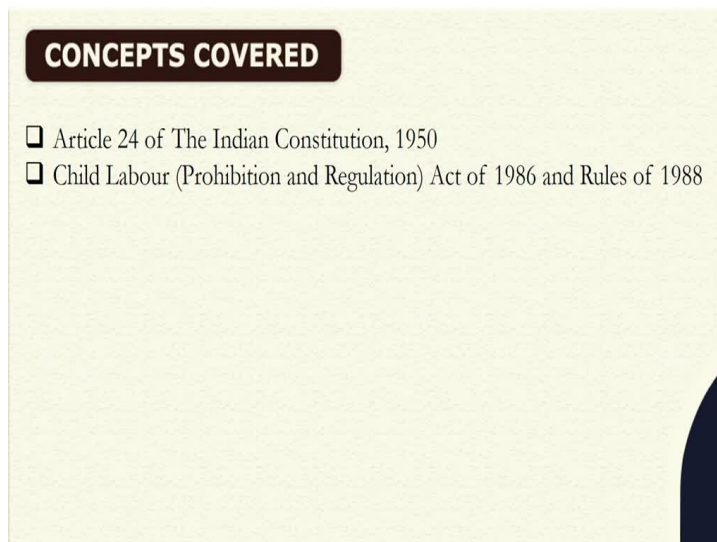


New Labour Codes of India
Professor K. D. Raju
Department of mathematics
Indian Institute of Technology Kharagpur
Lecture 44
Child Labour Prohibition

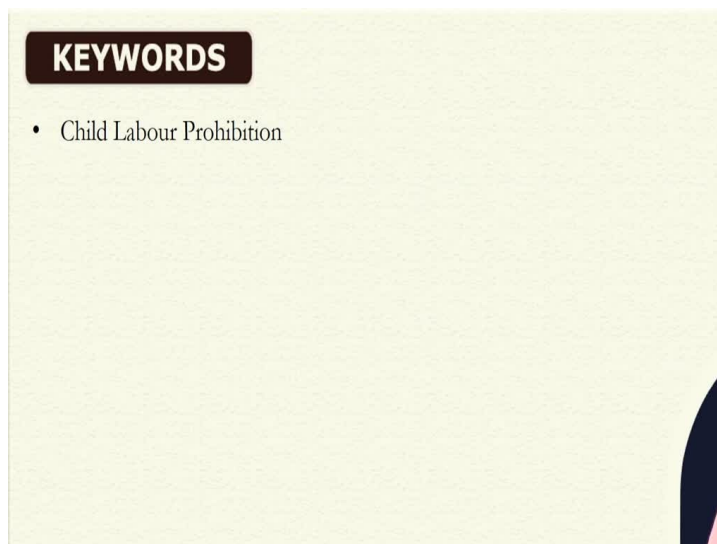
Dear students this class we are going to discuss about child labour. So, child labour prohibition is happening all over the world. So, in India also child labour is prohibited, but still, the question exists whether child labour is completely prohibited or they are prohibited from working in all areas or all industries or it is the in textile industry or other industries that we are going to discuss today.

(Refer Slide Time: 0:56)



CONCEPTS COVERED

- Article 24 of The Indian Constitution, 1950
- Child Labour (Prohibition and Regulation) Act of 1986 and Rules of 1988



KEYWORDS

- Child Labour Prohibition

Indian Constitution on Child Labour Prohibition

Child Labour

World: 256 million
Asia: 153 million
India: 60 – 115 million?

And the ILO and other organizations have identified India as a hotspot of child labour and they are working for the last maybe more than 50 years to abolish or eliminate child labour from India. But still, there are reports saying that India is one of the largest numbers of child labours in the world. So, if it is 256 million calculated to be approximately child labour in the world and the majority is in Asia 153 million and within Asia, the highest or largest or we can say that almost 45 percent of the child labours.

So, there is no number with the Government of India and the ILO has identified around 60 million 50 to 60 million child labours. So, the actual number is much more and nobody have the exact number and some scholars some organization, it is more than 100 million. So, whatever it is, it is true that child labour is prevailing in the country till now.

(Refer Slide Time: 2:26)

Child Labour

73 million working children are less than 10 years old.

While buffaloes may cost up to 15,000 rupees, children are sold at prices between 500 and 2,000 rupees.

47 out of 100 children in India enrolled in class I reach class VIII, putting the dropout rate at 52.79%.

Approximately 16.64% of villages in the country do not have facilities for primary schooling. (UNICEF)

42 million children in the age-group 6-14 years do not attend school in India.

So, the most important point, mentioned by some of the international agencies is very alarming. 73 million working children are less than 10 years old. So, it means that children below 10 years old are also working and so somebody has mentioned that a buffalo will cost 15,000 rupees in India and but children's are sold at 500 rupees to 2000 rupees. Some of the reports says 47 out of 100 children in India enrolled in class 1 reaching class VIII putting the dropout rate at 52 percent.

So, this is happening even after India passed a compulsory education up to the age of 14. So, if it is happening, then it means that the government failed to implement the Compulsory Education Act. And we can see that this child labour is mostly happening in villages. And UNICEF found out that 16.64 villages percentage of villages in the country do not have facilities for primary schooling.

So, where they will go for compulsory education and again, so, if you can see that 42 million children in the age group of 6 to 14 do not attend school in India. So, what they do 42 million. So, we claim ourselves to be a developed country now, but 42 million children are not going to school in India, these are the international agencies say.

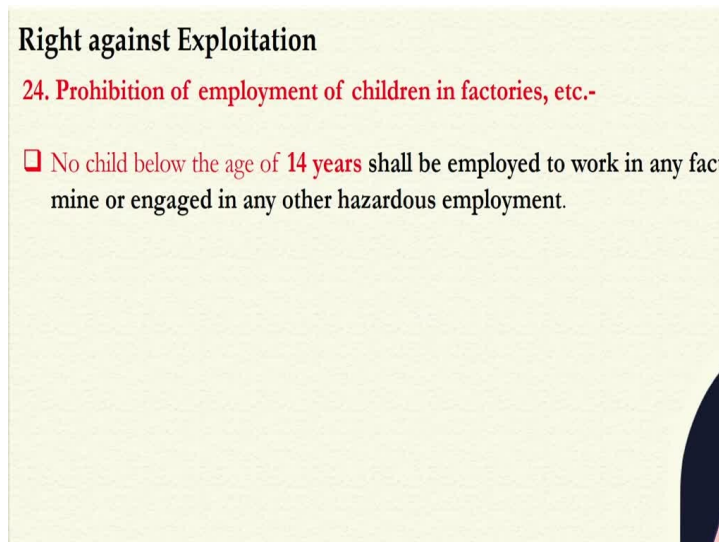
So, it means that the main reason for child labour is the lack of primary schooling in the country or the facilities or lack of facilities for primary school. So, these are some of the statics which lead to the discussion of the prohibition of child labour.

(Refer Slide Time: 4:42)



So, we can see that, so, this is a picture from Patna, Bihar. So, it says that child labour, you can see which are the areas where child labour is prevalent. So, whether they are used by the parents or whether they are used by the organized child labour lobbies or anybody else. So, but the number is to the tune of around 50 to 60 million in India.

(Refer Slide Time: 5:18)



So, we can say that the right against exploitation which we already discussed under the Indian constitution in Article 24 especially prohibits the prohibition of employment of children in factories says that no child below the age of 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment. So, what about other employments?

So, hazardous employment means, there is a list of hazardous industries in the schedule, Central Government also has a schedule and the state governments also have a schedule. So, what about other employment? So, the question is whether somebody below the age of 14 can be used in any other industries other than hazardous employment.

(Refer Slide Time: 6:09)

M.C. Mehta vs. State of Tamil Nadu and Ors. (10.12.1996 - SC)

- ❑ The public spirited lawyer, Shri M.C. Mehta, thought it necessary to invoke the court's power under Article 32, as after all the fundamental right of the children guaranteed by Article 24 was being grossly violated.
- ❑ It came to be disposed of on October 31,1990 by noting that in Sivakasi, as on December 31, 1985, there were **221 registered match factories employing 27,338 workmen of whom 2941 were children.**
- ❑ The Court then noted that the **manufacturing process of matches and fireworks is hazardous, giving rise to accidents including fatal cases.**
- ❑ Keeping in view the provisions contained in Articles 39(f) and 45 of the Constitution, it gave certain directions as to how the quality of life of children employed in the factories could be improved.
 - ❑ State Government should see that adult member of family whose child is in employment in factory or mine or in other hazardous work gets job anywhere in lieu of child
 - ❑ Labour inspector shall have to see that working hours of child are not more than 4 to 6 hours a day and it receives education at least for 2 hours each day
 - ❑ Entire cost of education to be borne by employer

So, the Supreme Court got an opportunity in 1996 to elaborately discuss about the child labour problem in the country. So, MC Mehta, who is an activist has filed a case in the Supreme Court against the state of Tamil Nadu for employing children in the match industry in Sivakasi. So, here you can see that some of the workmen and children, specifically functioning registered match factories and employing workmen and their children, children are used in the matchbox industry.

So, the court noted that the manufacturing process of matches and firework is hazardous and give rise to fatal accidents, so, from time to time, we heard about accidents and Sivakasi of the bursting one is matchbox and the other one is crackers, the crackers industry which uses children. So, here, the court has elaborated a discussion of the constitutional provisions contained in Articles 39(f) and 45.

And give directions to, how the quality of life of children employed in the factories could be improved. When the court said that, the government should see that the adult members of the factory whose child is in employment at the factory or mine or any other hazardous work gets a job anywhere in view of the child.

And labour inspectors shall have to see that the working hours of children are not more than 4 hours to 6 hours a day. And they get an education, at least for 2 hours each day, at the cost of education to be bought by the employer. So, this is the judgment of the Supreme Court in 1996. So, it is true that even the court also recognized that children are used by some of the industries for the use in even hazardous industries.

(Refer Slide Time: 08:33)

Other Constitutional Provisions concerning Children

- ❑ **21A. Right to education** - The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine. *(Added by 86th Constitutional Amendment, 2002)*
- ❑ **45. Provision for early childhood care and education to children below the age of 6 years** - The State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years.
- ❑ **51A. Fundamental duties** - It shall be the duty of every citizen of India - (k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of

Other Constitutional Provisions concerning Children

- ❑ **39. Certain principles of policy to be followed by the State**-The State shall, in particular, direct its policy towards securing-
 - ❑ (e) that the health and strength of workers, men and women, and the **tender age of children are not abused** and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
 - ❑ (f) that **children are given opportunities and facilities to develop in a healthy manner** and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

And you can see other constitutional provisions right to education, the article 21 A has been incorporated into the Indian Constitution by the 86th Amendment in 2002. So now, free and compulsory education up to the age of 6 to 14 years is mandatory. So that the children from 6 age to 14 will go to school so that we can reduce the number of child labourers. article 45,

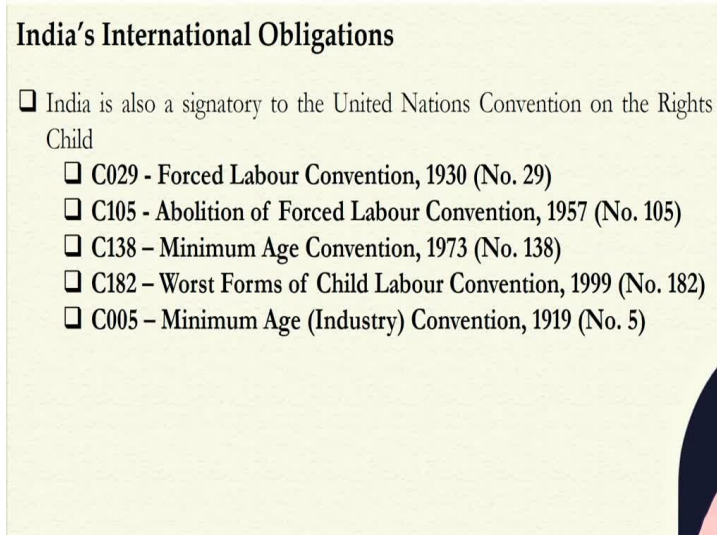
talks about the promotion of early childhood care, and education to children below the age of 6 years.

So the state shall endeavour to provide early childhood care and education for all children completing the age of 6 years. So 6 to 14, compulsory education, is the duty of the state to provide. Article 51 A fundamental duties. So it shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child, as the case may be, between the age of 6 and 14, so Article 21A is now clear that there must be a compulsory education between the age of 6 to 14 in the country.

But again, the state comes that how the number of child labourers is increasing in the country. Article 39, talks about the Directive Principles of State Policy. So, it says that the health and strength of workers men and women at the tender age of children are not abused. So, based on economic necessity, according to the unsuited to their age or strength. So, children should not be used in any kind of hazardous industries.

So, children must be given opportunities and facilities to develop in a healthy manner, the Constitution Directive Principle says.

(Refer Slide Time: 10:39)



So and there are sufficient constitutional provisions, which talk about the prohibition of child labour, when it comes to the international conventions, the United Nations conventions or the rights of the child, the CRC completely prohibits child labour and if you look at the ILO conventions, convention number 29.

Or forced labour convention, convention number 105, abolition of forced labour convention, convention number 138 Minimum Wage convention, the Worst form of child labour convention number 182, Minimum Age Convention, convention number 5, all these conventions talk about the prohibition of the use of children in workplaces.

(Refer Slide Time: 11:28)

Gurupadswamy Committee

- ❑ In 1979 GoI formed the 1st committee called Gurupadswamy Committee to study the issue of child labour and to suggest measures to tackle it.
- ❑ It observed that **as long as poverty continued**, it would be **difficult to totally eliminate child labour** and hence, any attempt to abolish it through legal recourse would not be a practical proposition. The Committee felt that in the circumstances, **the only alternative left was to ban child labour in hazardous areas** and **to regulate and ameliorate the conditions of work in other areas**.
- ❑ The Committee was of the view that the minimum age for entry into any employment should be **15 years**, and that the existing laws which prescribe an age lower than this **should be suitably amended**. Correspondingly, **the age for adolescents should be specified as**

So, if you look into India, the famous committee that worked on this child labour elimination of this child labour is the 1979 Gurupadswamy Committee report. So, the committee studied the child labour problem in the country and suggest appropriate measures. We can see that the committee found that poverty is the basic reason for child labour in the country.

And it is very difficult to eliminate child labour without improving the poverty situation in the country. So, only the prohibition is not going to help families in eliminating poverty. So, the committee has recommended only the prohibition of child labour in hazardous industries and also to regulate and ameliorate the conditions of work in other areas which is why India has not 100 percent banned child labour.

So, it says that the minimum age of entry to employment is 15 years and it says that the existing laws should be amended to accommodate the minimum working age of 15. And the age of adolescence should be specified as 15 to 18. So, there is a category below 14 children from 15 to 18 adolescents and above 18 is the adult workers. So, there are 3 categories of workers are formed due to this particular committee.

(Refer Slide Time: 13:05)

Child Labour (**Prohibition** and **Regulation**) Act, 1986

Child Labour (**Prohibition** and **Regulation**) Act, 1986

Objective:

- ❑ An Act to **prohibit** the engagement of children in **cer**
employments and to regulate the conditions of work
children in certain other employments.

- ❑ Employment of Children Act, 1938 - Repealed

Now, we will come to the Child Labour Prohibition and Regulation Act of 1986. The Act says that this Act prohibits specifically engagement of children in certain employments, not all employments and also regulates the conditions of work of children in certain other employments. So, earlier the Employment of Children Act of 1938 is repealed through the 1986 Child Labour Prohibition and Regulation Act.

(Refer Slide Time: 13:35)

Important Definitions

- ❑ 2(ii) “child” means a person who has **not completed his 14th year of age**;
- ❑ 2(v) “family”, in relation to an occupier, means the **individual, the wife or husband**, as the case may be, of such **individual, and their children, brother or sister of such individual**;
- ❑ 2(iv) “**establishment**” includes a **shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment**;
- ❑ 2(x) “**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 **Section 67 of the Factories Act, 1948** for the time being, apply.
 - ❑ **67. Prohibition of employment of young children.—No child who has**

So, the Act defined, who is the child so, the child means a person who has not completed his 14th year of age. So, we already said that the 14th year of age those who have not completed are children and from 15 to 18 is adolescent and 18 and above adult worker here also you can see that establishments and group shops and commercial establishments, farm houses etc.

And also we can see that industrial premises and workshops are also included. So, it is the provision saying that no child who has not completed his 14th year shall be required or allowed to work in any factory, factory act, which says, but again, the question is, if somebody is below 14, is allowed to work in ordinary factories, not in hazardous factories.

(Refer Slide Time: 14:37)

Prohibition of employment of children in certain occupations and processes

- ❑ **No child shall be employed or permitted to work** in any of the **occupations** set forth in **Part A of the Schedule** or in any workshop wherein any of the **processes** set forth in **Part B of the Schedule** is carried on:
- ❑ **Provided that nothing shall apply to any workshop** wherein any **process is carried on** by the **occupier with the aid of his family** or to **any school established by, or receiving assistance or recognition from, Government.**

So, the prohibition against it is they are permitted to work, any of the occupations, no child shall be employed or permitted to work in this scheduled employment Part A of the scheduled and workshops, the process set forth in Part B of the schedule. Part A and Part B talk about these hazardous industries or hazardous works or the process carried.

So, they are saying that this does not apply to any workshops indicating a process is carried out by the occupier with the aid of his family, or any school established by or receiving assistance or recreation from the government. So, a limited exception is provided.

(Refer Slide Time: 15:27)

Child Labour (**Prohibition** and **Regulation**) Act, 1986

THE SCHEDULE

PART A - Occupations

Any occupation connected with:

1. Transport of passengers, goods or mails by railway ;
2. Cinder picking, clearing of an ashpit or building operation in the railway premises ;
3. 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 ;
4. Work relating to the construction of a railway station or with any other work where such work is done in close proximity too between the railway lines;
5. A port authority within the limits of any port;
6. Work relating to selling of crackers and fireworks in shops with temporary licenses;

Child Labour (**Prohibition** and **Regulation**) Act, 1986

PART B - Processes

1. Bidi-making.
2. Carpet-weaving.
3. Cement manufacture, including bagging of cement.
4. Cloth printing, dyeing and weaving.
5. Manufacture of matches, explosives and fireworks.
6. Mica-cutting and splitting.
7. Shellac manufacture.
8. Soap manufacture.
9. Tanning.
10. Wool-cleaning.
11. Building and construction industry.
12. Manufacture of slate pencils (including packing).

Child Labour (**Prohibition** and **Regulation**) Act, 1986

PART B - Processes

14. Manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos.
15. "Hazardous processes" as defined in Section 2(cb) and "dangerous operations" as notified in rules made under Section 87 of the Factories Act, 1948
16. Priming as defined in Section 2(k)(iv) of the Factories Act, 1948
17. Cashew and Cashew nut descaling and processing.
18. Soldering processes in electronic industries.

Here the part A of occupations, which talks about a long list of transport and a whole list which is included. So, a big list is included in part A of occupations and also Part B of occupations. So, if you can look into this part B of occupations of the carpet industry is included bidi making is included, cloth printing is included Mica is included and shellac soap manufacturing, and tanning.

So, the building and construction industry and also this you can say that manufacturing of slate and pencils. So, where most of the children were used at that period of time. So, here again, part B process, which includes the hazardous process or dangerous operations is notified in the Factories Act. And also we can see some of the activities like dangerous activities like cashew and cashew nut, descaling and processing, and soldering process in the electronic industries. So, all these are in Part B of the process list.

(Refer Slide Time: 16:45)

Child Labour (**Prohibition** and **Regulation**) Act, 1986

Regulation of Conditions of Work of Children in an establishment(s) in which none of the occupations or processes of the Schedule are carried on-

1. Hours and period of work.

- a) Not in excess of such number of hours as may be prescribed.
- b) **The period of work on each day shall be so fixed that no period shall exceed 3 hours and that no child shall work for more than 3 hours before he has had an interval for rest for at least 1 hour.**
- c) The period of work of a child shall not be spread over more than 6 hours.
- d) No work between 7 p.m. and 8 a.m.
- e) No overtime
- f) No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

Child Labour (**Prohibition** and **Regulation**) Act, 1986

Regulation of Conditions of Work of Children in an establishment(s) in which none of the occupations or processes of the Schedule are carried on-

2. Weekly holidays

- Every child employed shall be allowed in each week, a holiday of 1 whole day and the day so specified shall not be altered by the occupier more than once in 3 months.

Child Labour (**Prohibition** and **Regulation**) Act, 1986

- Disputes as to age** - If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, **the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.**

And also we can see that it is actually that is why it is prohibition and regulations, it is not only prohibition, the regulation of child labour in some of these industries, so the hours of period of what is regulated. So, the hours or period of the child labourers' work is fixed, that no period shall exceed 3 hours and no child shall work for more than 3 hours before he has been given an interval rest of one hour, what does it mean?

At a time 3 hours some children can be given 1-hour rest and again another 3 hours they can work. So, the definition is talking like that. So, the interval is one hour and the total working hours mentioned are 6 hours. So, 3 hours working, 1-hour rest and then the next 3 hours work. So, no children shall be used from 7 pm to 8 am which means no night shifts, no overtime and also no child shall be permitted to work in any establishment on any day on which he has already been working on another establishment.

So, all these prohibitions and regulations have been made through the provisions of this particular Act. And also we can see that weekly holidays. So, every child employed shall be allowed in each week, a holiday of one whole day per week, and also shall not be altered by the occupation more than once in 3 months.

So, one day compulsory is a holiday, a weekly holiday to be given to children. If there is any dispute with regard to age, that discussion should be resolved by an authorized medical practitioner. So, the age should be determined by the medical practitioner or authorized medical authority.

(Refer Slide Time: 18:46)

Duty of Employer

Child Labour (Prohibition and Regulation) Rules, 1988

- ❑ A certificate of age from the appropriate medical authority, whenever required to do so by an Inspector -
- ❑ The certificate of age shall be issued in Form 'B'.
- ❑ The charges payable to the medical authority shall be borne by the employer of the young person whose age is under question.
- ❑ "Medical authority" shall be Government medical doctor not below the rank of an **Assistant Surgeon of a District** or a regular doctor or equivalent rank employed in Employees' State Insurance dispensaries of hospitals.

FORM B
(Certificate of Age)
[See Rule 17 (2)]

Certificate No.....

I hereby certify that I have personally examined (name.....
Son/daughter ofresiding at.....
and that he/she has completed his/her fourteenth year and his/her age, as nearly as can be ascertained from
my examination is.....years (Completed).

His/Her	descriptive	marks
Are.....
Thumb-impression/signature of child.....		
Place	Medical Authority	

And the Child Labour Prohibition Regulation Rules 1988 talks about the duty of employees to keep a certificate for each of every child they are working and also to be certified by an assistant surgeon of a particular district or equivalent rank of those who are working in the Employee State Insurance Dispensaries or hospitals with regard to the each if there is any form. So, the particular forms are mentioned.

(Refer Slide Time: 19:15)

Ramachander Rao P. vs. State of A.P. (18.03.2006 - APHC)
Haria Ginning and Pressing Factory vs. Mamlatdar and Ors. (30.07.2006)

- Whenever there is any dispute regarding the age of the child, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, **be referred by the Inspector for the decision to the prescribed medical authority.**
- In the absence of sending the child to the medical authority for determination of the age, the Inspector or the Labour Officer cannot determine the age.
- In the absence of any record to show that the child is of a particular age, the complaint that the child of 12 years old is engaged, cannot be maintained.

And if we look into some of the cases like the Ramchander Rao versus State of Andhra Pradesh, and also Haria Ginning and Pressing Factory versus Mamlatdar and others so here we can see that any dispute with regard to the child age, so the court said that, so the medical authority is referred by the inspector for the decision to be the prescribed medical authority.

So in the absence of serving the child to the medical authority for determination of the age, the inspector or the labour officer cannot determine the age. So to send him to the medical authority is mandatory to determine the age whether he is 12 years old, or whether he is 14 years of age for determination. So and also every employer to keep a register of the kind of work, the permitted work and also it is to be ready for inspection by an inspector.

(Refer Slide Time: 20:16)

Duty of Employer

Child Labour (Prohibition and Regulation) Rules, 1988

- Register to be maintained** - Every occupier of an establishment shall maintain a register in Form A.
- The register **shall be maintained on a yearly basis but shall be retained by the employer for a period of 3 years** after the date of the last entry made therein.

FORM A
[See Rule 16(1)]

Year.....

Name and
Address of employer.....Place of work.....
Nature of work being done by the establishment.....

Sl. No.	Name of Child	Father's Name	Date of Birth	Permanent Address	Date of joining the Establishment
1	2	3	4	5	6

Nature of work	Daily hours	Intervals	Wages	Remarks

Child Labour (Prohibition and Regulation) Act, 1986

Penalties -

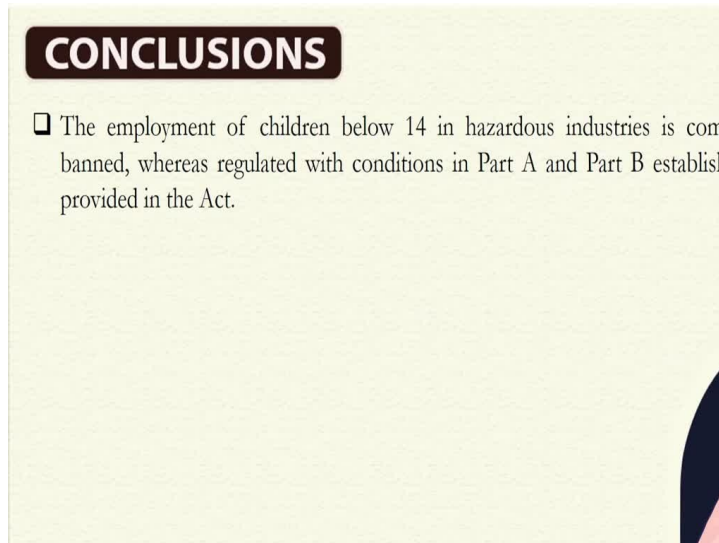
- Whoever employs any child or permits any child to work in contravention shall be punishable with imprisonment from 3 months - 1 year or with fine from ₹10,000/- to ₹20,000/- or with both.
- Whoever, having been convicted of an offence commits a like offence afterwards, he shall be punishable with imprisonment from 6 months - 2 years.
- Whoever:
 - Fails to give notice to Inspector
 - Fails to maintain a register or makes any false entry
 - Fails to display a notice
 - Fails to comply with or contravenes any other provisions of this Act or the rules
- shall be punishable with simple imprisonment upto 1 month or with fine upto ₹10,000/- or with both.

So, the employer to keep a record and also the registers, they have to as every occupier has to establish and maintain registers and also that should be maintained on yearly basis, but shall be retained by every employee for a period of 3 years.

See this particular register, you can see the form number A which can be used for this one and also any noncompliance with the provisions of this particular Act, these penalties so whoever is employing any child or permit any child to work in contravention of the provisions is punishable with imprisonment for 3 months, or 3 months to 1 year and a fine from 10,000 to 20,000 rupees or both.

And also if one has been convicted of an offence and commits alike offence a second time, shall be punished with a liberal for 6 months to 2 years also, you can see that other offences like failing to give inspector, give notice to the inspector, to maintain a register, fails to display a notice and fails to comply with other provisions of this Act, such occupiers or the employees shall be penalized with simple imprisonment for 1 month or with a fine of 10,000 rupees or both. So, there is a penal punishment has been for the violation of the provisions.

(Refer Slide Time: 21:45)



CONCLUSIONS

- ❑ The employment of children below 14 in hazardous industries is completely banned, whereas regulated with conditions in Part A and Part B establishments provided in the Act.



REFERENCES

- ❑ The Indian Constitution, 1950
- ❑ Child Labour (Prohibition and Regulation) Act, 1986
- ❑ Child Labour (Prohibition and Regulation) Rules, 1988

So, in conclusion, we can say that in India, there is no prohibition of child labour as such, it is prohibition, regulation and prohibition is only with regard to hazardous industries. So, for the employment of children below 14 years in hazardous industries, there is complete prohibition, whereas other industries it is regulated.

So, after even 75 years of independence, we are not able to prohibit child labour because of the different committees and also the international organizations which pointed out we are not able to reduce the poverty level. But this provision should be strictly implemented in hazardous industries in India.

So that the child labour Prohibition and Regulation Act of 1986 and the rules, if implemented properly, then child labour can be avoided. And also they can be set from the age of 6 years to 14 years for compulsory education. Thank you.