

Bill No. XLIV of 2008

THE PLANTATIONS LABOUR (AMENDMENT) BILL, 2008

A

BILL

further to amend the Plantations Labour Act, 1951.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Plantations Labour (Amendment) Act, 2008.

Short title
and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States and any reference in any such provision to the commencement of this Act shall, in relation to any State, be construed as a reference to the coming into force of that provision in that State.

69 of 1951.

2. In section 2 of the Plantations Labour Act, 1951 (hereinafter referred to as the principal Act),—

Amendment
of section 2.

(a) in clause (e), the following *Explanation* shall be inserted, namely:—

Explanation.—For the purposes of this clause, “the person who has the ultimate control over the affairs of the plantation” means in the case of a plantation owned or controlled by—

(i) a company, firm or other association of individuals, whether incorporated or not, every director, partner or individual;

(ii) the Central Government or State Government or any local authority, the person or persons appointed to manage the affairs of the plantation; and

(iii) a lessee, the lessee;’;

(b) in clause (ee), for the words “and includes, where the worker is a male, his parents dependent upon him”, the words “and includes parents and widow sister, dependent upon him or her” shall be substituted;

(c) in clause (k),—

(i) in the opening portion, after the words “manual or clerical”, the words “and includes a person employed on contract for more than sixty days in a year” shall be inserted;

(ii) in sub-clause (ii), for the words “rupees seven hundred and fifty”, the words “rupees ten thousand” shall be substituted;

(iii) in sub-clause (iii), for the words “managerial capacity, notwithstanding that his monthly wages do not exceed rupees seven hundred and fifty”, the words “managerial or administrative capacity, notwithstanding that his monthly wages do not exceed rupees ten thousand” shall be substituted.

Amendment of section 7.

3. In section 7 of the principal Act, in sub-section (2), in clause (b), for the words “and children are, or are to be”, the word “are” shall be substituted.

Amendment of section 10.

4. In section 10 of the principal Act, in sub-section (2), for the words “chief inspector”, the words “State Government upon a request by the chief inspector” shall be substituted.

Insertion of new Chapter IVA.

5. After Chapter IV, the following Chapter shall be inserted, namely:—

“CHAPTER IV A

PROVISIONS AS TO SAFETY

Safety.

18A. (1) In every plantation, effective arrangements shall be made by the employer to provide for the safety of workers in connection with the use, handling, storage and transport of insecticides, chemicals and toxic substances.

(2) The State Government may make rules for prohibiting or, restricting employment of women or adolescents in using or handling hazardous chemicals.

(3) The employer shall appoint persons possessing the prescribed qualifications to supervise the use, handling, storage and transportation of insecticides, chemicals and toxic substances in his plantation.

(4) Every employer shall ensure that every worker in plantation employed for handling, mixing, blending and applying insecticides, chemicals and toxic substances, is trained about the hazards involved in different operations in which he is engaged, the various safety measures and safe work practices to be adopted in emergencies arising from spillage of such insecticides chemicals and toxic substances and such other matters as may be prescribed by the State Government.

(5) Every worker who is exposed to insecticides, chemicals and toxic substances shall be medically examined periodically, in such manner as may be prescribed, by the State Government.

(6) Every employer shall maintain health record of every worker who is exposed to insecticides, chemicals and toxic substances which are used, handled, stored or transported in a plantation, and every such worker shall have access to such record.

(7) Every employer shall provide—

- (a) washing, bathing and clock room facilities; and
- (b) protective clothing and equipment,

to every worker engaged in handling insecticides, chemicals or toxic substances in such manner as may be prescribed by the State Government.

(8) Every employer shall display in the plantation a list of permissible concentrations of insecticides, chemicals and toxic substances in the breathing zone of the workers engaged in the handling and application of such insecticides, chemicals and toxic substances.

(9) Every employer shall exhibit such precautionary notices as may be prescribed by the State Government indicating the hazards of insecticides, chemicals and toxic substances.

18B. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Chapter.

Power of State Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the restriction on employment of women and adolescents for handling hazardous chemicals under sub-section (2) of section 18A;
- (b) the qualifications of supervisor appointed under sub-section (3) of section 18A;
- (c) the matters for training of workers under sub-section (4) of section 18A;
- (d) the medical examination of workers under sub-section (5) of section 18A;
- (e) the facilities and equipment to be provided to the workers engaged in handling insecticides, chemicals and toxic substances under sub-section (7) of section 18A;
- (f) the precautionary notices to be exhibited under sub-section (9) of section 18A.”.

6. In section 19 of the principal Act, in sub-section (1), the words “or child” shall be omitted.

Amendment of section 19.

7. After section 23 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 24.

“24. No child shall be employed to work in any plantation.”.

Prohibition of employment of Children.

8. In section 25 of the principal Act,—

Amendment of section 25.

- (a) the words “or child” shall be omitted;
- (b) in the marginal heading, the words “and children” shall be omitted.

9. In section 26 of the principal Act,—

Amendment of section 26.

- (a) in the opening portion, the words “child and no” shall be omitted;
- (b) in clause (b), the words “child or” shall be omitted.

10. In section 27 of the principal Act, in sub-section (1), the words “either as a child or” shall be omitted.

Amendment of section 27.

- Insertion of new section 32C.
Compensation.
- 11.** After section 32B, the following section shall be inserted, namely:—
- “32C. The employer shall give compensation to a worker in plantation in case of accident and the memorandum relating to such compensation shall be got registered by the employer with the Commissioner in accordance with the provisions of the Workmen’s Compensation Act, 1923.”.
- Amendment of sections 33, 35 and 36.
- 12.** In sections 33, 35 and 36 of the principal Act, for the words “three months, or with fine which may extend to five hundred rupees, or with both”, wherever they occur, the words “six months, or with fine which may extend to ten thousand rupees, or with both” shall be substituted.
- Amendment of section 34.
- 13.** In section 34 of the principal Act, for the words “one month, or with fine which may extend to fifty rupees, or with both,” the words “two months, or with fine which may extend to one thousand rupees, or with both” shall be substituted.
- Amendment of section 37.
- 14.** In section 37 of the principal Act, for the words “six months, or with fine which may extend to one thousand rupees, or with both”, the words “one year, or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both” shall be substituted.
- Substitution of new sections for section 39.
Cognizance of offences.
- 15.** For section 39, the following sections shall be substituted, namely:—
- “39. No court shall take cognizance of any offence under this Act except on a complaint made by any worker or an office bearer of a trade union of which such worker is a member or an inspector and no court inferior to that of a metropolitan magistrate or a judicial magistrate of the first class shall try any offence punishable under this Act.
- 39A. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.”.
- Protection of action taken in good faith.
- Amendment of section 43.
- 16.** In section 43 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—
- “(3) Every rule made by the State Government under this Act shall, as soon as may be after it is made, be laid before the State Legislature.”.

STATEMENT OF OBJECTS AND REASONS

The Plantations Labour Act, 1951, provides for the welfare of labour and regulates the conditions of work in plantations. One of the major problems of safety and health in plantations arises out of the risks associated with the growing use of agro-chemicals, especially insecticides, pesticides and herbicides. At present, the Act has no provisions for safety measures and precautions to be taken for the storage, utilisation and handling of such agro-chemicals. It is, therefore, considered necessary to amend the Act to provide for safeguards to be adopted in the use and handling of such substances. It is also necessary to amend the Act to enable the Central Government to prohibit, restrict or regulate the employment of women and adolescents for handling hazardous chemicals in plantations. It is, therefore, considered necessary to amend the Act to prohibit employment of children below 14 years in plantations.

2. It has been felt that in order to ensure better implementation of welfare provisions under the Act, specific targets may be fixed for provisions of certain facilities and that penalties for non-compliance of such provisions should be made more stringent. It has also been considered necessary that the Act should be amended to make provisions relating to the liability of an employer in regard to the workmen employed by a contractor engaged for the execution of work by such employer. This Act also needs to be suitably amended to modify the definition of "family", "employer" and "worker" to make such definitions broad based and gender sensitive and also to make implementation of the Act more effective.

3. The Bill seeks to achieve the above objects.

NEW DELHI;

OSCAR FERNANDES.

The 1st October, 2008.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to insert a new Chapter IV A containing provisions dealing with safety of workers. This clause seeks to insert a new section 18A which empowers the Central Government to specify the manner in which, and the conditions and limitations subject to which women or adolescents may be employed for using or handling any hazardous chemical in a plantation. This clause also seeks to insert a new section 18B which empowers the State Governments to make rules for carrying out the purposes of the said Chapter.

2. Clause 11 of the Bill seeks to insert a new section 32C to provide for the employer to give compensation to a worker in a plantation in case of accident and the Memorandum relating to such compensation shall be registered by the employer with the Commissioner in accordance with the provisions of the Workmen's Compensation Act, 1923. Clause 16 seeks to amend section 43 relating to power to make rules to provide for laying of the rules framed by the State Government, before the State Legislature.

3. The matters in respect of which rules may be made are matters of procedure and administrative details. The delegation of the legislative power is therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE PLANTATIONS LABOUR ACT, 1951

(69 OF 1951)

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2. In this Act, unless the context otherwise requires,—

Definitions.

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(e) "employer", when used in relation to a plantation, means the person who has the ultimate control over the affairs of the plantation, and where the affairs of any plantation are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person shall be deemed to be the employer in relation to that plantation;

³[(ee) "family", when used in relation to a worker, means—

(i) his or her spouse, and

(ii) the legitimate and adopted children of the worker dependent upon him or her, who have not completed their eighteenth year,

and includes, where the worker is a male, his parents dependent upon him;

* * * * *

(k) "worker" means a person employed in a plantation for hire or reward, whether directly or through any agency, to do any work, skilled, unskilled, manual or clerical, but does not include—

(i) a medical officer employed in the plantation;

(ii) any person employed in the plantation (including any member of the medical staff) whose monthly wages exceed rupees seven hundred and fifty;

(iii) any person employed in the plantation primarily in a managerial capacity, notwithstanding that his monthly wages do not exceed rupees seven hundred and fifty; or

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7. (1)

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Certifying surgeons.

(2) The certifying surgeon shall carry out such duties as may be prescribed in connection with—

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(b) the exercise of such medical supervision as may be prescribed where adolescents and children are, or are to be, employed in any work in any plantation which is likely to cause injury to their health.

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10. (1)

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Medical facilities.

(2) If in any plantation medical facilities are not provided and maintained as required by sub-section (1) the chief inspector may cause to be provided and maintained therein such medical facilities, and recover the cost thereof from the defaulting employer.

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CHAPTER V

HOURS AND LIMITATION OF EMPLOYMENT

Weekly hours.	<p>19. (I) Save as otherwise expressly provided in this Act, no adult worker shall be required or allowed to work on any plantation in excess of forty-eight hours a week and no adolescent or child for more than twenty-seven hours a week.</p> <p style="text-align: center;">* * * * *</p>
Night work for women and children.	<p>25. Except with the permission of the State Government, no women or child worker shall be employed in any plantation otherwise than between the hours of 6 A.M. and 7 P.M.:</p> <p> Provided that nothing in this section shall be deemed to apply to midwives and nurses employed as such in any plantation.</p>
Non-adult workers to carry tokens.	<p>26. No child and no adolescent shall be required or allowed to work in any plantation unless—</p> <p style="padding-left: 40px;">(a) a certificate of fitness granted with reference to him under section 27 is in the custody of the employer; and</p> <p style="padding-left: 40px;">(b) such child or adolescent carries with him while he is at work a token giving a reference to such certificate.</p>
Certificate of fitness.	<p>27. (I) A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the employer or any other person on his behalf that such person will be employed in the plantation if certified to be fit for work, or on the application of the employer or any other person on his behalf with reference to any young person intending to work, examine such person and ascertain his fitness for work either as a child or as an adolescent.</p> <p style="text-align: center;">* * * * *</p>

CHAPTER VII

PENALTIES AND PROCEDURE

Obstruction.	<p>33. (I) Whoever obstructs an inspector in the discharge of his duties under this Act or refuses or wilfully neglects to afford the inspector any reasonable facility for making any inspection, examination or inquiry authorised by or under this Act in relation to any plantation, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.</p> <p style="padding-left: 40px;">(2) Whoever wilfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Act, or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by an inspector acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.</p>
Use of false certificate of fitness.	<p>34. Whoever knowingly uses or attempts to use as a certificate of fitness granted to himself under section 27 a certificate granted to another person under that section, or having been granted a certificate of fitness to himself, knowingly allows it to be used, or allows an attempt to use it to be made by another person, shall be punishable with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.</p>
Contravention of provisions regarding employment of labour.	<p>35. Whoever, except as otherwise permitted by or under this Act, contravenes any provision of this Act or of any rules made thereunder, prohibiting, restricting or regulating the employment of persons in a plantation, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.</p>

36. Whoever contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided by or under this Act shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Other offences.

37. If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Enhanced penalty after previous conviction.

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

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39. No court shall take cognizance of any offence under this Act except on complaint made by, or with the previous sanction in writing of, the chief inspector and no Court inferior to that of a presidency magistrate or a magistrate of the second class shall try any offence punishable under this Act.

Cognizance of offences.

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43.(1)*

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General power to make rules.

(3) All rules made under this Act shall, if made by any Government, other than the Central Government, be subject to the previous approval of the Central Government.

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further to amend the Plantations Labour Act, 1951

(Shri Oscar Fernandes, Minister of Labour and Employment)