
A CRITICAL STUDY OF WOMEN AND CHILD LABOUR UNDER THE FACTORIES ACT, 1948: ENSURING OCCUPATIONAL SAFETY AND HEALTH (OSH)

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ABSTRACT

Women workers form an essential part of the labour workforce in India. But not all the women workers are recognized, not many are protected, and very few of them are treated equally to men. And children who are the future pillars of our society, still engaged in hazardous employments.

Women and children constitute a significant yet vulnerable segment of India's industrial workforce, facing unsafe working conditions, exploitation, and inadequate legal protection. While women workers contribute extensively to economic growth, they often encounter discrimination, unequal treatment, and occupational health risks. Similarly, despite legislative prohibitions, children continue to be engaged in hazardous employment, depriving them of their right to education and exposing them to serious health and safety hazards. The Factories Act, 1948, was introduced as a key labor law to regulate working conditions, working hours, maternity benefits, and occupational safety for women and child workers. However, gaps in enforcement, inadequate monitoring mechanisms, and emerging industrial hazards have hindered its effectiveness. The researcher critically examines the efficacy of the Factories Act, 1948, in ensuring occupational safety and health (OSH) protections for these vulnerable groups. It further evaluates the recent labor reforms under the OSH Code, 2020, analyzing their impact on workplace safety and regulatory compliance. In addition, the study explores the role of international labor standards, particularly ILO conventions, in shaping India's labor policies and highlights the significance of judicial interpretations in strengthening labor protections. By bridging the gap between policy and practice, this study advocates for sustainable and gender-sensitive workplace reforms that safeguard the health, dignity, and rights of women and child workers in India's industrial sector. Strengthening legal protections and ensuring effective enforcement mechanisms will be crucial in promoting safe and inclusive working environments that align with international labor standards.

Keywords: Women workers, Child Labour, Factories Act, 1948, Occupational Safety and Health (OSH) Code

Introduction:

Workers are the foundation of our nation and play a major role in its economic success, yet they are frequently disregarded. Workers who exist behind the scenes frequently get overlooked. Their rights, respect, quality of life, and even a better working environment are often overlooked, despite the fact that they are critical for human survival.¹ Several labour laws have been passed by our legislative body for the benefit of workers, such as the Factories Act of 1948, which was passed with the intention of enhancing working conditions for employees. The Factories Act, 1948, is a significant labour law in India which aims to control factory working conditions in order to protect workers' health, safety, and welfare. The Act was enacted after independence and replaced previous factory legislation from the colonial era with more extensive rules.² One of the main objectives is to protect employees from dangerous workplaces and to advance occupational safety and health (OSH).

Although the new Labour Codes made an effort to address most of the problems, they still exist. The Centre and the States must collaborate to create regulations that are consistent and to put the Codes into effect in their entirety. The Ministry of Labour and Employment has recommended four distinct Codes to make it easier to comply with Labour Laws in India. One of those four codes is the Code on Occupational Safety, Health, and Working (OSHW) Conditions.³ This research paper mainly deals with the legal protections provided to women and child workers under the Factories Act, 1948, while focusing on Occupational Safety and Health (OSH) measures.

Historical Background of the Factories Act, 1948:

The Factories Act, 1948 is a comprehensive Indian law that regulates working conditions within factories, aiming to ensure the health, safety, and welfare of workers by setting standards for working hours, minimum age to work, leave with pay, and proper sanitation facilities within the workplace, covering aspects like licensing, inspection, and penalties for non-compliance, essentially aiming to consolidate and amend labour laws related to factories across the country. Modern industrialization arrived in India over a century after it started in Britain, therefore

¹ Sandeep Kumari & Dr. Lalit Dadwal, *An Outlook look of the Occupational Safety, Health and Working Conditions Code, 2020: A Critical Appraisal of the Factories Act, 1948*, 6 INT'L J.L. MGMT. & HUM. 253 (2023)

² K.D. Srivatsava, *Commentary on the Factories Act, 1948*, Eastern Book Company, 2000.

³ Trishaljeet Singh, *The Occupational Safety Health and Working Conditions Code*

beginning of the Factory Act had to wait. In 1854, the first factory producing cotton fabric was established in Bombay. By 1870, a large number of industries had been constructed in Bombay, Nagpur, Kanpur, and Madras as the pace accelerated. Between 1760 and 1820, Britain underwent an Industrial Revolution that altered production technologies. The factory had seen a sharp rise in employment. The capitalist class and the working class were the two new classes that had formed. The Industrial Safety and Health Act was established as the Factory Act of 1881, which was further amended and improved in 1948, in light of the lack of social measures as well as the substandard working conditions and class of the workforce.⁴ With the establishment of cotton mills in 1851 and a jute mill in Bengal in 1855, India's modern industrial structure was founded. Women and children both worked. There was not enough break and workdays that were far too long. Previously, employers had the final say. Enacted in 1881, the Indian Factories Act offered protection for workers, especially young children. In 1890, the Factory Commission was founded by the Indian government. A statute that broadened the term of "factory" to include establishments with 50 or more workers was enacted in 1891 in response to the Commission's recommendations.⁵

The local governments were allowed to expand it to places with twenty or more employees. Special consideration was given to female employees, and their workdays were limited to accommodate a 30-minute break. The Act was amended on a regular basis. It has two amendments in 1923 and 1926. The 1929-formed Royal Commission on Labour's recommendations served as the foundation for the 1934 revision and rewriting of the Act. The Factories Act of 1934 was amended several times before the current Act of 1948 was enacted.

According to the 1934 Act, the Provincial Government had the authority to apply the Act to enterprises that consumed power and had more than 10 employees. It made an effort to improve factory working conditions by reducing the number of hours that employees had to work. Provisions were also created for the Act's proper enforcement and inspection. In 1948, the 1934 Factories Act was amended to cover welfare, overtime pay, cleanliness, and other similar provisions. The aim of the Factories Act was to ensure that factories had safe, healthy, and appropriate working conditions so that workers could dedicate their time and energy to manufacture without fear of accidents or physical strain. The Act was amended often until

⁴ <https://www.deskera.com/blog/factories-act-1948/>

⁵ M.S.Simon, *A Study on Factories Act, 1948*, 9 Int'l J. Innovative Res. Eng'g & Mgmt. 27 (2022)

1976.

At this time, a large number of chemical plants had already been constructed that produce and handle harmful and dangerous compounds.⁶This resulted in further health and safety issues. Thousands of innocent, naïve lives were destroyed in a matter of hours, and many were left disabled when the world's largest disaster struck Bhopal before the government had a chance to assess the problem's possible impact and predict the risk of catastrophic tragedies.⁷The Factories (Amendment) Act, 1987 was enacted in 1987 as a tribute to the Bhopal victims.

It provides better safeguards for industries handling and utilising hazardous materials. Any manufacturing process or operation that presents a risk of physical harm, poisoning, disease, or any other health hazard to those working there should be carried out by safety officers, and management is encouraged to take other safety-related precautions. Additionally, factories with 1,000 or more workers should designate safety officers. In addition, the new Act required that all fatal incidents be investigated into within a month of the incident. It also authorised the Chief Inspector, the Director General of Factory Advice Service and Labour Institutes, the Director General of Health Services to the Government of India, or any other individual they may have authorised, to carry out safety and occupational health surveys.

The Act included contract workers and all forms of labour engaged directly or through an agency, regardless of the primary employer's awareness, and included both compensated and uncompensated work within its protective provisions. According to the amended Act,⁸ a creche facility must also be provided by any factory that employs more than 30 women (as opposed to 50, as required under the Principal Act). If an employee is discharged or dismissed from service, resigns, becomes superannuated, or dies while working during the calendar year, the Act provides that their heirs or nominee, as applicable, will be entitled to earnings in lieu of the amount of leave that is due. Increased penalties for prior convictions and updated general penalty rates for infractions were also included in the new Act.

Legal Framework for Women and Child Labour under the Factories Act, 1948:

Women and children have contributed significantly to industrial labour, especially in fields like

⁶ International Labour Organization (ILO), *Occupational Safety and Health in India: A Review of Labour Laws and Policies*

⁷ P.N. Bhagwati, *Bhopal Gas Tragedy: A Case Study in Disaster Management*, 1991

⁸ The Factories (Amendment) Act, No. 20 of 1987, § 48, INDIA CODE

manufacturing, chemical processing, and textiles. But their employments have frequently been characterized by long working hours, hazardous conditions, and limited pay. In order to protect their health, safety, and well-being, the Factories Act of 1948 was passed in order to control and enhance their working conditions.

1. Protection of Women Workers:

Women in our country form an integral part of our workforce and they are facing certain discrimination in the workplace.⁹ Once there was time, where women not even allowed to do certain jobs but it was later amended and now most of the women are in many jobs. Women still face discrimination still even though many laws were there against discrimination, especially in work which is usually seen as a men's job such as working in factories and mines. The Factories Act is a welfare law that was passed with the goal of regulating working conditions in the factory and implementing welfare, health, and safety measures.¹⁰

a. Latrine and Urinal Facilities:

The Factories Act of 1948 provides women workers with separate conservancy facilities.¹¹ These facilities are provided as per Section 19 of the Factories Act, 1948. Each factory must provide a sufficient number of urinals and latrines of the specified type, separately for men and women workers, according to the Factories Act of 1948. The facilities which the factories providing should be conveniently situated and easily accessible to workers at all times while they are working in factory. Each latrine must have a good door, be covered, and be divided from sections to ensure privacy and fasten ages. These facilities include adequate lighting and ventilation to avoid unsanitary circumstances, which lowers the risk of infections and other health problems, especially for pregnant and menstrual women. Furthermore, the need for regular cleaning and disinfection guarantees that these spaces stay hygienic, preventing the spread of diseases. Sweepers must be used to maintain the cleanliness of latrines, urinals, and washing areas. Hygiene standards are further improved for factories with more than 250 employees by requiring tiled surfaces and rigorous weekly cleaning. To prevent overcrowding and inadequacy, the provision also gives State Governments the authority to control the number of urinals and latrines in accordance to the number of female employees. Section 19 upholds

⁹ <https://blog.ipleaders.in/employment-women-factories-factories-act-1948/>

¹⁰ Suresh V Nadagoudar, "Right of Women Employees at their workplace,"

¹¹ G.Q.Mir, "Women Wokers and the law," 2002, 1stEdn, P. No. 162

women's right to work with dignity and promotes increased female labour participation by implementing these protective measures and making the workplace safer and more inclusive.¹²

b. Prohibition of work in Hazardous Places:

Women are prohibited from working in Hazardous places as per the Factories Act, 1948. The purpose of this Section 22 of the Factories Act, 1948 is to protect the workers who are required to work on or near machinery in motion. Women and young workers are specifically prohibited from cleaning, lubricating or adjusting any prime mover, transmission machinery, or any other moving machine part if doing so would expose them to the risk of injury. The reason for this restriction is that working on moving machinery poses significant hazards such as entanglement, crushing, or severe injuries, which could be life-threatening.

The Act makes sure that only competent people perform such dangerous tasks by permitting only trained adult male workers who must be properly registered and wear tight-fitting protection gear. Additionally, the provision mandates fencing of moving parts like pulleys, shafts, and gears, further minimizing the chances of accidental contact and injuries. The State Government is also empowered to impose additional prohibitions on specific factories or machinery, reinforcing workplace safety regulations as needed. By implementing these safeguards, Section 22 effectively prevents workplace accidents and ensures a safer working environment for women, supporting their occupational health and well-being.¹³

The Factories Act of 1948, Section 87, gives the State Government the authority to prohibit the employment of women in hazardous occupations. In accordance with this section, the government may establish regulations that apply to any factory or class or description of factories where manufacturing processes or operations are carried out, declaring them to be hazardous and limiting or outlawing the employment of women in the manufacturing process or operation if it believes that such processes or operations expose workers to a serious risk of illness, poisoning, or bodily harm.¹⁴

c. Excessive Weights:

Women workers are protected by Section 34 of the Factories Act, 1948, which prohibits them

¹² Section 19 of the Factories Act, 1948.

¹³ Section 22 of the Factories Act, 1948.

¹⁴ Section 87 of the Factories Act, 1948.

from lifting, transporting, or moving dangerously huge objects. Since physical strain and musculoskeletal injuries are common risks in industrial workplaces, this provision prevents employers from assigning tasks that could compromise the health and safety of workers, particularly women. In order to prevent women from experiencing excessive physical strain that may result in long-term health issues, the State Government also has the authority to establish weight restrictions for adults, women, adolescents, and children through regulations. This provision is especially significant for pregnant and lactating women, as excessive weightlifting can pose severe health risks.¹⁵

d. Washing Facilities:

Section 42 of the Factories Act, 1948 ensures that the protection and dignity women workers by mandating separate, adequately screened and well-maintained washing facilities in factories. This Section is important for maintaining hygiene and privacy, which are particularly crucial for female employees who are working.

The Act helps prevent infections and skin disorders, which can worsen in industrial environments, and other health problems caused by inadequate sanitation by mandating that these facilities be easily accessible and maintained clean. In order to guarantee that women have access to sanitary and suitable washing places, State Governments might also establish certain requirements for these facilities based on the type of work and the workplace environment. Section 42 upholds women's right to work in a hygienic and respectable atmosphere by implementing certain safeguards, which make workplaces safer and healthier for them.¹⁶

e. Creches Facilities:

A Creche is a nursery place where babies of working mothers are taken care of while the mother are at work. Section 48 of the Factories Act, 1948 ensures that factories employing more than 30 women workers¹⁷ must provide a creche facility for the children (under six years of age) of such women.¹⁸ They should provide and maintain a suitable room for the use of children. And such rooms shall provide adequate accommodation, and shall be adequately lighted and

¹⁵ Section 34 of the Factories Act, 1948

¹⁶ Section 42 of the Factories Act, 1948

¹⁷ Substituted for 50 by the Factories (Amendment) Act, 1976

¹⁸ Section 48 of the Factories Act, 1948

ventilated. Such rooms must be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants. The State Government is authorized to make some rules;

- The location, construction, accommodation, furniture, and equipment of creches must meet prescribed standards, ensuring a safe and comfortable environment for children.
- It requires additional childcare facilities, including washing and changing areas, promoting hygiene and well-being.
- It mandates that factories provide free milk or refreshments for children, ensuring their nutritional needs are met.
- It ensures that mothers are given time space to feed their children, supporting maternal and child health while enabling women to balance work and childcare.

f. Hours of Work:

According to the Factories Act, 1948, the daily working hours for the adult workers have been at 9. The Act does not allow women to work more than nine hours per day, even if it allows allow men to work more than nine hours per day under specific conditions.¹⁹ Additionally, women employees are not allowed to switch shifts unless it is following a weekly holiday or another holiday.

Both men and women workers should not work more than 48 hours per work in the any industrial premises as per Section 51 of the Factories Act, 1948.²⁰ The daily spread over of working hours has been limited to 10 ½ hours in factories. The Act provides that no adult worker whether man or women employed in factories shall be allowed to work for more than 5 hours at stretch with a rest pause of atleast half an hour.²¹

2. Protection of Child workers:

Under the Factories Act, 1948, a child is defined as a person below 14 years of age,²² and an

¹⁹ Section 54 of the Factories Act, 1948

²⁰ Section 51 of the Factories Act, 1948

²¹ Id., Section 66(1) (a)

²² Section 2(c) of the Factories Act, 1948

adolescent refers to a person between 14 to 18 years.²³ The Act strictly prohibits the employment of children in factories due to the hazardous nature of industrial work, while it allows regulated employment of adolescents under certain conditions, such as obtaining a certificate of fitness and working limited hours.

Despite legal prohibitions, economic hardship, poverty, lack of education, and social circumstances often force children to work in factories. Many children from marginalized backgrounds contribute to family income by working in industries such as textiles, manufacturing, and hazardous chemical units. Some are also engaged due to cheap labour demands, making them vulnerable to exploitation, long working hours, and unsafe environments.

a. Prohibiting children from working near cotton openers:

The children should not allowed to work in any part of a factory for pressing cotton in which a cotton opener is at work as per Section 23 of the Factories Act, 1948.²⁴

b. Prohibition of employment of young children:

Section 67 of the Factories Act, 1948 provides a fundamental safeguard against child labour by prohibiting the employment of children below 14 years in any factory. This provision aims to protect young children from hazardous working conditions, physical strain, and exploitation in industrial settings. By restricting their employment, the Act ensures that children are not deprived of their right to education, health, and overall well-being.²⁵

c. Working Hours:

The reason for allowing children to work under restricted conditions is to balance economic necessity with legal protection. Many children from economically weaker backgrounds enter the workforce due to financial hardships, and the law aims to regulate their working conditions rather than forcing them into unsafe or illegal employment.

²³ Section 2(b) of the Factories Act, 1948

²⁴ Section 23 of the Factories Act, 1948

²⁵ Section 67 of the Factories Act, 1948

- Children should not work for more than 4.5 hours per day and is prohibited from working at night (between 10pm and 6am).
- Child workers can only work in two shifts (each lasting a maximum of five hours), ensuring they are not overburdened.
- No child can be employed in more than one factory on the same day, reducing the risk of exploitation and exhaustion.
- Female child workers can only work between 8 AM and 7 PM, providing additional protection against night shifts and unsafe working environments.²⁶

d. Notice of period of work for children:

Section 72 of the Factories Act, 1948 ensures that children employed in factories are protected from overwork and exploitation by mandating clear and publicly displayed work schedules. Factories employing children must display a notice specifying their working hours to ensure transparency and compliance with legal limits.²⁷ The work periods must be pre-determined in a manner similar to adult workers under Section 61, preventing arbitrary or excessive working hours. The scheduled work hours must align with Section 71, ensuring that children do not work more than 4.5 hours per day, during the night, or in overlapping shifts. This section acts as a preventive mechanism against the misuse of child labour by ensuring work-hour regulations are clearly defined, publicly available, and legally enforced, thereby safeguarding their health, education, and well-being.

e. Registration of Child Workers:

Section 73 of the Factories Act, 1948 plays a crucial role in monitoring and regulating child labour in factories by requiring factory managers to maintain a register of child workers. This provision ensures accountability, transparency, and compliance with child labour laws.²⁸

²⁶ Section 71 of the Factories Act, 1948

²⁷ Section 72 of the Factories Act, 1948

²⁸ Section 73 of the Factories Act, 1948

Every factory employing children must maintain an updated register with details such as the child's name, type of work, shift allocation, and fitness certification. This prevents illegal employment and overwork. The register must include the certificate of fitness issued under Section 69, ensuring that the child is medically fit for the assigned work, thereby protecting their health and well-being. The register must be readily available to inspectors during working hours, allowing regular monitoring and ensuring that factories comply with child labour restrictions. Under Sub-section (1A), no child can be employed unless their name is recorded in the register, preventing unregulated employment and exploitation. The State Government has the authority to prescribe the format and maintenance of the register, ensuring uniformity and long-term record-keeping for monitoring and enforcement purposes. By implementing a compulsory record-keeping system, this section helps prevent the exploitation of child workers, ensures adherence to work-hour restrictions, and allows authorities to track and regulate child employment in factories effectively. **Occupational Safety and Health Issues for Women:**

The International Labour Organisation (ILO) defines occupational safety and health (OSH), commonly known as a safe and healthy working environment, as the "discipline dealing with the prevention of work-related injuries and diseases, as well as the protection and promotion of the health of workers." Occupational safety and health refers to the development of working conditions and environments for employees in order to guarantee their health and safety while working and to provide compensation in the event of a work-related injury.²⁹

Many underlying factors, including inadequate legislative frameworks, governance gaps, a lack of knowledge and resources, unsustainable business practices, and a lack of a preventive culture at the national and workplace levels, contribute to unsafe and unhealthy working conditions. To solve OSH issues, businesses and governments each have a part to play. There are numerous physical and biological agents (like bacteria and radiation) and hazardous chemicals used in many workplaces that expose women workers to health and safety risks. In addition, there are numerous work environments (like shift work or extremely stressful work) that can negatively impact the reproductive health of female employees.

The majority of chemical compounds and work environments have not yet been examined for their potential which negatively impact an employee's health. However, it is well recognised that a number of drugs can adversely affect the reproductive health of female employees who

²⁹ <https://unglobalcompact.org/take-action/safety-andhealth>

are exposed to them. Unfortunately, despite the shortage of evidence regarding potential impacts on reproductive health, numerous chemicals are nevertheless utilised at work.

a. Personal security:

Enough safeguards must be put in place to guarantee the personal protection and safety of female employees.³⁰ For women who work alone or in remote or isolated regions of a workplace, or who operate at night or in dimly lit areas like underground spaces, security is especially crucial.³¹

b. Maternity leave:

Enough maternity leave policies are especially crucial when trying to safeguard the health and safety of female employees. Enough maternity leave should also ensure that the employee can return to work at the same salary and without losing her seniority.

c. Maximum Weights:

When female employees are asked or obliged to carry burdens that exceed their physical capabilities, their health and safety may be gravely jeopardized. There should be sufficient safeguards in place to ensure that female employees are not required to do so.

Occupational Safety and Health Issues for Children:

The International Labour Organisation estimates that between 100 and 200 million children under the age of 15 were employed worldwide in the early 1990s. Most of these child labourers were exist in underdeveloped countries.³² Since it is impossible to determine the exact number of child labourers worldwide, it is also widely acknowledged that these numbers are a huge underestimate; the real number may be more than twice as high. Because the official estimates only account for full-time child workers, they are underestimated. Additionally, child labour goes unreported because it is prohibited in many countries. There are several reasons why it is frequently minimised, even when it is reported.

³⁰ Ministry of Labour and Employment, Government of India, *Report on Workplace Security Standards*, 2021.

³¹ International Labour Organization (ILO), *Guidelines on Workplace Safety for Women*, 2020.

³² https://training.ilo.org/actrav_cdrom2/en/osh/wc/wcmain.htm

Child labour is not something that happened recently. On the other hand, the systematic exploitation of children outside of the home setting is new. The fact that working children typically do not attend school is perhaps the most significant of the numerous consequences of having children in the workforce.³³ A child has little chance of progressing or living a better life without attending school. Even if a working child is able to continue attending school, it is likely that they will perform poorly, fail, and drop out. The child's lengthy work hours, exhaustion, and inability to focus or perform well in school are all strongly linked to these regrettable outcomes.

Although the economic exploitation of children who work has drawn a lot of attention, little research has been done on how labour affects child workers' health. Like adults, young workers are known to be exposed to a wide range of occupational health and safety risks. Children who must work may experience long-term developmental consequences as a result of occupational dangers and working environments.

a. Exposure to environmental agents:

Child labourers may be exposed to physical and chemical health risks in a variety of occupations. Despite a lack of empirical research on the impact of occupational hazards on children who work, it is believed that children are more likely than adults to experience physical health issues due to their jobs. Furthermore, child workers are more likely than adult workers to experience emotional health issues related to their jobs.

Children who work with chemicals may experience more severe and rapid effects than adults who are exposed to the same levels of toxins. Children cannot be adequately protected by the suggested exposure limits for adult workers. The only way to protect kids from some extremely hazardous physical agents, like ionising radiation, and chemical chemicals, like lead, is to completely remove their exposure.³⁴

According to the findings of several studies, children often absorb more lead than adults do at the same degree of exposure. Furthermore, after being exposed to lead, children are more prone than adults to experience major, long-lasting health problems. Similar results have been seen in investigations of young females performing spinning and weaving in a viscose fibre mill,

³³ UNICEF, *The Impact of Child Labour on Education: Evidence from Developing Countries* 12 (2019)

³⁴ U.S. Dep't of Lab., *Effects of Hazardous Work on Children's Health* (2021)

young workers exposed to benzene, and child workers exposed to silica in the slate-pencil industry. Additionally, young workers are more prone than adults to experience hearing loss as a result of occupational noise exposure. Lower noise exposure limitations are therefore required in areas where young employees and children are employed.

b. Working capacity and limitations:

Selecting and training operators, designing tools and machinery, designing workstations, implementing work procedures and postures, prescribing working hours and rest periods, designing personal protective equipment, and managing physical aspects of the workplace are all included in the broad concept of work design.

Since every child grows and develops at a different rate, it is very challenging to identify and eliminate risks associated with work design for children.³⁵ Adults can have their working capability and restrictions evaluated collectively. However, because there are so many differences within each age group, it is vital to evaluate each child individually in regard to their work.

c. Psychosocial risks to child workers:

The Special circumstance of being a child and a worker can lead to a number of psychosocial risk factors for the child worker, which include emotional, behavioural, and developmental problems. Furthermore, children who work may respond differently than adults who are exposed to comparable psychosocial dangers.³⁶ Regardless of the employment, there are certain common stressful psychosocial aspects linked to child labour. The youngsters are under stress due to their unfortunate family and socioeconomic circumstances, which have compelled them to work in the first place.

The majority of child labourers are not given the chance to experience the typical phases of childhood growth.³⁷ Many of them are never given the opportunity to form deep connections with friends, family, and other members of their community. They are denied the chance to play, be impulsive, or receive an education. The majority of kids who work are not permitted

³⁵ World Health Org. [WHO], *Children's Environmental Health: The Vulnerability of Young Workers* (2018),

³⁶ Int'l Labour Org. [ILO], *Children's Psychological and Social Well-being in Hazardous Work* 4 (2018)

³⁷ Human Rights Watch, *Abuse and Exploitation of Child Workers* 15 (2022)

to communicate their wants or sentiments. They are occasionally physically mistreated and frequently subjected to harsh discipline. Child labourers are not legally protected in many nations. This implies that even if they sustain an injury at work that renders them permanently handicapped, they will not be eligible for compensation.

d. Primary health care for child workers:

Children who work typically lack access to health care. Occupational health services are designed to address the health of adult workers and young people (15 years and above), while general health services are not designed to treat working children. In actuality, excluding children who are too young to work is one of the responsibilities of occupational health services. Young children who are required to work will, in fact, work, but they won't be protected by any health services. Children who work might not be able to receive health care other than through primary care.

Child labourers are included in the "reach people where they live and work" objective of primary health care. The fundamental services required to safeguard child workers should be provided by primary health care services, with the assistance of community health workers and any facilities that a workers' health service may make available.

OSH Code, 2020:

India is a party to the ICESCR and therefore, it is obligated to include the right to reproductive health in its occupational safety and health legislation to achieve the highest attainable standard of health as directed by the Committee. However, India in its OSH Code fulfills only the minimum requirements of occupational safety and health standards concerning women workers.³⁸ Even though the OSH Code aims to achieve equality between men and women by providing for the employment of women in all establishments for all types of work and also between 7 pm to 6 am (Section 43), it does not provide for any specific provision that caters to the needs of women during these late-night working hours. It does, however, lays down that this provision is subject to the conditions to be observed by the employer as provided by the appropriate government.³⁹ Since the OSH Code is largely a skeleton document vesting the state

³⁸ The Occupational Safety, Health and Working Conditions Code, 2020, Ministry of Labour and Employment, Government of India

³⁹ Aayushi Agarwal, *Gender Equality in the Workplace: An Analysis of the OSH Code*, Indian Journal of Labour Economics, Vol. 64, No. 2 (2021)

governments with immense power to frame the rules as per their convenience and requirement. Therefore, the rules that are yet to be framed may go either way with respect to the women workers and their specific needs.

Section 44 of the Code provides for the adequate safety of employment of women in dangerous operations requiring the employers to provide adequate safeguards where women are employed in hazardous or dangerous processes. While the Factories Act, 1948 prohibited the employment of women in hazardous jobs, the OSH Code has opened new avenues for women. However, it shall be noted that with new opportunities for women would emerge new problems relating to occupational health and safety.⁴⁰ The OSH Code, however, apart from laying down these two “special provisions” for women does not prescribe any substantive provisions for women with respect to their reproductive health. The new code like its predecessors is only applicable to establishments with 10 or more workers and does not fill the gap left by the maternity benefit acts and schemes and the health care policies in providing maternity and reproductive health-related benefits to women.

The Occupational Safety, Health, and Working Conditions (OSH) Code, 2020 provides enhanced protection for children working in factories compared to the Factories Act, 1948. It strictly prohibits the employment of children below 14 years in any establishment, including factories, aligning with Article 24 of the Indian Constitution and the Child Labour (Prohibition and Regulation) Act, 1986. For adolescents aged 14–18 years, the OSH Code allows employment only in non-hazardous work, ensuring that they are not engaged in tasks that pose serious risks to their safety and health.⁴¹ This is a significant improvement over the Factories Act, which had fewer restrictions on adolescent labor in hazardous environments.

The OSH Code also introduces stricter regulations on working hours and conditions for adolescents. It limits their daily work hours to 4.5 hours and prohibits night shifts between 10 PM and 6 AM. Additionally, employers must ensure that adolescent workers receive sufficient rest breaks to prevent exploitation. Another important provision is the requirement for factory managers to maintain a register of adolescent workers, detailing their name, age, nature of

⁴⁰ S. Rathi, *Expanding Women's Employment: Challenges in the OSH Code*, Economic & Political Weekly, Vol. 56, No. 3 (2021)

⁴¹ A. Mehta, *Women in the Informal Sector: The Gaps in the OSH Code*, Indian Journal of Labour Economics, Vol. 65, No. 2 (2022)

work, and certificate of fitness. This ensures better monitoring and compliance, preventing the illegal employment of children.⁴²

A key improvement in the OSH Code is its stricter enforcement mechanisms. It grants the government the power to expand the list of hazardous occupations where adolescents cannot work, ensuring continuous updates based on modern industrial risks. Employers who violate these provisions face higher penalties and stricter accountability. By modernizing labor laws, the OSH Code, 2020 strengthens child protection measures, ensuring a safer and healthier working environment in factories. These reforms provide better safeguards against child exploitation, reinforcing India's commitment to occupational safety and international labor standards.

ILO Conventions for Women and Children Workers:

International Labour Organization (ILO) is the most important organization in the wide level and it has been working for the benefits of the workers throughout the world. It was established in the year 1919. ILO is a tripartite body consisting of representatives of the Government, Employers and Workers. It operates democratically by having an interest in the global working class's protection. The ILO examines each and every problem of the workers pertaining to each member country and discusses thoroughly in the tripartite body of all the countries. The ILO passes many conventions and Recommendations on different subjects like Social Security, Basic Human Rights, Welfare Measures and Collective Bargaining.

1. C.No.89 - Night Work (Women) Convention (Revised), 1948

The Night Work (Women) Convention (Revised), 1948 (No. 89) is an International Labour Organization (ILO) convention that prohibits women from working at night in factories and other industrial establishments. The term night is defined as a period of at least 11 consecutive hours, including at least 7 hours between 10 p.m. and 7 a.m. The authority can adjust these hours based on location, industry, or other factors, after consulting with employers and workers. It prohibits the employment of women workers during night shifts in industrial undertakings, unless the undertaking employs only family members. It allows the government to suspend

⁴² The Occupational Safety, Health, and Working Conditions Code, No. 37 of 2020, § 26, Acts of Parliament, 2020 (India)

thenight work prohibition for women in emergencies, after consulting employers' and workers' organizations.

Any suspension must be reported annually to the International Labour Office.⁴³

2. C.No.171 - Night Work Convention, 1990

The Night Work Convention, 1990 (No. 171) was adopted by the International Labour Organization (ILO) to regulate night work and provide special protection for workers, particularly women, who engage in night shifts. The convention acknowledges the health, safety, and social risks associated with night work and mandates measures to minimize these risks.

"Night work" is defined as work performed during a period of at least seven consecutive hours, including the interval between midnight and 5 a.m.⁴⁴It deals with women workers, particularly regarding maternity. Women workers who are pregnant or recently gave birth should not be required to perform night work for a specified period. Employers should provide alternatives, such as transferring them to day work, or ensuring income maintenance through social security or extended maternity leave.

3. C.No.138 - Minimum Age Convention, 1973

Convention 138 was created to control child labour by establishing a minimum age that signatories must adhere to in order to be admitted to employment. The Convention became operative on June 19, 1976. 15 years old was the minimum working age (13 years old for light work). The

Convention established an 18-year-old age limit for employment in hazardous jobs (16 years under some circumstances). The goal of Convention 138 is to provide children the freedom to enjoy their childhood. An unemployed youngster is more likely to grow up to be a healthy adult by experiencing optimal physical and mental development.⁴⁵In order to protect the child's welfare, the minimum age was set at fifteen years old. The age at which a child's basic

⁴³ Convention No. 89 of 1948, Night Work (Women) Convention (Revised)

⁴⁴ Convention No. 171 of 1990, Night Work Convention

⁴⁵ <https://www.humanium.org/en/minimum-age-convention/>

education and development (growth, etc.) are deemed complete serves as the basis for this threshold.⁴⁶

4. C.No.182 - Worst Forms of Child Labour Convention, 1999

The Worst Forms of Child Labour Convention (C. No. 182) is an urgent international call for the immediate abolition of the most severe and harmful forms of child labor. By prioritizing these worst forms, the Convention aims to ensure that children are protected from exploitation and abuse, and that they are given the opportunity for education and healthy development.

The Convention mandates that all countries ratifying it take immediate and effective measures to eliminate the worst forms of child labor, including those that occur in factories. This includes practices like forced labor, trafficking, and work that endangers children's health and safety.

The Convention requires that each country define what constitutes harmful work for children through national laws and regulations, in consultation with employers' and workers' organizations. This would include specifying the types of work in factories that are considered hazardous and ensure children are not employed in these roles. Countries are required to establish mechanisms to monitor the implementation of the Convention. In the case of factory work, this would involve ensuring that child labor laws are enforced, and children are not exploited in factories. Countries must design and implement programs to eliminate the worst forms of child labor. In factories, these programs should focus on preventing child labor, removing children from dangerous factory jobs, and ensuring their rehabilitation and education. The Convention requires effective sanctions (including penal measures) against employers who exploit child labor in factories. This would include penalties for those who employ children in hazardous working conditions or violate child labor laws.⁴⁷

Challenges and Shortcomings:

1. Weak Implementation and Enforcement

Many factories are not regularly inspected, leading to non-compliance with safety regulations. Factory inspectors may overlook violations due to corruption or lack of resources. Many

⁴⁶ Convention No. 138 of 1973, Minimum Age Convention

⁴⁷ Convention No. 182 of 1999, Worst Forms of Child Labour Convention

women and child workers are unaware of their rights under the Factories Act, limiting their ability to demand safe working conditions.

2. Workplace Safety Issues

Many factories lack separate restrooms, childcare facilities, and maternity benefits for women workers. Women and child workers are often exposed to toxic chemicals, excessive noise, and unsafe machinery without adequate protection. Many factories do not implement Sexual Harassment at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, leaving women vulnerable to exploitation.

3. Gender Discrimination in Employment

Many factories avoid hiring women due to perceived liabilities related to maternity benefits and safety requirements. Women workers often receive lower wages than men for the same work, violating the principles of equal pay.

4. Persistent Child Labour in Unregulated Sectors

Despite legal prohibitions, children continue to be employed in small and unregistered factories, particularly in hazardous industries like fireworks, textiles, and chemicals. Government agencies often fail to track and penalize factories employing child labour due to insufficient data and weak enforcement.

5. Lack of Health and Social Security Benefits

Many factories fail to provide onsite medical care, leaving workers vulnerable to industrial accidents. Women workers, especially in informal factories, do not receive paid maternity leave despite legal provisions under the Maternity Benefit Act, 1961. Occupational safety laws do not address psychological stress, workplace harassment, and mental well-being of workers.

6. Need for Policy and Legal Reforms

The government has been slow in updating factory safety laws to align with technological advancements and global OSH standards. Many factories violate OSH norms without facing strict penalties, encouraging unsafe work practices.

Judicial Decisions:**1. M.C. Mehta v. State Of Tamil Nadu And Others on 10 December, 1996****Facts:**

In *M.C. Mehta v. State of Tamil Nadu*, M.C. Mehta was a public interest lawyer, filed a writ petition under Article 32 of the Constitution of India, to enforce the fundamental rights of minors working in dangerous sectors.⁴⁸ The case mostly involved the fireworks and matchstick industries in Sivakasi, Tamil Nadu, which are well-known for using a lot of child labourers in hazardous and exploitative circumstances. Article 24 of the Indian Constitution, which forbids the employment of minors under the age of 14 in mines, factories, or any other dangerous activity, was directly violated, the petitioner argued. The issue gained further urgency after a tragic accident in

Sivakasi's matchstick factories claimed the lives of 39 individuals, prompting the Court to take suo moto cognizance.

Issues:

- Whether the children working in hazardous industries violate the constitutional and statutory provisions?
- What steps can be taken to abolish child labour while addressing the socio-economic factors driving it?

Judgement:

The Court ruled that Sivakasi is not the only place where child labour occurs. The Court referenced a number of Indian Constitutional provisions, including Articles 24, 39(e) and 9(f), 41, and 47, which safeguard children's social rights by prohibiting child labour, mandating free and compulsory education, and establishing standards of honour. The Conditions of Employment for Bidi and Cigar Workers Act, the Apprentice Act, and the Child Labour (Prohibition and Regulation) Act are further domestic legislation that protect these rights. India

⁴⁸ AIR 1997 SUPREME COURT 699

also ratified the Convention on the Rights of the Child, which provides protection for children throughout their lives.

The court concluded that the families' deteriorating financial situation was the main factor, forcing the children to put in a lot of effort. The Court ordered the creation of The Fund, a welfare fund for the rehabilitation of child labour, in order to address this. Anyone caught breaking child labour laws faces a fine of 20,000 rupees, which will be used to support the child's growth. The court ordered the government to ensure a family member of the child who had worked in hazardous jobs would find employment. This adult would be responsible for ensuring the child attends school fulltime and keeping them away from dangerous jobs.

2. Vasantha R. v Union of India (Uoi) And Ors. on 8 December, 2000

Facts:

In *Vasantha R. vs Union of India*,⁴⁹ *Vasantha R.*, a female employee, challenged the constitutionality of the Factories Act, 1948's Section 66 (1) (b), which prohibited women from working night shifts (from 7 PM to 6 AM) in factories. She argued that this provision violated gender equality rights under the Indian Constitution.

Issues:

- Whether Section 66(1)(b) of the Factories Act, 1948, which prohibits women from working night shifts, is unconstitutional.
- Whether the restriction discriminates against women in employment and violates fundamental rights under Articles 14, 15, and 16 of the Constitution.

Judgement:

The Madras High Court struck down Section 66 (1) (b) of the Factories Act, 1948, as unconstitutional. The Court held that the provision was discriminatory and violated gender equality rights under Articles 14, 15, and 16 of the Constitution. It ruled that women should have equal employment opportunities and that restricting them from working night shifts solely

⁴⁹ *Vasantha R. v. Union of India & Ors.*, AIR 2001 Mad 104

based on gender was unconstitutional. The Court emphasized that instead of banning women from working at night, factories should implement adequate safety measures to ensure a secure working environment.

3. People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235

Facts:

The 1982 Asian Games brought immense prestige to India,⁵⁰ necessitating large-scale construction projects, including stadiums, hotels, and infrastructure. The Delhi Development Authority (DDA), New Delhi Municipal Committee (NDMC), and Delhi Administration oversaw these projects, engaging contractors as principal employers under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970. These contractors, in turn, hired Jamadars, who recruited workmen from Rajasthan, Uttar Pradesh, and Orissa. Shockingly, men were paid ₹9.25 per day, women ₹7 per day, and children many under 14 years were employed at even lower wages, with Jamadars deducting ₹1 as commission. These workers faced exploitative conditions, working long hours in hazardous environments without fair wages or basic protections. Children suffered malnutrition, severe accidents, and even death due to unsafe conditions. The People's Union for Democratic Rights (PUDR), after conducting a fact-finding mission in July-August 1981, exposed these violations. They wrote to Justice P.N. Bhagwati, who treated the letter as a Public Interest Litigation (PIL), leading to the landmark case being filed on November 16, 1981.

Issues:

- Whether Article 32 of the Indian Constitution allow for the maintenance of a writ petition against a private individual?
- Whether Article 21 of the Indian Constitution cover the right to livelihood and the right to live with human dignity as well?

Judgement:

The court's ruling upheld the right of a poor worker to petition the Supreme Court directly

⁵⁰ 1982 AIR 1473

under Article 32 of the Indian Constitution in order to enforce rights established by various labour laws, specifically the Equal Remuneration Act of 1976, the Employment of Children Act of 1970, the Contract Labour (Regulation and Abolition) Act of 1970, the Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1977, and the Minimum Wages Act of 1948. Along with the "right to live with basic human dignity," the Supreme Court expanded the definition of article 21 of the Constitution, which guarantees the right to life, to include the right to a means of subsistence.

The provisions of Articles 21, 17, and 23 of the Constitution have also been interpreted more broadly to include situations in which workers are not paid their full wages as required by law. The Supreme Court gave careful thought to the reach and extent of Article 23. According to the Court, Article 23's reach is broad and unbounded, targeting "traffic in human beings" as well as "beggar and other forms of forced labour" wherever they may be found. Not only is "begging" forbidden by Article 23, but other forms of forced labour are as well. This article opposes forced work in all of its manifestations since it is against fundamental human values and a violation of human dignity. Consequently, strikes also violate Article 21. The government's and its agencies' solemn constitutional duty to ensure that the various laws are correctly implemented not just by the government itself, but also by private individuals or non-governmental organizations was stated by the court. The Supreme Court invoked the terms "forced labour" and "bonded labour" in Article 21 to refer to the "right to live with human dignity." Workers' rights and benefits under various labour regulations were elevated to the rank of fundamental rights and considered a part of basic human dignity.

4. Leela v. State of Kerala (2004)

Facts:

In the case of *Leela v. State of Kerala*,⁵¹ the petitioner, Leela, was appointed as a Binding Assistant at the Kerala Books and Publications Society on October 17, 1978. In 1982, when the seniority list was published, she found errors in her ranking and filed a petition in the High Court. The court directed her to submit a representation, after which she was promoted to Machine Operator on December 2, 1982. Later, on June 20, 1997, a junior employee, Mr. K. Prabhakaran Pillai, was given the position of Supervisor (Binding), which Leela believed she

⁵¹ *Leela v. State of Kerala*, (2004) II LLJ 106 (Ker.).

deserved based on seniority. However, she was denied the promotion due to Section 66 (1) (b) of the Factories Act, 1948, which restricts women from working in factories between 6 a.m. and 7 p.m. Leela challenged this provision, arguing that it was discriminatory and violated her constitutional rights under Articles 14, 15, and 16.

Issues:

- Does Section 66 (1) (b) of the Factories Act, 1948 represent a specific provision in benefit of women, or does it discriminate against them?

Judgement:

Section 66 (1) (b) of the Factories Act, 1948, is a protective measure and not discriminatory. It falls within the ambit of Article 15(3), which allows special provisions for women. The restriction on night work is intended to safeguard women from occupational hazards and societal risks, rather than deny them employment opportunities. The Kerala High Court upheld the validity of Section 66 (1) (b) of the Factories Act, 1948, ruling that it does not discriminate against women but rather constitutes a special protective provision under Article 15(3) of the Constitution. The Court dismissed the writ petitions, stating that restricting women from working in factories during night hours (7 PM to 6 AM) aims to ensure their safety and well-being and does not violate Articles 14, 15, and 16 of the Constitution.

Conclusion:

Women and child laborers form an important part of the labor workforce in India. But not all are recognized and protected. Still they are facing problems in the society and it need to be addresses. The Indian legal framework with respect to protection of rights of women and child laborers are quite progressive and in tandem with the changing needs and requirements of contemporary India. Regulation of the working conditions of women and children in industrial establishments has been greatly aided by the Factories Act of 1948. In order to protect their welfare, health, and safety, it has implemented a number of measures. Notwithstanding these legal protections, there are nevertheless obstacles to their efficient use. Women and child workers continue to face challenges such workplace exploitation, a lack of enforcement, and gaps in occupational safety and health (OSH) regulations. The Act has to be amended to conform to contemporary labour standards and international treaties, even if it was progressive

for its time. To guarantee safer and healthier working conditions, it is essential to strengthen the legal framework, enhance awareness, and improve compliance procedures.

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