



# Child Labour and Child Marriage



*Stop! Child Labour and Marriage*

**National Human Rights Commission  
India**



# **Child Labour and Child Marriage**



**TRAINING & RESEARCH DIVISION  
NATIONAL HUMAN RIGHTS COMMISSION  
INDIA**

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Manav Adhikar Bhawan, C-Block  
GPO Complex, INA, New Delhi - 110 023  
Email : [covdnhrc@nic.in](mailto:covdnhrc@nic.in)  
Website : [www.nhrc.nic.in](http://www.nhrc.nic.in)

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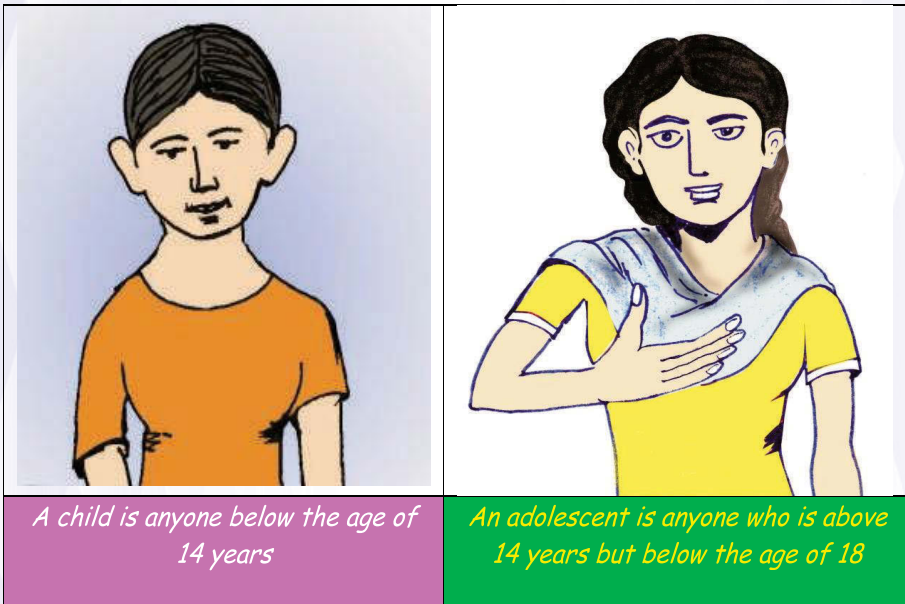
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## CHILD LABOUR

The Child and Adolescent Labour (Prohibition and Regulation) Act of 1986, the CAL Act for short, regulates child labour in India.

It divides persons below the age of 18 into 2 categories:

- *Children.....anyone below the age of 14 years*
- *Adolescent...anyone who is above 14 years but below the age of 18.*



### CHILD AND ADOLESCENT LABOUR LAW WITH REGARD TO CHILDREN

Child labour is prohibited under this law. ***This means that no child can be engaged in any form of employment.***

HOWEVER, there are exceptions.

Children below the age of 14 years **can be employed in these circumstances:**

A child can help his **family or family enterprise** after school hours and during **vacations**.

Under the CAL Act, 'family' means the child's parents and siblings. Also included are the brothers and sisters of the child's parents.

'Family enterprise' means any work or business which is performed by the members of the family with the engagement of other people.



*Raju is 9 years old. He can help his parents with housework at home. But he cannot be sent to work as a domestic help in someone else's house*

*Babloo is 12 years old. His father owns a stationery shop. Babloo attends the nearby government school. The school has a month long vacation for the summer. Babloo spends his holidays playing with some older boys who are known to be trouble makers.*

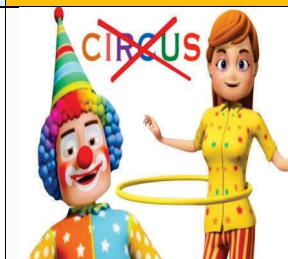
*Babloo's parents decide that Babloo should spend his time helping his father in the shop instead. That way he can learn the business early and, more importantly, stay out of trouble. Babloo agrees especially since his father has also promised that if Babloo works sincerely, he will get the cricket bat he wants so much!*

*This is not child labour because although Babloo is under 14, he is only helping in his father's business, and the work is not dangerous. Also, it is not interfering with his schooling.*

However, **if the work is dangerous or unsuitable then the child cannot work even to help the family or family enterprise.**

Children can work in the entertainment industry (e.g. advertisement, films, TV serials), and in sports, PROVIDED THEY MEET SAFETY STANDARDS

NO CHILD IS ALLOWED TO WORK IN A CIRCUS



13 year old Sarita and 11 year old Malti are sisters. Their father is a street vendor, and mother a domestic help. They are poor and struggle to survive in Mumbai. Their mother's brother is a better off businessman who owns a godown and retail store. As Diwali approaches, he offers his sister's family a chance to make a tidy sum. All they have to do is wrap some firecrackers into parcels which he will then sell to customers as gift items. "The work is easy," he says, "and the girls can also help as they have holidays now. I just need these done quickly."

The girls' parents can legally take the offer, but they cannot put their girls to work. This is because although they do not have school, and the business is indeed run by a relative, firecrackers are dangerous and no child should be allowed to work near them. If Sarita and Malti take up this work, even if they are keen to, it will be child labour.

Children are also allowed to work as artists in the entertainment industry (e.g. advertisements, films, television serials) as well as sports. However, **the work must meet safety standards.**

## NO CHILD IS ALLOWED TO WORK IN A CIRCUS.



*Asha is 8 years old and a promising gymnast. Her coach is so impressed with her skills that he believes she has potential to win at the Olympics. But she must train regularly from this age to be able to have a career in gymnastics.*

*Asha can certainly train to be a gymnast. But it must not be at the cost of her education. Her training and schooling must go hand in hand.*


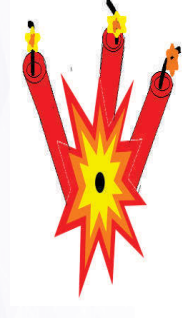
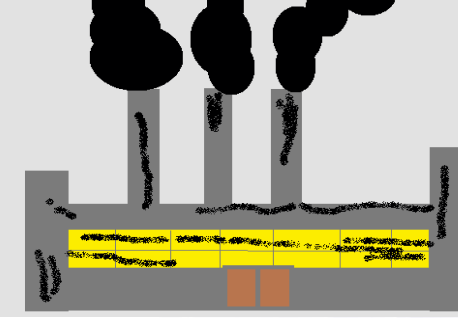
***Under no circumstances should the child's work hamper the child's school education.***

### CHILD AND ADOLESCENT LABOUR LAW WITH REGARD TO ADOLESCENTS

The Child and adolescent Labour Act bans the employment of adolescents in hazardous occupations and processes given in the schedule, e.g., mines, work in beedi-making, inflammable substances and explosives like production/sale of fire crackers, cement Industries, coal industries, fertilizer industries, work in slaughterhouses, salt mines, etc.



*Adolescents (those above 14 but under 18 years of age) cannot be employed in work involving:*

		
<i>Mines</i>	<i>Inflammable substances or explosives</i>	<i>Hazardous processes which are likely to cause injury or harm to a person or pollute the environment</i>

In areas of work not prohibited under the Child Labour Act, adolescents can be employed on certain conditions:

- They should not be made to work at a stretch for more than three hours.
- There should be a break of at least one hour between the periods of work
- The entire period of work, including the break/ interval, should not be more than six hours
- They cannot be made to work between 7 PM and 8 AM
- They cannot be made to work overtime
- Adolescents are not permitted to work in more than one workplace in a single day
- They must be given at least one weekly holiday

Government Inspectors are required ensure compliance of this law.



## DETERMINATION OF THE AGE OF A CHILD

Usually, the age of a child or adolescent is determined by the **birth certificate**. If a child or adolescent does not have a birth certificate, a government doctor can be approached for determining the age.

## PENALTIES

Whoever employs a child or adolescent in violation of the provisions of this act can be punished with imprisonment between a minimum of 6 months and a maximum of 2 years or can be fined between twenty thousand to fifty thousand rupees or with both.

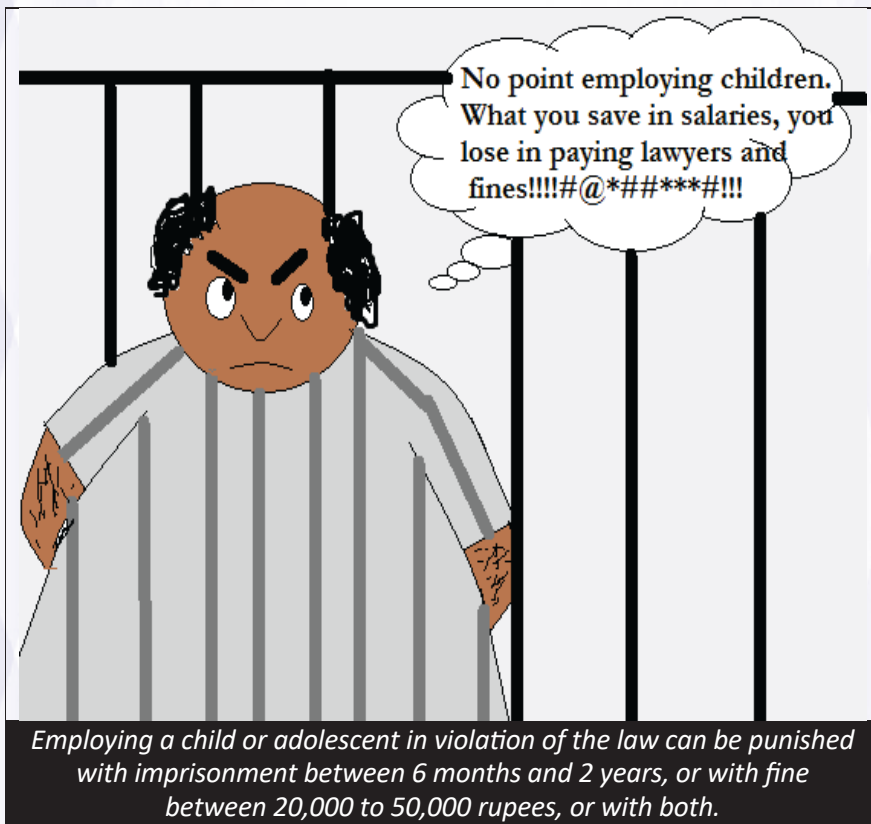
If a person repeats this offence, then they can be punished with imprisonment between a minimum of 1 year and a maximum of 3 years.

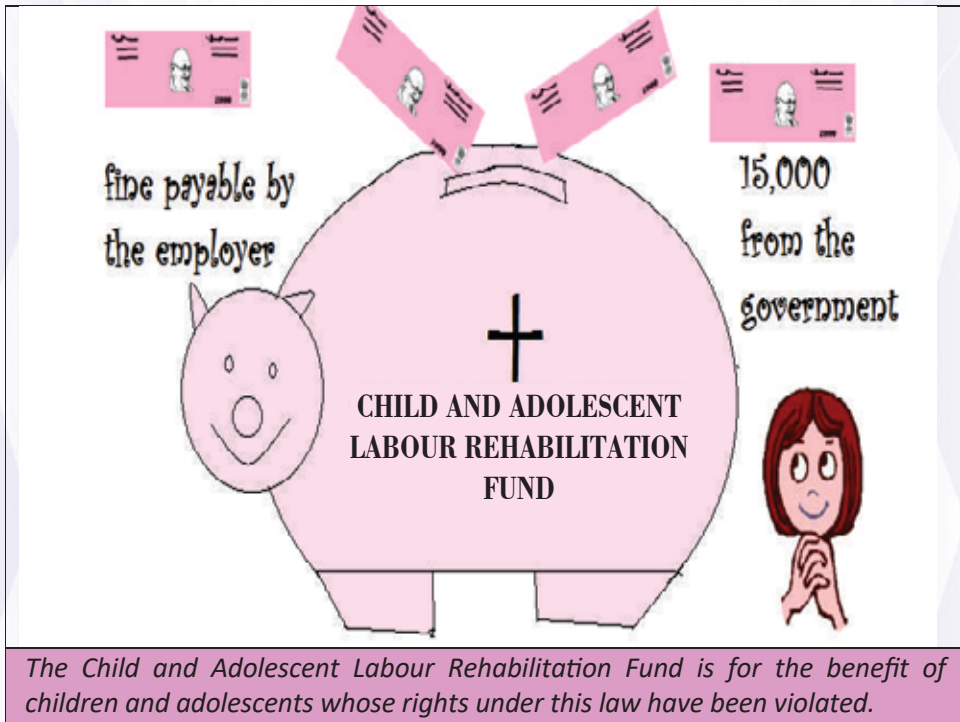
The Act also requires the government to set up a district **level CHILD AND ADOLESCENT LABOUR REHABILITATION FUND**. Fines recovered from violators will be deposited in this Fund in favour of the child or adolescent who was the victim of the offence. The government will add another fifteen

thousand rupees in favour of the said child or adolescent. The Fund amount will be deposited in a bank or invested under the guidance of the government. The Fund amount and any interest gained will be paid to the particular child or adolescent under government guidance.

If the violator is a parent or guardian of the victim, the District Magistrate is empowered to let off the person on payment of fine.

Apart from this financial assistance through the Fund, the victim child or adolescent will also be rescued and rehabilitated.








## FILING A COMPLAINT UNDER THIS LAW

In case of violation of this law complaints can be filed before:

- Labour Inspector
- Court
- Child Welfare Committee under the Juvenile Justice Act
- State/National Commission for the Protection of Child Rights

## CHILD MARRIAGE

The Prohibition of Child Marriage Act (PCMA for short) of 2006 seeks to prohibit child marriage. It defines a child as a **male under the age of 21 years**, and a **female below 18 years**. **A child marriage is a marriage in which either party (the boy, the girl, or both) is a child.**

<i>A child marriage is one in which either:</i>		
		
<i>The groom is under 21 years</i>	<i>The bride is under 18 years of age</i>	<i>The groom is under 21 years and the bride is under 18 years</i>

The PCMA deals with 2 categories of child marriages:

- Those that are **voidable**.....such a marriage **can be made void** only if one or both parties take the steps necessary to have it declared void. Once a marriage is declared void it means that the marriage has no legal effect at all – in fact, the law treats it as if it had never happened.
- Those that are **void**.....such a marriage is **automatically void** and has no legal effect at all – the law treats the marriage as if it had never happened.

## VOIDABLE MARRIAGES

All child marriages are voidable, except those which are already void and therefore do not need to be specifically declared void. This means that if any party to a marriage was a child at the time of marriage, this person can approach a district court to have the marriage declared void. A 'void' marriage is one that is not valid and has no effect in law. ***But this must be done within 2 years of the child becoming an adult.***

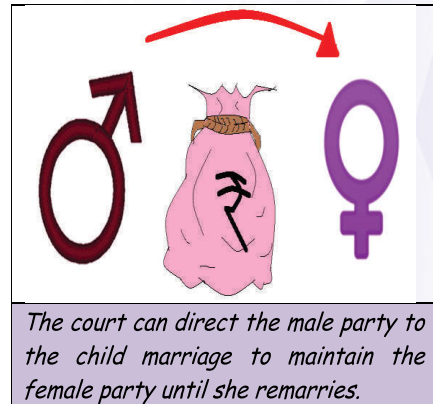


When a child marriage is declared void, the parties must return the gifts and valuables received from the other side.

The court can also direct the *male party* to the child marriage to *maintain the female party until she remarries*. If the male party is a minor, his parents or guardian will be responsible for providing maintenance for the wife.

The amount of maintenance will depend on the needs of the child, the lifestyle enjoyed by the child during the marriage, and the income of the other party. The maintenance could be paid every month, or in lump sum (i.e. in one single payment).

The court can also make directions to provide for the girl's residence till she remarries.



If there are children from the marriage, the court will decide on who will have custody of the child **keeping the best interest of the child in mind**.

***Even if a child marriage is declared void, children born of such a marriage will be considered as legitimate.***

*Atul was born when his mother Shalu was just 16 years old. Shalu and Atul's father Mohan were married when Shalu was 15 and Mohan 19 years. Theirs was therefore a child marriage. Mohan works as a taxi driver to make ends meet. He is often away making inter - state trips. Their neighbour Anand, a 25 year old teacher, is very fond of Atul and often plays with him. Anand also helps Shalu with shopping and other household chores. Soon Shalu and Anand fall in love and want to be together. By now Shalu is 18 and Atul is 2. Shalu has the option of getting her marriage with Mohan declared void by filing a case in the district court.*

***What will become of Atul?***

*Even if the court declared that the marriage is void, Atul will be the legitimate child of Mohan and Shalu.*

*Regarding custody, the court must decide on the basis of the best interest of Atul. Is he better off with his mother and step father?  
Or should he be with his father, whose work requires him to travel a lot.*

*The court orders that the child will be with the mother but will spend one day in a week with his father Mohan.*



*Even if a child marriage is declared void, children born of such a marriage will be considered as legitimate*

*The court will decide on custody of such a child keeping in mind the **best interest of the child***

*Sameera is 16 when she marries Javed, a 27 year old. Under the PCMA, Sameera is a child, not Javed. If Sameera does not want to continue with the marriage, she can file a petition in the district court for declaring the marriage void. But she must do so within 2 years of turning 18 (i.e. before her 20<sup>th</sup> birthday). Javed cannot file a case for annulment as he was not a child when the marriage took place.*

*If the marriage is declared void, Javed can be directed to maintain Sameera till she remarries.*



## VOID MARRIAGES

A child marriage will be automatically void if the child was:

- Forcibly taken away from the guardian
- Taken away from the guardian by deceit or other unfair means
- Forced or tricked into the marriage
- Sold for purpose of marriage
- Sold after the marriage, or trafficked, or used for immoral purpose (e.g. prostitution)

If a child marriage that takes place despite an injunction having been passed by a court to stop the marriage, this child marriage will also be a void marriage.

**Come with me to Delhi. I hate to see my niece rot here like this. In Delhi I will get you a job paying 50,000 rupees per month!**



*Monali is 15 years old. Her aunt promises her a good job in Delhi. Believing her, Monali leaves her home and heads for Delhi. There her aunt sells her off to Hari Lal for 1 lac rupees. Hari Lal takes Monali to his village in Haryana, threatening to kill her if she resists. He marries her in a temple and Monali is forced to stay in his house where she is regularly raped by Hari Lal and his two brothers.*

**THIS CHILD MARRIAGE IS VOID**

## PREVENTING CHILD MARRIAGES

*Child Marriage Prohibition Officers* are appointed by the government to prevent child marriages. They are also required to sensitise people on the issue of child marriage.

If a Child Marriage Prohibition Officer comes to know that a child marriage is about to take place, s/he can get an injunction from the court to **stop such a marriage**. Such a complaint can also be made by:

- any NGO aware that such a marriage is likely to take place
- any individual aware that such a marriage is likely to take place

## PENALTIES

A male above 18 years entering into child marriage can be **imprisoned for 2 years and fined up to 1 lakh rupees**.

All persons involved in arranging or conducting a child marriage (including those who attend it) or fail to prevent it from happening can be punished in the same way.

If a court has passed an injunction to stop a child marriage, then disobeying such an injunction is a punishable offence. Those responsible for **disobeying the injunction can be imprisoned for 2 years and fined up to 1 lakh rupees**.

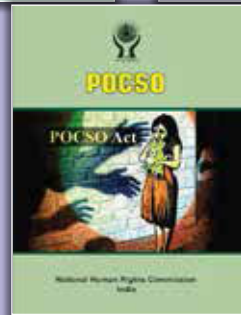
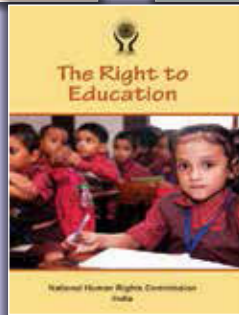
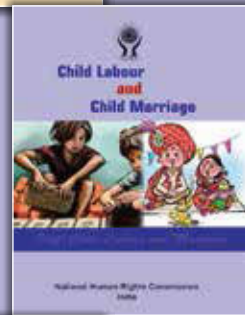
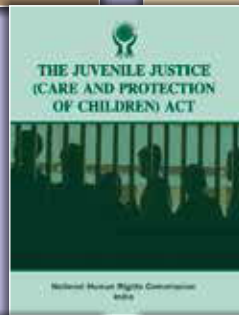
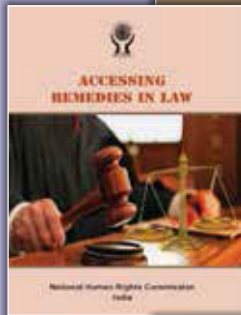
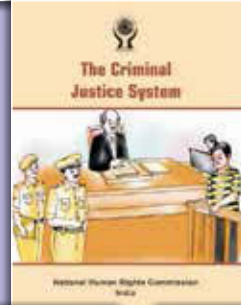
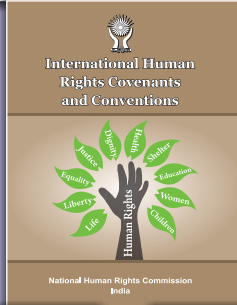
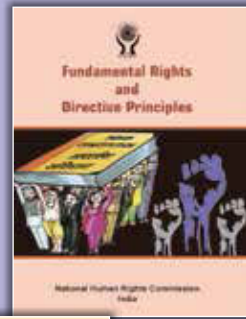
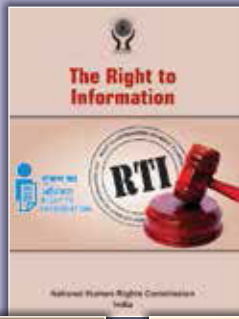
*However, in none of the cases can a woman can be sent to prison under this law.*

The Supreme Court has held<sup>1</sup> that sexual intercourse or sexual acts by a man with his wife who is under 18 years of age **amounts to rape** and is punishable as such. If a child marriage occurs, and the husband has sexual relations with the wife who is under 18 years of age, not only is the marriage voidable (or, in some cases void), **the husband is also liable to be punished for the offence of rape**.

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<sup>1</sup> Independent Thought vs Union Of India on 11 October, 2017





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