sections (1) and (2) of section 3 and section 4 as required by section 3E], shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to five hundred rupees or with both].

1. Inserted by Act 39 of 1978, S. 4 (1-3-79).

2. Inserted, by Act 39 of 1978, S. 3 (1-3-79).

3. Inserted sub-section (1) and sub-section(2) before sub-section (3) as so renumbered of section (3E) by by THE EMPLOYMENT OF CHILDREN (AMENDMENT) ACT, 1985 dated 4th December, 1985

4. Section 4 renumbered as sub-section (3) of Section (3E) by THE EMPLOYMENT OF CHILDREN (AMENDMENT) ACT, 1985 dated 4th December, 1985

5. Omitted for " (a) employs any child or permits any child to work in contravention of the provisions of section 3 ; or ", vide THE EMPLOYMENT OF CHILDREN (AMENDMENT) ACT, 1985 (62 Of 1985), Dt. 4th December, 1985 Published in Received the assent of the President on December 4, 1985 and published in the Gazette of India, Extra., Part II, Section I, dated 4th December, 1985, pp. 1-2 [W]

4. . :-

5. Procedure relating to offences :-

(1) No prosecution under this Act shall be instituted except by or with the previous sanction of an inspector appointed under section 6 .

¹ [(2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, becon- clusive evidence as to the age of the child to whom it relates].

(3) No Court inferior to that of a Presidency Magistrate b or a Magis- trate of the first class shall try any offence under this Act.

1. Substituted for sub-section (2) by the Employment of Children (Amendment) Act, 1939 (15 of 1939), S. 6 (w. r. e. f. 1-10-1939).

6. Appointment of inspectors :-

The competent authority may appoint a persons to be inspectors for the purpose of securing compliance with the provisions of this Act and any inspector so appointed, shall be deemed to be a public servant within the meaning of Indian Penal Code, 1860 .

7. Power to make rules :-

(1) The competent authority may by notifica- tion in the Official Gazette and subject to the condition of previous publica- tion make rules¹for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the forego- ing power, such rules may

(a) regulate the procedure of inspectors appointed under section 6²[*]

(b) make provision for the grant of certificates of age in respect of young persons in employment or seeking employment, ³[the medical authori- ties] which may issue such certificates, the form of such certificate, the charges which may be made therefor, and the manner in which such certificates may be issued: Provided that no charge shall be made for the issue of any such certificate if the application is accompanied by evidence of age deemed satisfac- tory by the authority concerned.

⁴[(c) fix the seven consecutive hours between 10 P.M. and 7 A. M. for the the purpose of sub-section (2) of section 3 ;

(d) specify the circumstances in which and the conditions subject to which a child may be employed or permitted to work either as an apprentice or for the purpose of receiving vocational training in any occupation referred to in sub-section (1) of section 3 ;

(e) specify the other particulars which a register maintained under section 3D should contain;

(f) specify the Indian language or languages in which a notice referred to in section 3E shall be published; and

(g) provide for exemption from the provisions of sub-section (2) and section 3 in cases of emergencies which could not have been controlled or foreseen, which are not of a periodical character and which inter- fere with the normal working of any occupation referred to in sub- section (1) of section 3].

5 (3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule].

1. For such rules framed by the Central Government, see Gaz. of Ind., 1940, Part I, dated 30-11-1940; in J. and K., see J. and K. Gaz. 21-8-1972, Pt. III, No. 2-DO. For Employment of Children (Railways) Rules, 1955, see Gaz. Ind. 1955, Pt. II, S. 3, p.2325 and for Employment of Children (Major Ports) Rules, 1955, Gaz. Ind., 1955, Pt. II, S. 3, p. 2346.

2. Word 'and' was omitted by the Employment of Children (Amendment) Act, 1951 (48 of 1951), S. 7 (1-9-1951).

3. Substituted for "the authorities" by the Employment of Children (Amendment) Act, 1939 (15 of 1939), S. 7 (w. r. e. f. 1-10-1939).

4. Inserted by the Employment of Children (Amendment) Act, 1951 (48 of 1951), S. 7 (1-9-1951).

5. Inserted by Act 39 of 1978, S. 5 (1-3-79).

8. Amendment of section 6 Act XV of 1908 :-

Repealed by the Repealing and Amending Act, 1942 (XXV of 1942), S. 2 and Sch. I.]

SCHEDULE 1

LIST OF PROCESSES

5. Manufacture of matches, explosives and fire works. 6. Mica-cutting and splitting. 7. Shellac manufacture. 8. Soap manufacture. 9. Tanning. 10. Wool cleaning.] 1. Bidi-making. 2. Carpet-weaving. 3. Cement manufacture. Including bagging of cement. 4. Cloth-printing, dyeing and weaving. STATE AMENDMENT Andhra Pradesh: In Its application to the State of Andhra Pradesh, add the following process to the Schedule, namely "11. Construction work (including river valley projects)" A. P. Govt. Gaz., 24-6-1965, Pt. I, p. 1247.