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## Child Labour Legal Guide - India

# Laws

- Constitution of India
- Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (CALA)
- Factories Act, 1948 (Factories Act)
- Mines Act, 1952 (Mines Act)
- Plantations Labour Act, 1951 (Plantations Act)
- Motor Transport Workers Act, 1961 (Motor Act)
- Merchant Shipping Act, 1958 (Shipping Act)
- Local Shops and Establishments laws
- Juvenile Justice (Care and Protection) of Children Act, 2015 (Juvenile Act)





# Summary

- The Constitution of India prohibits the employment of any child below the age of 14 in a factory, mine or any other hazardous employment.
- CALA is an overarching legislation which governs the employment of children in all occupations and processes. CALA prohibits the employment of:
  1. A child below the age of 14 years for any purpose (subject to limited exceptions such as helping family or working as an artist other than in a circus – see details below); and
  2. an ‘adolescent’ (person aged between 14-17 years) in any hazardous occupation or process.
- In addition to CALA, there are other laws dealing with employment of children and adolescents in specific industries. Each of these laws prescribes a different minimum age for employing a person within the relevant industry. The minimum ages under each law are indicated below.

Industry / Establishment	Minimum Age	Remarks/ Exceptions
Factories	14 years	Persons aged 14-17 years are permitted to work subject to a medical exam and certificate
Plantations	15 years	Persons aged 15-17 years are permitted to work subject to a medical exam and certificate
Motor Transport Undertakings (carrying passengers, goods or both by road for hire or reward)	15 years	Persons aged 15-17 years are permitted to work subject to a medical exam and certificate
Shipping (being engaged or carried to sea to work in any capacity in a ship)	16 years	-
Mines	18 years	Apprentices and trainees ( $\geq 16$ years) are permitted to work in a mine under proper supervision and subject to approval from authorities

# How is business affected?

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## CALA

### ***Applies***

To all occupations and processes.

### ***Definitions***

- “child” is a person who has not completed 14 years of age;
- “adolescent” is a person who has completed 14 years but has not completed 18 years of age.

### ***Restrictions***

- CALA prohibits employment of a ‘child’ in any occupation or process except: (i) helping his/her family or family enterprise after school hours or during vacations, provided the work does not include specified hazardous occupation or process (collieries, inflammable substances, metallurgic industries, coal, power generating industries, pulp, fertilisers, cement and various others); or (ii) working as an artist in an audio-visual entertainment industry except the circus, subject to prescribed conditions and safety measures.
- An ‘adolescent’ is prohibited from being employed or allowed to work in hazardous occupations or processes (discussed above).

### ***Hours and period of work***

- The limit on the number of hours that an adolescent can work can vary depending upon the class of establishment in which s/he is employed. The period of work cannot exceed 6 hours on any day, with an interval of at least 1 hour if the adolescent has worked for 3 hours.
- An ‘adolescent’ is prohibited from being employed or allowed to work in hazardous occupations or processes (discussed above).

### ***Holidays***

- An adolescent employed in any establishment has to be allowed one whole day’s holiday per week. The day has to be specified by the occupier of the establishment (i.e., person having ultimate control over the affairs of the establishment) in a notice permanently exhibited in a conspicuous place at the establishment.
- There are exceptions to the provisions regarding hours, period of work and holidays which apply to certain family run enterprises and schools recognised by the government.

# Factories Act

## ***Applies***

To premises where a manufacturing process is carried out and there are a minimum number of workers (10 workers if the manufacturing process is carried out with the aid of power and 20 workers if the manufacturing process is carried out without the aid of power).

## ***Definitions***

- “**child**” is a person who has not completed 15 years of age;
- “**adolescent**” is a person who has completed 15 years of age but has not completed 18 years of age;
- “**young person**” is either a child or an adolescent.

## ***Restrictions***

- No child who has not completed 14 years of age is permitted to work in a factory.
- A child above 14 years of age or adolescent is permitted to work in a factory if the child/adolescent: (i) has been granted a certificate of fitness by a certifying surgeon; and (ii) carries a token giving reference to such certificate while at work. The factory manager can make an application for grant of certificate of fitness. The certificate is valid for 12 months with an option of renewal.
- A young person is not permitted to clean, lubricate or adjust any part of a prime mover or any transmission machinery while it is in motion; or if such cleaning, lubrication or adjustment would expose the young person to the risk of injury.
- A young person is prohibited from working at a dangerous machine unless the person has been fully instructed on the dangers arising in connection with the machine and the precautions required. The person has to also receive sufficient training and must be under adequate supervision of a person having thorough knowledge and experience of the machine.

## ***Working Hours***

- Adolescents who have not attained 17 years of age are allowed to work in a factory only between 6 AM and 7 PM (can be varied by the relevant state Government). Female adolescents cannot be employed between 10 PM and 5 AM. State governments can grant exemptions for serious emergencies in national interest.
- Children are not permitted to work in a factory: (a) for more than 4.5 hours in a day or during the night (the night is at least 12 consecutive hours including the period between 10 PM and 6 AM); (b) on any day on which they have already worked in a different factory. A female child is allowed to work only between 8AM and 7PM.
- Children can be employed in two shifts which cannot overlap and should not be spread over more than 5 hours each. Each child should be employed in only one of the shifts.

# Plantations Act

## ***Applies***

To land used for growing tea, coffee, rubber, cinchona or cardamom which measures 5 hectares or where 15 or more persons are employed in the last 12 months (amongst others).

## ***Definitions***

The same as under the Factories Act.

## ***Conditions***

- A child is prohibited from working in any plantation.
- An adolescent is permitted to work at a plantation if the adolescent: (i) has been granted a certificate of fitness by the certifying surgeon; and (ii) carries a token giving reference to such certificate while at work. As with the Factories Act, the application for the certificate of fitness can be made by the employer. The certificate is valid for a period of 12 months which can be renewed.

## ***Leave***

A young person must be allowed 1 day of leave with wages for every 15 days of work performed by the person.

# Motor Act

## ***Applies***

To every motor transport undertaking, i.e., an undertaking engaged in carrying passenger or goods by road for hire or reward, ordinarily, where 5 or more workers are employed.

## ***Definitions***

- “**adolescent**” means a person who has completed 15 years but has not completed 18 years of age;
- “**child**” means a person who has not completed 15 years of age.

## ***Restrictions***

- A child is prohibited from working in any capacity in a motor transport undertaking.
- An adolescent is permitted to work if the adolescent has: (i) been granted a certificate of fitness by the certifying surgeon; and (ii) a token giving reference to such certificate while at work. As above, the application can be made by the employer and if granted and is valid for 12 months with a renewal option.

## ***Hours of work***

An adolescent cannot be employed or required to work (a) for more than 6 hours in a day including a rest interval of half an hour; (b) between 10 PM and 6 AM; and (c) the hours of work should not be spread over more than 9 hours in a day.

### ***Overtime wages***

An adolescent who is required to work on any day of rest is entitled to wages at the rate of twice the ordinary wage rate for the work done on the rest day.

### ***Leave***

- An adolescent must be allowed 1 day of leave with wages for every 15 days of work during the previous calendar year.
- An adolescent is entitled to carry forward a total of 40 days of leave to a succeeding year.

## **Shipping Act**

### ***Definitions***

- “**young person**” means a person under 18 years of age.

### ***Restrictions***

- A person under 16 years of age cannot be engaged or carried to sea to work in any ship.
- A young person cannot be engaged in night work but the authorities can permit such engagement if it is not detrimental to the health or well-being of the person and provided it is for the purpose of: (i) giving effective training; or (ii) performing a specific nature of duty.
- A young person can be engaged or carried to sea to work in a ship if the young person is given a certificate of physical fitness from the prescribed authorities and the certificate is delivered to the shipping master. Without the certificate, the young person would be permitted to be employed on the ship only if the employees of the ship are part of the same family or if there are grounds of urgency, provided that in the latter case, the young person cannot be employed beyond the first port in which the ship calls.

## **Mines Act**

- Apprentices and trainees being at least 16 years of age are permitted to work in a mine under proper supervision. However, in case of trainees, prior approval of the Chief Inspector or Inspector has to be obtained.
- Other than apprentices or trainees, no person below 18 years of age is permitted to work in any mine or part of it.

## Shops and Establishments Laws

- Depending on the particular state in India where the employer's establishment is located, the local Shops and Establishment law could apply to it which would govern the employment of persons at that establishment. The local law typically applies to most kinds of commercial establishments. Several Shops and Establishment laws (for e.g., those applicable to Delhi and Tamil Nadu) have provisions that: (a) restrict the employment of children; (b) limit the hours of work and period of work for 'young persons' and women. Some Shops and Establishments laws (like the one applicable in the state of Maharashtra) do not have such provisions.
- As an e.g., the Delhi Shops and Establishments Act, 1954 prohibits the employment of children as employees or otherwise in an establishment. The employment of young persons (below the age of 18) is also prohibited for more than 6 hours a day in aggregate or more than 3.5 hours continuously without an interval of at least half an hour for rest or meals. Women and young persons cannot be required to work between 9 PM and 7 AM during the summer and 8 PM to 8 AM during the winter.

## Juvenile Act

- The Juvenile Act penalizes the act of ostensibly engaging a child (person who has not completed 18 years of age) and keeping the child in bondage for the purpose of employment or withholding the child's earnings or using such earning for one's own purpose.
- There are other provisions in this law for the protection of children who are found working in conditions that violate labour laws (including restoration of the child to its parents or guardian, placement of the child in a home or adoption agency or temporary or foster care, sponsorship, etc.).





# Expectations

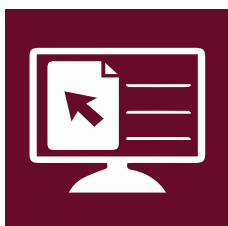
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## Notice to Inspector

An establishment employing an adolescent is required to provide notice to the inspector (or appropriate authority) within 30 days of such employment along with prescribed information. The responsibility of providing this notice is with the occupier.

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## Register of adolescent workers

The occupier of an establishment is also required to maintain a register for adolescent workers with details like their name and date of birth, hours and periods of work, intervals of rest, the nature of work, etc.

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## Notice of legal provisions

A notice setting out the key provisions of CALA, including the penalties under it, is required to be displayed in a conspicuous and accessible place at the place of work, in local language and English.

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## Special provisions for factories

Every factory employing children has to maintain and display a notice stating the periods of work for children during each day. A register of child workers is also required to be maintained with details such as the name of the child, nature of work, group, relay and certificate of fitness number.

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## Special provisions under the Shipping Act

If young person(s) are members of a crew of a ship, then the agreement executed between the crew with the master of the ship must contain a list of all such young persons, along with their particulars. In case there are no such agreements, the master must keep a register of young persons with particulars.

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# Penalties

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## CALA

- Any person employing or permitting a child or an adolescent to work in contravention of the provisions of CALA can be punished with imprisonment for a term ranging from 6 months to 2 years and/or a fine ranging from INR 20,000 to 50,000 (USD 275 to 680).
- Repeat offenders can face imprisonment ranging from 1 to 3 years.
- Contravening any other provision of the CALA would attract the penalty of simple imprisonment for a term of up to 1 month and/or fine of an amount up to INR 10,000 / USD 140.

## Factories Act

Employment of a child below the age of 14 years at a factory will attract the penalties provided under CALA.

## Plantations Act

- A person who generally contravenes any provision or rule prohibiting, restricting or regulating employment of persons in a plantation can be punished with imprisonment for a term of up to 6 months and/or fine of an amount up to INR 10,000 / USD 140.
- In case of a repeat conviction, the imprisonment can be for up to 1 year and the fine can be up to INR 100,000 / USD 1,400.

## Motor Act

Employing child labour in contravention of the Motor Act will attract the penalties provided under CALA.

## Shipping Act

Engaging underage persons in contravention of the Shipping Act will attract the penalties provided under CALA.

## Mines Act

Contravention of the provisions relating to employment of child labour at a mine will attract the penalties provided under CALA.

## Juvenile Act

Persons who ostensibly engage a child and keep the child in bondage for the purpose of employment or withhold the child's earnings or use such earnings for their own purposes can be punished with rigorous imprisonment for a term of up to 5 years and fine of INR 100,000 / USD 1,400.

## Notable prosecutions

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The number of reported cases involving child labour issues in India in the last 20 years has been limited. In 2013, the High Court of the state of Uttarakhand in India convicted two persons for employing a child aged 11 years in a cane crushing establishment in violation of CALA. The Court imposed a penalty of 3 months' rigorous imprisonment and a fine of INR 10,000 / USD 140 on each person<sup>1</sup>.

## Useful links

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CALA:

<https://labour.gov.in/childlabour/child-labour-acts-and-rules>

Factories Act:

[https://labour.gov.in/sites/default/files/Factories\\_Act\\_1948.pdf](https://labour.gov.in/sites/default/files/Factories_Act_1948.pdf)

Mines Act:

<http://legislative.gov.in/actsofparliamentfromtheyear/mines-act-1952>

Plantations Act:

<https://labour.gov.in/sites/default/files/The-Plantation-Labour-Act-1951.pdf>

Motor Act:

[https://www.indiacode.nic.in/bitstream/123456789/15616/1/motortransport\\_workers\\_act\\_1961.pdf](https://www.indiacode.nic.in/bitstream/123456789/15616/1/motortransport_workers_act_1961.pdf)

Shipping Act:

<http://legislative.gov.in/sites/default/files/A1958-44.pdf>

Juvenile Act:

<http://legislative.gov.in/actsofparliamentfromtheyear/juvenile-justice-care-and-protection-children-act-2015>

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<sup>1</sup>. Tuffail Ahmad and Ors. vs. State of Uttarakhand (2013 CriLJ 3726).



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