

# Child Labor



# Conspiracy of Silence

**I**t is no secret that child labor exists on an extensive scale in Pakistan. This is despite the fact that Pakistan has signed and ratified, since December 1990, the CRC (UN Convention on the Rights of the Child) which, under its Article 32, protects children from employment that is likely to be hazardous to their health, or to interfere with their education and development.

Justification of child labor is sometimes based upon confusing it with child work. The latter is distinguishable from the former in that young people indulging in child labor are exploited, overworked or deprived



of their rights to health or education or just to childhood. The danger in defending child labor is that it gradually results in its societal acceptance.

Few in the world support child labor. Many, however, rationalize it on grounds such as poverty, underdevelopment, unemployment, rapid population growth, agricultural commercialization, fast industrialization, landless peasantry and rural-urban migration. What they fail to appreciate is that child labor is also one of the major causes of the above grounds. There is thus an acute need to do everything possible to eliminate the possibility of employing children as an available option. Laws to prohibit, and regulate child labor are accordingly important. And then it is not enough to have laws on statute books. It is equally significant that these laws are strictly enforced and implemented.

### **Employment of under-14 Children**

Article 11(3) of Pakistan's Constitution prohibits employment of children below the age of 14 years in any factory or mine or any other hazardous employment.

The terms "factory" and "mine" are not defined in the Constitution but are defined in the general Acts governing these establishments. However "hazardous employment" is not defined under any law in Pakistan.

A "factory" is defined under the **Factories Act 1934** as being "any premises, .. whereon ten or more workers are working,.. and in any part of which a manufacturing process is being carried on." The terms "manufacturing process" and "worker" are also defined. Thus if an establishment employs less than ten persons then it would not be considered a "factory" for purposes of this Act; and it could then employ children unless not covered by another law. The **Mines Act 1923**, however, has no such restriction.

The **Shops & Establishments Ordinance 1969** prohibits employment of a below 14 year old child in any establishment. The term "establishment" is defined under this law to mean a shop, commercial establishment, industrial establishment, private dispensary, maternity home, hotel, restaurant, cinema, theater, circus, or other place

of public entertainment; other establishments could be added by the Provincial Government to this definition through notification in the official Gazette.

The **Merchant Shipping Act 1923** states that no child below 14 years of age be engaged or carried to sea to work in any capacity in any ship registered in Pakistan; or in any foreign ship except in a school, or training ship; or in a ship in which all persons employed are members of one family; or in a home-trade ship of a burden not exceeding 300 tons; or where the child is employed on nominal wages and is in the charge of his father or other adult near male relative. Contravention is punishable with a fine of Rs 50.

Probably the only law in Pakistan that presently prohibits employment of children below the age of 18 years is the **Road Transport Workers Ordinance 1961** which governs the conditions of employment of road transport workers. For employment of drivers, the minimum age is fixed at 21 years. Contravention is punishable, however, with only Rs 1,000 fine.

# Occupational Bans

ECA's Section 3 bans employment of under-14 children in occupations connected with:

- ⌚ transport of passengers, goods or mail by railway;
- ⌚ cinder picking, cleaning of an ash-pit or building operation in the railway premises;
- ⌚ 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;
- ⌚ work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines;
- ⌚ a port authority within the limits of any port; and
- ⌚ work relating to selling of crackers and fire works in shops with temporary license.

## **The Employment of Children Act 1991**

("ECA") repealed the Employment of Children Act 1938 but basically is similar to it. Some salient new features of this law are its stricter penalties; and supersession of its definition of child over that contained in the Factories Act; the Mines Act and the Shops & Establishments Ordinance. In case of the former two, it has been to the detriment of children as the age has been lowered from 15 to 14 years. ECA's section 2 (iii) defines a 'child' to

mean "a person who has not completed his fourteenth year of age." Its section 3 then states that:

*No child shall be employed or permitted to work in any of the occupation set forth in Part I of the Schedule or in any workshop wherein any of the processes set forth in Part II of that Schedule is carried on:*

*Provided that nothing in this section shall apply to any establishment wherein such process is carried on by the*

*occupier with the help of his family or to any school established, assisted or recognized by Government.*

The occupations listed in Schedule's Part I are outdated; as a matter of fact, the list has been copied from the Employment of Children Act 1938 the law which the ECA repealed.

Part II of the Schedule is again a reproduction of the 1938, law but it at least covers areas in which children are still employed in large numbers.

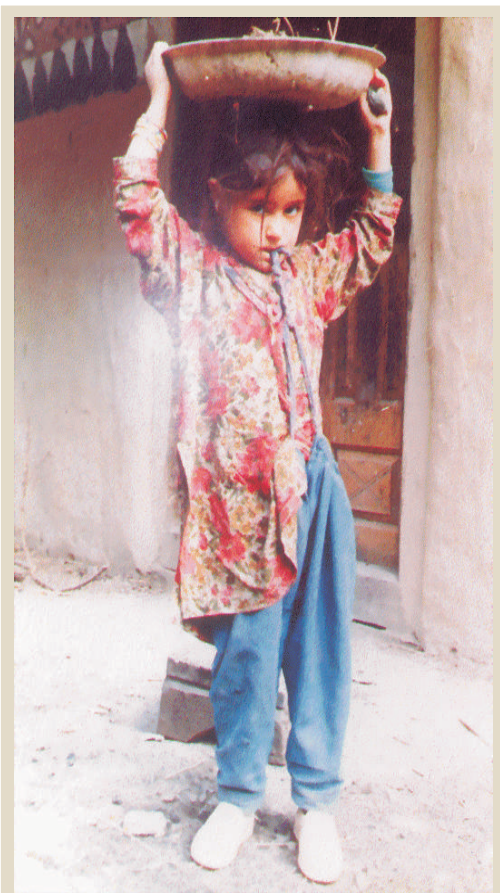
The Federal Government is empowered to add any occupation or process to the Schedule but has failed to do so during the past ten years.

Whoever employs any child in contravention of the ECA is punishable with imprisonment for a term which may extend to one year or with fine which may extend to Rs 20,000, or with both. A repeated offense is punishable with imprisonment for a term which shall

## Processes Bans

ECA also bans employment of under-14 children employed in processes covering:

- ⌚ Bidi-making.
- ⌚ Carpet-weaving.
- ⌚ Cement manufacture, including bagging of cement.
- ⌚ Cloth printing, dyeing and weaving.
- ⌚ Manufacture of matches, explosives and fire-works.
- ⌚ Mica-cutting and slotting.
- ⌚ Shellas manufacture.
- ⌚ Soap manufacture.
- ⌚ Tanning.
- ⌚ Wool-cleaning.
- ⌚ Building & construction industry.
- ⌚ Manufacture of slate pencils (including packing).
- ⌚ Manufacture of products from agate.
- ⌚ Manufacturing process using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos.



Every establishment employing children is required to display abstracts of this prohibition, and the penalty provisions, in a conspicuous place in the local and English language.

### **Regulation of Child Labor**

All establishments not listed in the Schedule of the ECA are covered by its Part III. This Part regulates working children's hours and periods of work; weekly holidays; health and safety.

The ECA has set a general maximum ceiling of hours for all establishments. Thus the total daily hours cannot exceed seven hours, inclusive of the interval for rest, and the time spent in waiting for work on any day. It is obligatory for all employers to give every child an interval of at least one hour for rest after he or she has worked for more than three hours. In addition such a child cannot work between 7 pm and 8 am; and cannot work overtime. He or she also cannot work in an establishment on a day on which he or she had already been working in another establishment.

not be less than six months but which may extend to two years. Penalties leviable under the ECA also apply to the Factories Act, the Mines Act and the Shops & Establishments Ordinance.

Any person may file a complaint for contravention of ECA in a court of competent jurisdiction, not inferior to that of first class magistrate.

It also grants the concerned governments the authority to prescribe by rules the maximum hours a child below the age of 18 years can be required or permitted to work in any specific establishment. Such hours have yet to be prescribed for any establishment at the Federal level despite existence of Rules since May 1995; in the Punjab, the June 1995 Rules prohibit any child between the age of 14 to 18 years to work for more than six hours a day. No child at this age should work for more than three hours before an interval of at least one hour of rest.

In Sindh with the August 1995 Rules, no child below the age of 14 years is allowed to work for more than four hours a day and for more than 20 hours a week. No child in the age group of 14 to 18 years is allowed to work for more than five hours a day or 30 hours a week. The Frontier Rules were notified as late as while Balochistan has yet failed to notify the Rules.

**Every under-14 working child** is also required to be given a whole day of holiday every week. This requirement implies that if an establishment is not covered by another law requiring a similar holiday, then children above the age of 14 may be refused such a weekly day of rest as this ECA

provision only covers children below the age of 14 years.

Every employer of an under-14 working child is required within a period of 30 days of employing the child to furnish to the Child Labor Inspector appointed under the ECA

- (i) establishment's name & address;
- (ii) person's name in-charge of the establishment; &
- (iii) nature of process carried on at the establishment.

This requirement of ECA, along with that relating to regulation of hours; and weekly holiday, does not apply to a family-run establishment; or to a school established, assisted or recognized by the Government.

Every establishment is ordered to maintain a register in respect of the working children containing particulars such as:

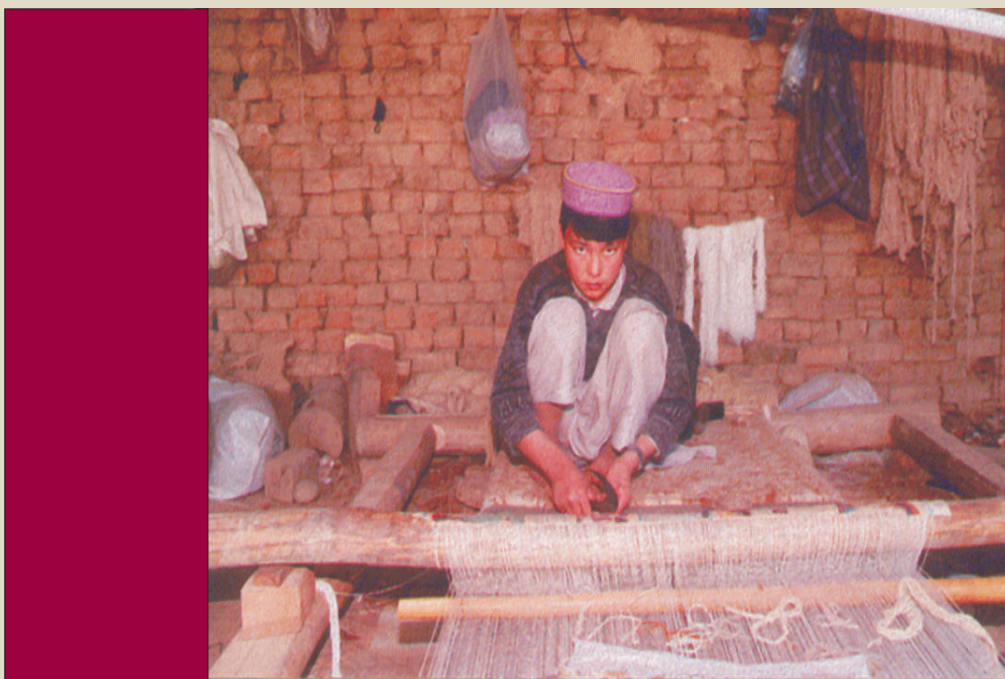
- ⌚ the name and date of birth of the child;
- ⌚ hours and periods of work;
- ⌚ rest intervals;
- ⌚ nature of work; and
- ⌚ any other particulars that are prescribed.

On November 16, 1998, the ECA through SPARC's exclusive efforts was extended to FATA, and on

November 25, 1998, through the authority given to the President of Pakistan, and the Provincial Governor, under article 247(3) of the Constitution.

One of the reasons for the failure of the successful enforcement of the ECA is non-existence of exclusive inspectors. The inspectors appointed under the authority of the Factories Act, Mines Act, and the Shops & Establishments Ordinance, have also been notified under section 2(ix) of the ECA for its enforcement. These inspectors already remain over-extended and thus fail to devote sufficient time for a comprehensive ECA enforcement in their respective areas.

If you would like further information on this subject, write to:



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*This Publication has been  
produced by SPARC with the  
financial assistance of CIDA  
(Canadian International  
Development Agency).*