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India Journal: What Is a Child?

By Saumya Roy

A few weeks ago, a team from the National Commission for Protection of Child Rights was in Gujarat to figure out how to reduce the high incidence of child labor in the state's cotton fields.



Channi Anand/Associated Press

Children walked with rods fitted with magnets, on the outskirts of Jammu, Dec 10

When they met the state's top bureaucrats, they were told that since the law does not prohibit children from working in agriculture, it is hard for them to stop these children from working, officials on both sides confirmed.

It is one of several recent incidents that shine a light into the murky legal world of Indian childhood. Who qualifies as an Indian child and the legal protection that child is afforded depends on which law you look at.

Various child protection laws define a child according to different ages and activities. While one law says a child must be in school fulltime, another allows a child to work,

albeit in non-hazardous activities. So, you could legally be working on a farm at any age.

Attempts to define a child more uniformly have revived a debate on how much child protection the government should give without affecting the economy and spending too much.

The current mismatch has meant that the Right to Education Act, passed in 2010, says that children between six and 14 should be in school fulltime while the Child Labour Prevention and Regulation Act of 1988 allows children under 14 to work six hours a day for six days a week.

"If you have children below 14 working legally, how will you implement Right to Education?," says Komal Ganotra, a specialist in advocacy and training with Childline India Foundation, which runs a phone help line for children. "Amendment of the child labor act is a necessity."

Others say RTE takes precedence over older laws, including the child labor act.

"The question of regulating child labor does not arise anymore because Right to Education means children under 14 cannot be allowed to work," says Niranjana Aradhya, fellow at the Centre for Child and the Law at the National Law School of India University.

But Babu Mathew, a visiting professor at National Law University Delhi, says there is no evidence that RTE has helped to curb child labor so far.

Apart from clashing with each other, these laws are either too porous or too restrictive in defining the children they seek to protect.

For instance, the child labor act says children under 14 cannot work in 13 occupations, including at abattoirs, auto repair shops, ports, and railway stations, as well as picking cinder and handling toxic substances. They are also not allowed to work in 57 processes including beedi-making, carpet-making, auto repair, soap-making, cotton-ginning and gem-cutting.

In theory, therefore, child labor isn't banned in any other places as long as the work is regulated, which is pretty impossible to ensure. Children are not allowed to work night shifts and are to get breaks after every three hours, for instance.

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While the processes and activities deemed hazardous are fairly expansive, they leave out some of the occupations that are the biggest employers of children: agriculture and fisheries.

These have presumably been left out to preclude children from being stopped from working on their own family farms. But increasingly this has meant that child laborers are smuggled across states to work on Bt cotton farms in India's largest cotton producing states of Gujarat and Andhra Pradesh.

According to a study by Davuri Venkateswarlu for the International Labour Rights Forum, 29.8% of the workforce in Andhra Pradesh's cotton fields were under 14 and 70.6% were girls, in 2009-10. In Gujarat, 24.6% of the workforce were under 14 and 62.7% were girls.

The child labor act covers only children up to 14. Child laborers between 15 and 18 are covered by the Juvenile Justice Act (2000), which allows prosecution of employers who employ anyone under 18 in hazardous jobs, keep them in bondage, or withhold their earnings.

But worker protection laws apply only for those over 18. And when children have accidents at work, it is hard to get employer compensation because they are not covered by the Minimum Wages Act, Employee State Insurance Act and a host of others relating to worker compensation and safety.

There is now a debate over how to bring some uniformity to these laws. How old a child should be is proving to be a contentious issue.

The National Advisory Council has set up a working group that says child labor should be banned until 14 and regulated between 15 and 18.

But the labor ministry objected, saying it would adversely impact exports and occupations such as agricultural and artisanal communities if they are not able to teach and induct children into the profession early.

Separately, the education ministry's Central Advisory Board has set up committees to see whether the Right to Education Act can be extended to include children between three and 16.

But that seems hard to implement because most Indian states have already said that they hardly have the money to implement the act as it is.

"There has to be something non-negotiable when it comes to children at work," says Praveen Singh of Child Rights and You, an advocacy organization. "I cannot change the vulnerability of the child according to the law. The law has to account for the vulnerability of the child or adolescent."

Shantha Sinha, head of the National Commission for Protection of Child Rights, said her organization has "actively engaged with the government and concerned ministries for an inclusive definition of child labor. It has argued that children working in agriculture, fisheries and many more sectors, especially in the household units are to be totally banned to enable children to join fulltime school."

Until that happens, big and small factories can use these cracks and contradictions in the system to keep children working.

Radhanath Modak sits in a small room at the end of a dark, long alley in Mumbai's Zaveri Bazaar. "These are not children we employ," he says. "They are bal shilpakar," he says, or child artisans.

Mr. Modak heads the association of Mumbai's Bengali gold jewelry artisans, who make up most of the craftsmen in the city's traditional jewelry market.

Mr. Modak says children come from Bengal to learn the craft as early as nine or 10 although he says workshops now try to hire older children. They learn to heat, twist and shape gold into intricate patterns as they sit on mats and work on low, long tables under lamps. The boys spend their childhoods living and working in these old buildings.

Asked if he can train children after 18, Mr. Modak says they would be too old to learn by then. Although there is a refurbished municipal school in the next lane, Mr. Modak cannot think of any child artisans who study there.

Over the last few years, the police, labor department and Pratham, a child rights organization, have conducted several raids to rescue child laborers here. Mr. Modak says business has dropped since the raids. But at various meetings with law enforcement agencies and child rights organizations, jewelers have been defiant.

“What would they have done with an eighth pass or tenth pass degree,” says Mr. Modak.

He says he is trying to persuade employers to send the kids to school as well but so far the employers have said the children can't spare the time away from work.



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