

EMPLOYMENT OF CHILDREN IN **HAZARDOUS** **AND FAMILY** **RUN BUSINESS**



**Bachpan
Bachao
Andolan**

An Initiative of Association for Voluntary Action (AVA)

ORGANISATIONAL BACKGROUND

Bachpan Bachao Andolan (BBA), started in 1980 by Nobel Laureate Mr. Kailash Satyarthi, is a peoples' grassroots movement with a vision to create a child friendly society. Since 1980, BBA has worked extensively towards protection of children through initiating their rescue from labour, prosecution of employers and traffickers and eventual rehabilitation of the rescued child labourers. During this time, BBA has successfully rescued more than 84,500 victims of labour trafficking including child labour and bonded labourers.

Alongside protection of children through direct action, BBA has made efforts to strengthen the legislative framework in India on child labour. On the one hand, it has advocated for formulation of a legislation of child labour and various amendments to it. On the other, it has sought directions from the judiciary on the matter. BBA has approached the Supreme Court of India for a total ban on child labour and the Delhi High Court defined child labour for the first time in India in a writ petition filed by BBA. The Court defined child labour as “the system of employing or engaging a child to provide labour or service to any person, for any payment or benefit, paid to the child or to any other person exercising control over the said child”.



BACKGROUND TO AMENDMENT TO LEGISLATIVE FRAMEWORK ON CHILD LABOUR LAW IN INDIA

Currently, official estimates suggest that there are 4.3 million child labourers. While a deeper analysis of Census data from 2011 by BBA suggests that there are at least 11.7 million children in India that are working or are seeking work. A comparison between school enrolled children as per DISE 2011 and children between 6-14 years as per Census 2011 shows 33.9 million children are out of school and hence vulnerable to labour. The 22.2 million (the difference between child labourers and out of school children) who are not full time child labourers, may be safely assumed to be 'helping' their families. These children will not be protected under the proposed amendment bill.

Considering the quantum of the problem, BBA has been at the forefront to strengthen the legislative framework in India on child labour. In 2012 BBA organised a national campaign on child labour seeking a total ban on child labour till 14 years and expansion of hazardous list for child labourers till 18 years. Following this national campaign, in a National Consultation jointly organised by BBA and Global March Against Child Labour in May 2012, the then Union Minister of Labour and Employment Mr. Mallikarjun Kharge accepted the demands raised by BBA and Global March Against Child Labour.

Following this, a draft Bill to amend the child labour law in India was presented in Rajya Sabha in December 2012. The Bill, following recommendations of the Standing Committee on Labour, was once again presented to the Union Cabinet. The Union Cabinet in May 2015 approved amendments to the child labour law.

The proposed amendments to child labour law include:¹

- (a) Making child labour a cognizable offence
- (b) Bringing the age of ban on child labour in sync with the Right to Education act
- (c) Penalty for parents who force their children to work in cases of repeat offences
- (d) Stringent penalty on employers who employ children
- (e) A seamless framework for rehabilitation of children rescued from child labour

However, the amendments also propose that:

- (a) A child may work in family enterprises after school hours
- (b) Child may be allowed in home based work
- (c) The proposed list of hazardous occupations/processes exclude Schedule A and B containing hazardous occupations and processes in the current child labour law

1. Ministry of Labour and Employment (2015): **Approval to move official amendments to the Child Labour (Prohibition & Regulation) Amendment Bill, 2012**, published as PIB release as on 13th May 2015.

STATUS OF CHILDREN EMPLOYED IN FAMILY RUN BUSINESSES

For this paper, a child means any person below the age of 18 years². For interpretation of data, the report divides children in two broad age groups of 'below 14 years' and '14-17'³ years' in conformity with the CLPRA Act. The data used in this report was collected by BBA for 5254 children rescued between 1 January 2010 and 31 December 2014. For these rescued children, prosecutions were launched and criminal cases are pending against employers. Simultaneously, separate enquiries by the administration has resulted in children being identified as bonded labourers.

(a) Children in employment

Out of 5254 child labourers rescued, 3022 were below 14 years while 2232 were in 14-17 years age-group.⁴



2. This definition is based on ILO Convention 138 on minimum age of employment
3. 14- 17 year age group includes anybody more than 14 years and below 18 years in this report. The database, for reasons of simplification and management of data, does not record age in fraction.
4. Child labourers below 14 years of age are rescued under section 3 and 14 of Child Labour (Prohibition and Regulation) Act 1986 whereas those falling between 14-17 age group are rescued under section 26 of the Juvenile Justice Act 2000. (Refer to table on Legal Framework on Child Protection: International and National).

It is evident from Figures 1 and 2 that rescued child victims of labour trafficking (henceforth child labourers), who were below 14 years of age, constitutes more than half of the total rescues. These numbers suggest that despite existing legal instruments, trafficking of children below 14 years continues unabated.

(b) Children Working with Family

The data distribution in this section is based on 5254 rescued child labourers.

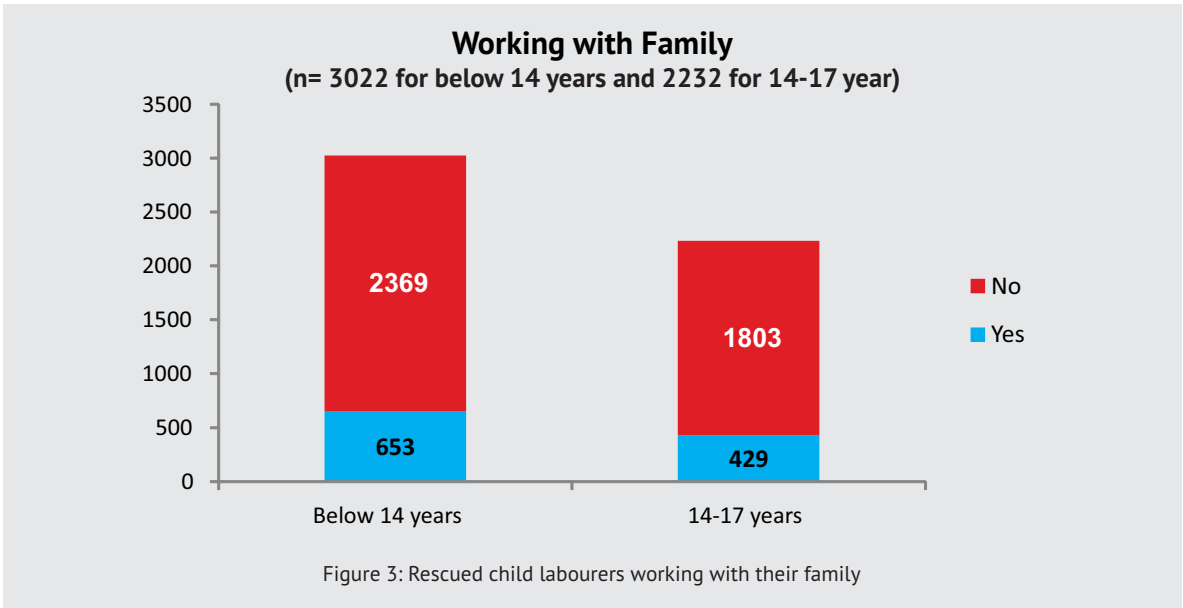
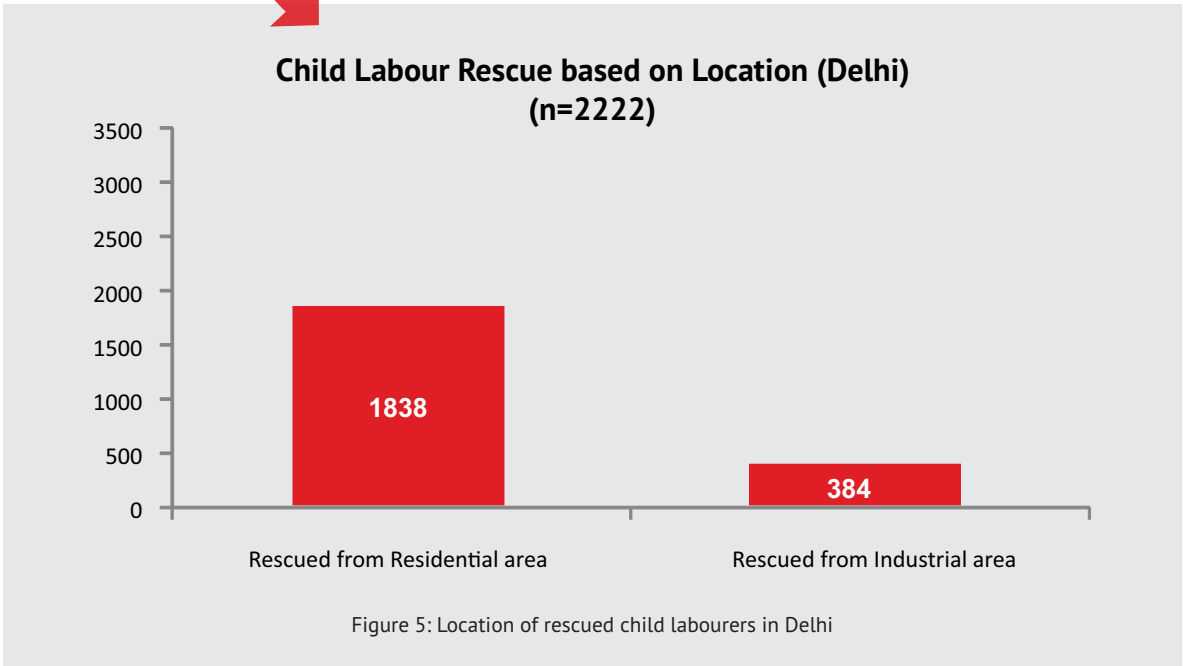


Figure 3 shows that of all rescued children below 14 years, 21% were working with their families. This number stands at 19% in the 14-17 age group. This is a significant finding as almost fifth of the total rescued children were working with their families. This has implications for any change in law which allows children to work with their families, especially below 14 years.





The data clearly demonstrates while almost 1/5th of the total children rescued were working with their families, almost 83% of the children were rescued from establishments operating in residential areas. This suggests that a change in law that permits employment of children in family enterprises may continue to support trafficking of children for forced labour since most manufacturing units operating out of residential areas could claim to be family enterprise.

(c) Prosecution of Offenders

In cases of rescued children, prosecutions were launched under relevant legal instruments. Interpretation of data in this section is carried out for 5254 child labourers rescued.

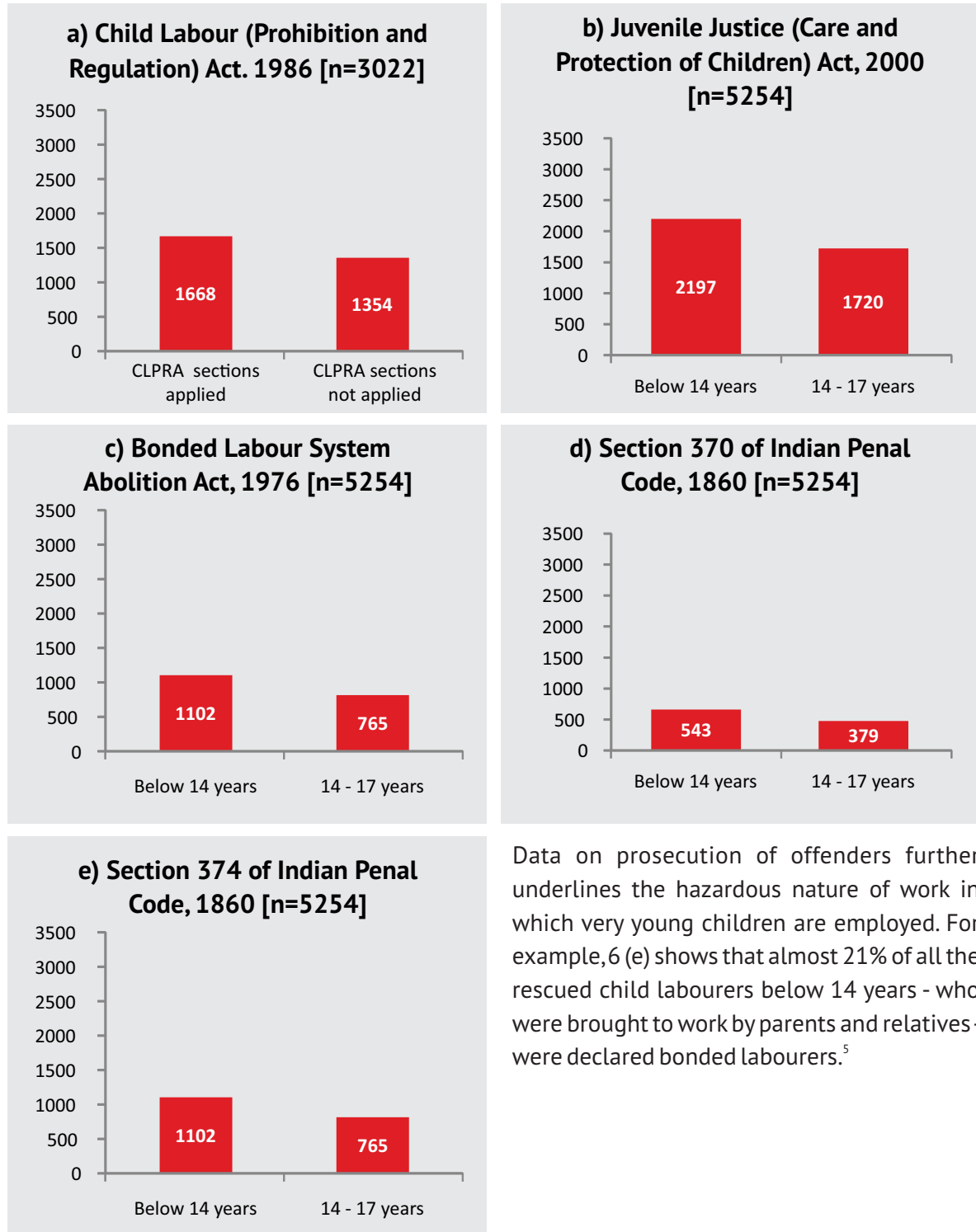


Figure 6: Cases filed against offenders of child labour under various laws

Data on prosecution of offenders further underlines the hazardous nature of work in which very young children are employed. For example, 6 (e) shows that almost 21% of all the rescued child labourers below 14 years - who were brought to work by parents and relatives - were declared bonded labourers.⁵

5. A bonded labourer is a person who does not have freedom of movement, freedom of choice of employment, has taken money in advance/under debt and not being paid minimum wages.

EMPLOYMENT OF CHILDREN IN HAZARDOUS AND FAMILY RUN BUSINESS

Table 1 below shows list of industries where raids were conducted on BBA's complaints to rescue child labourers. The names of the industries highlighted in Table 1 involve prohibited occupations and processes mentioned in the existing Part A and B of schedule of the CLPR Act. The list is arranged in ascending order for children below 14 years and children in 14-17 age group. Recovery of children below 14 years from hazardous occupations/processes demonstrates clearly that the regulatory and prohibitory aspects of the current child labour legislation have had little impact.

Table No. 1: Industry wise employment of children

(n= 3022 for below 14 years and 1838⁶ for 14-17 year)

SL.	Industry	Below 14 Years	14-17 Years
1	Garment (Zari Unit)	1044	781
2	Jute/Plastic/Rexin/Cloth Bags	324	195
3	Footwear	316	58
4	Hotel/Dhaba	314	162
5	Other (rag pickers, etc.)	142	81
6	Shellac (Lac) Handicraft	116	23
7	Cosmetic	111	55
8	Leather	109	57
9	Retail Shop/Office	77	38
10	Domestic Servants	73	71
11	Electrical & Electronics	63	0
12	Automobile/Transport	57	38
13	Bakery	53	56
14	Metal	51	58
15	Plastic and Nylon units	37	30
16	Paper Industry	24	22
17	Brick Kilns & Roof tiles units	23	3
18	Toy Making Unit	17	14
19	Printing	14	8
20	Jewellery	12	22
21	Handicraft	10	13
22	Suitcase Making	9	4
23	Abattoirs/Slaughter Houses	7	7
24	Carpentry	6	5
25	Carpet Industry	5	0
26	Building and Construction	3	18
27	Agriculture	2	3
28	Circus	2	8
29	Dairy Products	1	0
30	Tobacco & Chewing Tobacco	0	8
	TOTAL	3022	1838

According to the table, first ten enlisted industries employed nearly 79% of children. First three industries namely zari making, footwear and jute/plastic/rexin/cloth bags employs 50% of children.

For children below 14 years, zari making employs 35% and jute/plastic/rexin/cloth bags manufacturing employs 6% of children followed by footwear, leather, hotel/dhaba, cosmetics, electrical/electronic, etc.

In the 14-17 year age group, 35% of children are employed in zari making industry and 9% in jute/plastic/rexin/cloth bags, followed by hotel/dhaba, footwear, etc.

6. Number of child labourers, between 14-17 years age, rescued from industries involving prohibited occupations and processes.

MAJOR FINDINGS

- 58% of rescued child labourers are below 14 years of age.
- 21% rescued child labourers below 14 years were found working with their parents and relatives while this figure was 19% in 14-17 year age group.
- 83% of rescued child labourers below 14 years in Delhi were rescued from residential areas.
- Garment (Zari), jute/plastic/rexin/cloth, footwear and hotel/dhaba industries employ almost 50% of rescued child labourers.
- In case of 55% rescued child labourers, First Information Reports (FIRs) were filed under the Child Labour (Regulation and Prohibition) Act 1986
- In 42% cases of rescued child labourers below the age of 14 years, offenders were prosecuted under the Juvenile Justice (Care and Protection) Act 2000 while this figure was 33% in 14-17 year age group.
- In 10% cases FIRs were filed against offenders for trafficking of children below 14 years and 21% for unlawful compulsory labour. Similarly, for 14-17 year age group, 14% cases were filed for trafficking and 27% for unlawful compulsory labour.
- 21% of all the rescued child labourers below 14 years were declared bonded labour after their rescue. This figure was 16% in 14-17 age group.




ANALYSIS

BBA data discussed in above sections clearly suggests that 21% of child labourers below 14 years were found working along with extended family members in family run businesses. Similarly, 83% of child labourers were rescued from units functional in residential areas in Delhi. As the proposed amendment permits children to work in family enterprises after school hours and in “home based work”, these children will be ceased to be protected in the law in future.

Similarly, involvement of children in hazardous employment (both through consent of parents as well as employment of children by parents/relatives) clearly demonstrates that the provision of the proposed law that seek to reduce the list of hazardous employment and open up a conditional space for children below 14 years may be misused putting lives of very young children at risk. This would mean that in many instances children found to be working in hazardous industry/occupation as defined under the current provisions of the law will no longer be covered in the proposed law. This is especially problematic since the proposed bill fails to define child labour.

A similar implication may be considered for trafficking of children for forced labour. The law in India today permits prosecution of traffickers found to be involved in labour trafficking. With provisions in the amendment bill to reduce the list of hazardous occupations/processes and to permit a child to work in family enterprises, instances where children are trafficked by relatives and found to be working in hazardous occupations may come outside the purview of trafficking laws in India jeopardising protection of children.

A child is shown from the side, holding a paintbrush and painting large, bold red Hindi characters on a light-colored wall. The characters are partially completed, with the child's hand and brush visible at the bottom right, adding more red paint to the strokes. The background is a plain, slightly textured wall.

*“Teaching is more than
imparting knowledge, it
is inspiring change”*

CONCLUSION

From above it is clear that significant efforts need to be made to ensure protection of children from forced labour and exploitation. This is especially true for children below 14 years for whom the Indian Constitution provides education as a right.

As the amendments currently stand to the child labour law, there are significant concerns on some of the proposed provisions. For example, the list of hazardous occupations has been curtailed and the provision to allow work of children helping in family and family enterprise, even after school hours, raises significant concerns on regulating such situations when a large part of sub-contracting involves working at/from home.

It is of great importance primarily because allowing participation of children “helping family or family enterprises”, where an enterprise may be part of a supply chain of a major international company, will hamper India’s image of being a manufacturing hub where workers’ rights are duly protected. This in turn may lead to other complications in terms of consumer sensitivity and demand, as well as a negative business environment.

Amendments to the child labour law have further implications for trafficking of children as these provisions may hamper efforts to curb trafficking of children for forced labour. Exploitation of children relates with their ability to stay in education. Abuse of the legal provisions in the proposed law will further deteriorate the situation of education of a large number of children.

It is quite evident, from a brief assessment of the data that proposed amendments to the Child Labour (Prohibition and Regulation) Amendment Bill 2012 may be open to wide abuse and may be utilised in opposition to their intended purposes to save children from crime and exploitation.

RECOMMENDATIONS

Following the analysis of data, the following recommendations are proposed:

- a) Child labour should be clearly defined in law as per the definition given by the Delhi High Court in BBA’s case and extended for the entire country.
- b) It is important that proviso for Section 3 in the proposed Bill be removed to prevent any abuse of law in the name of family and family enterprise.
- c) List of hazardous occupation and processes enlisted in Part A and B of the schedule in current CLPRA needs to be expanded or at least kept as it is.



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