

Module 3



CHILD RIGHTS

Centre for Education and Communication (CEC)

CHILD RIGHTS

Centre for Education and Communication (CEC)
173 A, Khirki Village, Malviya Nagar New Delhi 110017
T: 91 11 29541841 / 29541858 **F:** 91 11 29542464
E: cec@cec-india.org **W:** www.cec-india.org

May 2018

Conceived and prepared by:

The Information and Feature Trust (TIFT)

Lakshmi (Kayyadam), Thondayad Calicut – 17.

Content Generation: **Vivek Singh**

Visual Presentation: **Richa Chandra**

This document is part of a project,

'Empowering CSOs for Decent Work and Green Bricks in India's Brick Kilns', in partnership with **Prayas** and **Terre des Hommes (TdH)**, funded by **European Union (EU)**

Who is a Child?



Who is a Child?

A child is defined on the basis of his/her age.

Acts	Definitions
Factory Act 1948	A person who has not completed the age of 14 years
The Apprentices Act (1961)	A child means a person who has not completed the age of 14 years
The Juvenile Justice (Care and Protection of Children) Act 2000	Child means a person who has not completed 18 year of age
The Child and Adolescents Labour (Prohibition and Regulation) Act 1986	Child means a person who has not completed 14 year of age. This Act has introduced another category known as adolescent, which refers to a person between the ages of 14 to 18 years.
United Nations Convention on Rights of Child (UNCRC), 1989	A child means every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier.

What are Child Rights?

बाल श्रम कानूनन अपराध है। बच्चों के विकास के लिये उन्हें सुरक्षित वातावरण मिलने और स्वास्थ्य का अधिकार है। बच्चे को जोखिम भरी स्थितियों में काम करने को मजबूर नहीं किया जा सकता।



What are Child Rights?

According to the UNCRC, Child Rights are minimum entitlements and freedoms that should be provided to all persons below the age of 18 regardless of race, colour, gender, language, religion, opinions, origins, wealth, birth status or ability. UNCRC defines a child as every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Children's rights includes their right to association with both parents, human identity as well as the basic needs for physical protection, food, primary education, health care.

Child Rights?



Child Rights

The following are the basic rights of children laid down by the United Nations under the Convention of Rights of Child:

- Right to live/survival
- Right to be with family (if possible)
- Right to expression, thought and conscience
- Right to information
- Right to education
- Right to special care, (if needed)
- Right to name and nationality
- Right to be protected from cruel punishment& exploitation
- Right to health care and nourishment
- Right to recreation and development
- Right to culture, religion and language

Having agreed to and signed this Convention, India is bound to provide these basic rights to children.

Why are children involved at brick kilns if child labour is unlawful?



Why are children involved at brick kilns if child labour is unlawful?

Firstly, children migrate with their families to the place of work. There are few options for children to stay back at the source locations. Parents cannot financially support them due to the low and intermittent nature of their income.

Secondly, the payment in the brick kiln industry is based on the piece rate system considering workers as a family unit. Children assist their families in making more bricks and earn more money. Owners, contractors and supervisors play a role in getting the children to work along with their families.

Thirdly, children end up working with their parents at the worksite due to lack of schools and crèche facility available in and around worksites.

According to a recent study, about one third of the total workforce at brick kilns are children with around 70 percent of these children being between the age of 6 to 14 years.

What is Child Labour?



बचपन में सिर्फ खेल
और पढ़ाई !!

What is Child Labour?

Child labour can be defined as having children engaged in economic activity, part-time or full time, that is detrimental to their physical, mental, social and moral well-being.

The definition of child labour can be traced from The Worst Forms of Child Labour Convention 1999, ILO Convention 182. It defines it as:

“(a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

“Working in a brick kiln is considered hazardous for children”

Constitutional Provisions for Protection and Welfare of Children in India

Article 21 A of the Constitution of India provides free and compulsory education to all children in the age group 6-14.

Article 23 prohibits human trafficking, forced begging and other similar forms of forced labour.

Article 24 of the Constitution of India says no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

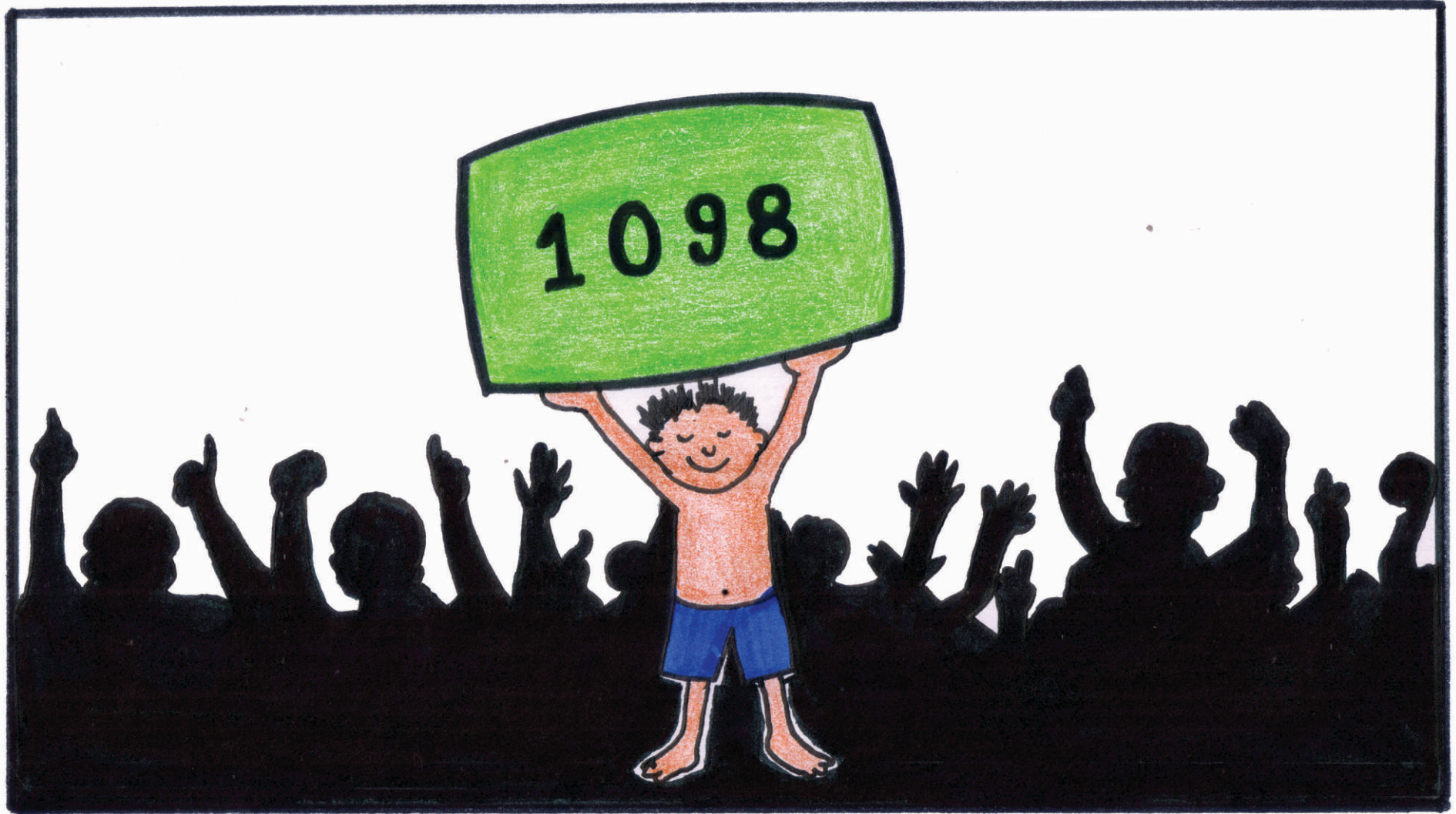
Through a Ministry of Labour and Employment notification in 2017, the Child and Adolescent Labour (Prohibition and Regulation) Act 2017 was amended to include brick kilns under the category of hazardous occupations and processes, in which adolescents are prohibited to work and children are prohibited to help.

Steps which can be taken to protect interest of children

- Inform the police or the child line.
- Ensure that the child line provides counselling and legal services to the child.
- Mobilise community support.
- Know your law.

It is important to know the basic law and understand the rights they protect. Only if you understand rights and legal protection available will you be able to convince a child or her/his parent(s)/guardian(s) or the community for legal action. Sometimes the police/administration can also turn out to be difficult. Knowing your law can empower you to deal with them better.

What is CHILDLINE?



What is CHILDLINE?

CHILDLINE 1098 is the country's first toll-free tale-helpline for children in distress.

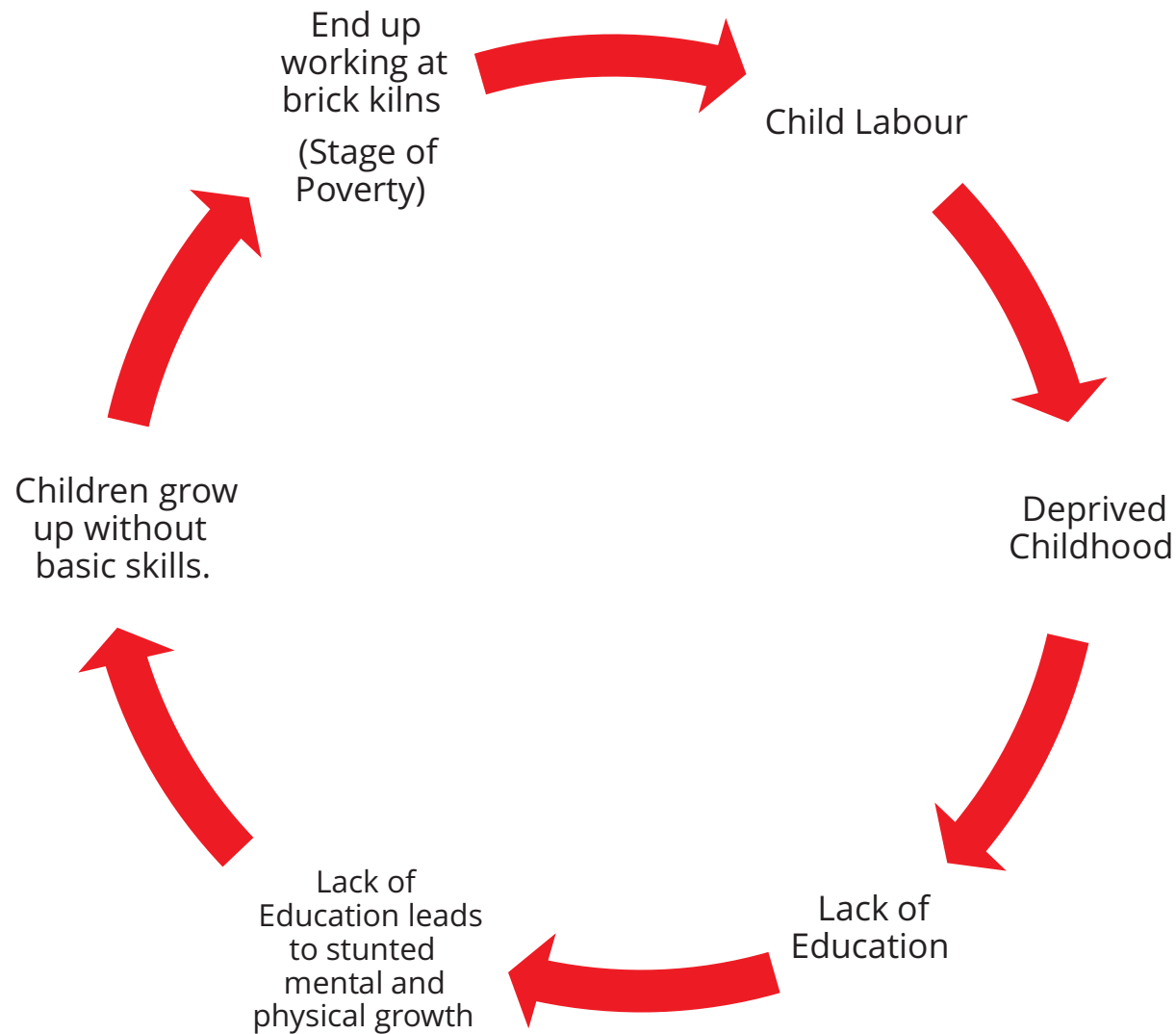
CHILDLINE is a national, 24 hour, free, emergency phone and outreach service for children in need of care and protection, linking them to long term rehabilitation.

CHILDLINE is a platform bringing together the Ministry of Women & Child Development, Government of India, Department of Telecommunications, street and community youth, non-profit organisations, academic institutions, the corporate sector and concerned individuals.

They work for the protection of the rights of all children. But the special focus is on children in need of care and protection, especially the more vulnerable sections which include child labourers working in unorganised sector such as brick kilns.

Workers can call 1098 from their mobiles or landlines (without any cost) and in any language. The helpline will attend to their issues and provide the assistance needed.

Implications of Child Labour at Brick Kilns



Impact of Hazardous Employment on Children

Children who live and work at such places have faced exclusion and discrimination in terms of kind of work, wages and education, thus limiting their future opportunities.

They encounter discrimination and exclusion, including language- based discrimination.

Children encounter exclusion and discrimination from school administrators as well as other students due to caste, class and because they are migrants.

The percentage of child workers in the brick kilns would register a high percentage if all the children who work with their parents are included and are not registered as workers. For example among the moulders the contribution of child labour is the highest. Often the true numbers of children working is hidden by not including them in the muster rolls or perhaps by increasing their age on record.

Implications - Exclusions and Discriminations

Impact - Physical Consequences

Long and strenuous hours of activity:

Affects a child's physical health & strength, impair vision and hearing. |
Hampers the physical development of the child.

Can Cause bronchial, musculoskeletal problems, cancer etc.

Cause permanent disabilities due to exposure to dangerous materials or substances.

Impact - Cognitive, Psychological and Social Consequences

Decreased school attendance or dropout rates lead to lesser education and
skill development

Leads to isolation, depression and/or mental disorder

Children in hazardous occupations can be used for anti-social practices

Deprives them of their childhood and freedom

Laws that offer Protection and Support to Children



Laws that offer Protection and Support to Children

Know your law

Only if you understand rights and legal protection available will you be able to convince a child or her/his parent(s)/guardian(s) or the community for legal action. Sometimes the police/administration can also turn out to be difficult. Knowing your law can empower you to deal with them better

Juvenile Justice (Care and Protection of Children) Act, 2000 and Amendment, 2015

The Juvenile Justice (Care and Protection of Children) Act 2015 prohibits bondage of children under 18, which is a normal practice in the brick kilns.

As provided in the preamble of the Act these provisions are for “child in need of care and protection”, who are either homeless or without any permanent place, living without any means of subsistence, who may be involved in begging or involved in child labour, such children who may be missing or who do not have parents.

Laws that offer Protection and Support to Children

Under the Act exploitation of juvenile or child employee, which includes making a child work in a hazardous employment or withholding wages of the child, is an offence with punishment upto three years in prison as well as fine.

Remedy available under Juvenile Justice Act

If the child is unaccompanied and in need of care and protection, then s/he be produced before the Child Welfare Committee (Section 32). On the other hand the Committee shall have the powers to restore any child in need of care and protection to his/her parent, guardian, fit person or fit institution, as the case may be (Section 39(3)).

State governments are required to establish a CWC or two in every district. A child can be brought before the committee (or a member of the committee if necessary) by a police officer, any public servant, CHILDLINE personnel, any social worker or public spirited citizen, or by the child himself/herself.

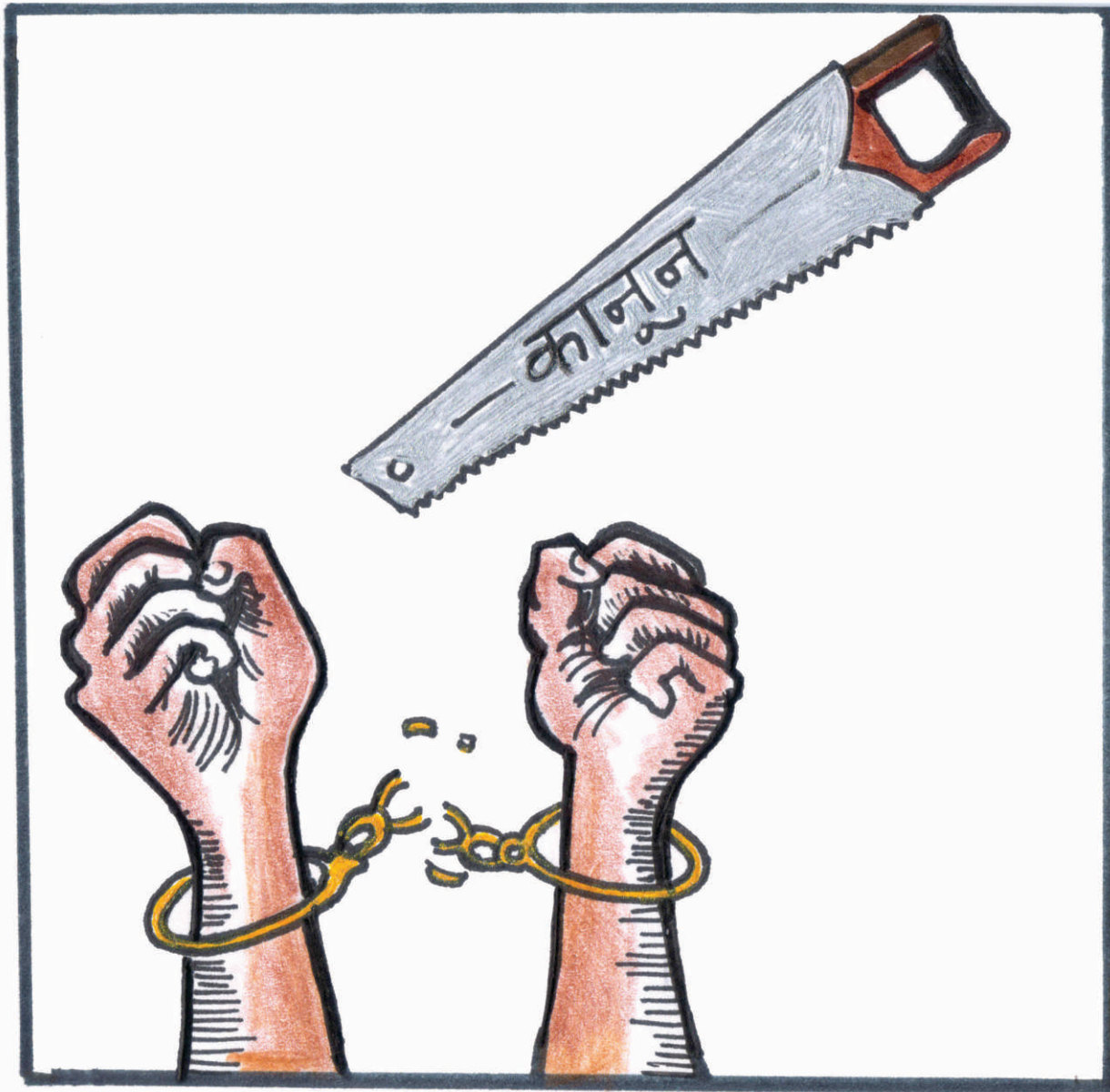
The Committee shall take the help of the local police in rescuing such children.

Laws that offer Protection and Support to Children

Steps to be taken by Child Welfare Committee

1. A rescued child has to be brought before the CWC, which takes suitable action for rehabilitation of the child.
2. The rescued child is taken to safe custody and not remanded.
3. Child can be sent to either: Children's home or a Children's Institution or Shelter Homes or a Place of safety.
4. CWC then assesses the case and counsels the child.
5. Final order is provided within 4 months by CWC, which may include sending him/her back to his parents, putting the child in a Shelter Home, putting a child for adoption or even sending him to foster home for long term.

Rights under Bonded Labour System (Abolition) Act, 1976



Rights under Bonded Labour System (Abolition) Act, 1976

Bonded Labour System (Abolition) Act, 1976

The Act specifies that all migrant workers fall under the BLSA Act, as most of the time they receive advance payment, enter into an arrangement, are forced to provide labour and paid less than prescribed wages.

The Act states that any instrument, tradition/custom or agreement, because of which a person is required to do any work as a bonded labourer, will be deemed void and inoperative.

Offences under this Act are cognizable and bailable.

The Act is a Central Act, but the responsibility to implement the provisions of the Act lies with the different state governments.

The responsibility of identifying bonded labourers lies with the District Magistrate, who heads the Vigilance Committee constituted under the Act.

The National Human Rights Commission (NHRC) is mandated to oversee the implementation of the Bonded Labour System (Abolition) Act.

Rights under Bonded Labour System (Abolition) Act, 1976

Remedy Available under Bonded Labour System (Abolition) Act, 1976

The bonded labour is to be immediately released from the bondage. His liability to repay bonded debt is deemed to have been extinguished.

Freed bonded labour shall not be evicted from his homestead or other residential premises, which he was occupying as part of consideration for the bonded labour.

Rehabilitation grants will be given as follows:

One lakh per adult male beneficiary;

Rs. 2 lakh for special category beneficiaries such as children including orphans or those rescued from organized & forced begging rings or other forms of forced child labour;

Rs. 3 lakh in cases of bonded or forced labour involving extreme cases of deprivation or marginalization such as trans-genders, or women or children rescued from ostensible sexual exploitation such as brothels, massage

Rights under Bonded Labour System (Abolition) Act, 1976

parlours, placement agencies etc., or trafficking, or in cases of differently abled persons, or in situations where the District Magistrate deems fit and assistance for his/her rehabilitation provided.

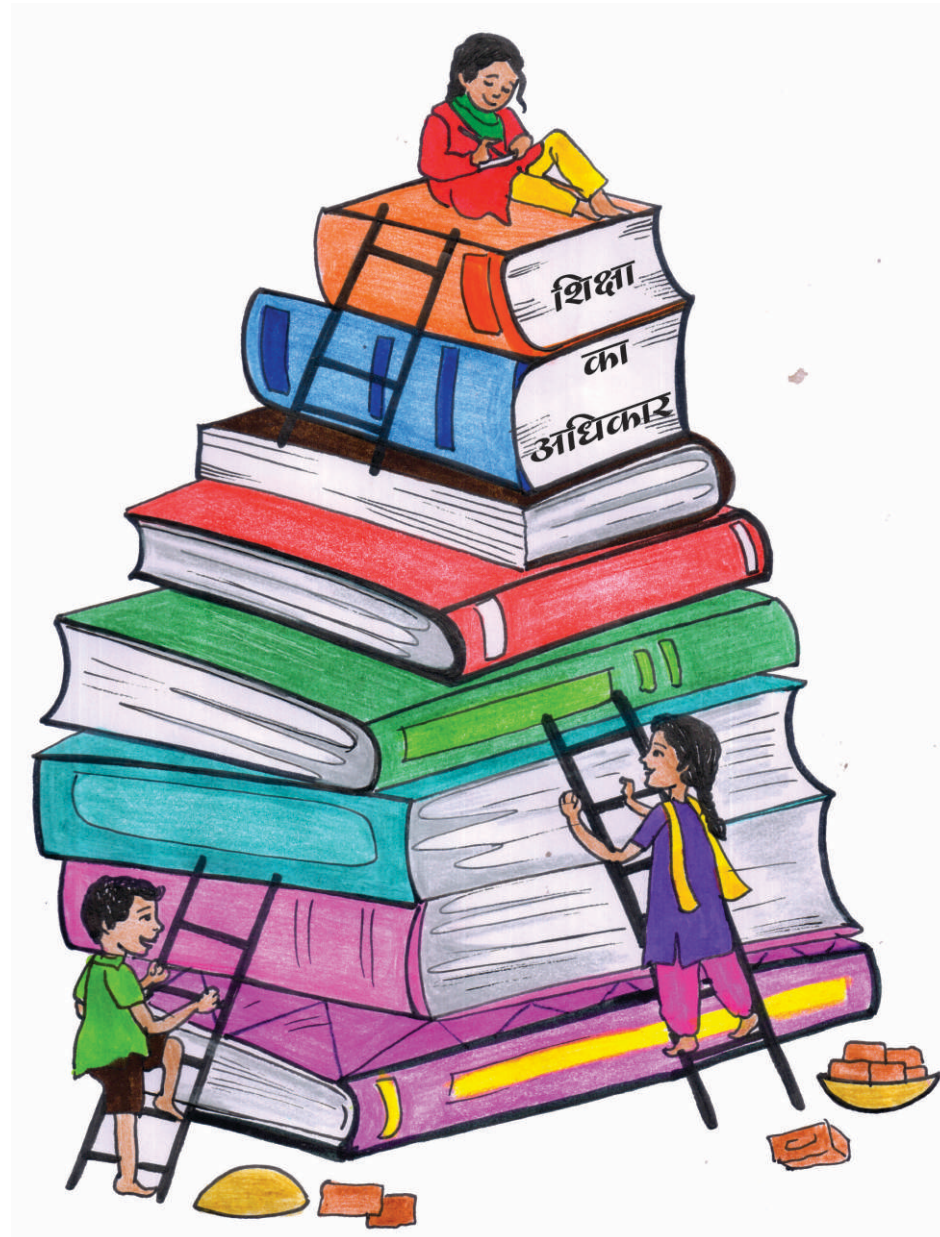
Child Labour and BLSAA, 1976

Under the Rehabilitation of Bonded Labour Scheme-2016 special care is made available by the State for addressing the needs of the disabled persons, female freed bonded labourers and bonded child labour. This includes providing safe and secure environment for the capacity building of child bonded labour, facilities for ensuring their proper education, short stay home till education upto class 12th, skill development, marriage assistance etc.

The benefits prescribed above shall be, in addition to, other cash or non-cash benefits which a beneficiary under this scheme is entitled to, by or under any other scheme.

For cases of child labour being part of bonded labour, help can be taken from police officials or call can be made to CHILDLINE at 1098.

The Right to Free and Compulsory Education Act, 2009



The Right to Free and Compulsory Education Act, 2009

The Right to Free and Compulsory Education Act, 2009

Government must provide free education to children between the ages of 6 to 14 and ensure admission, attendance and completion of education for all children between the ages of 6 to 14.

Under Section 10, it is the duty of every parent and guardian to admit their children aged between 6 and 14 in a neighbourhood school for pursuing elementary education.

Section 8 defines 'compulsory education' to mean the duty of the government to ensure and monitor admission, attendance and completion of elementary education by every child.

There is no direct (school fees) or indirect cost (uniforms, textbooks, mid-day meals, transportation) to be borne by the child or the parents to obtain elementary education.

The National Commission for the Protection of Child Rights shall review the safeguards for rights provided under this Act, investigate complaints and have the powers of a civil court in trying cases.

The Right to Free and Compulsory Education Act, 2009



The Right to Free and Compulsory Education Act, 2009

Remedies Available under RTE Act, 2009

Children, who have never been to school or have dropped out, can get back to school. They will get admission in a class suitable to their age.

Children, who are poor or underprivileged in some way, can get free education till class 8 in a private school.

Children must be given admission in a school even if they don't have documents like transfer certificate and age proof.

Children cannot be forced to give tests for getting admission in a school.

Children cannot be asked to leave school or be forced to repeat a class, till they complete class 8.

All the States are required to have a State Commission for the Protection of Child Rights (SCPCR) or the Right to Education Protection Authority (REPA) for ensuring the implementation of the Act. Any person wishing to file a grievance must submit a written complaint to the local authority.

The Right to Free and Compulsory Education Act, 2009

Appeals will be decided by the SCPCR/REPA . Prosecution of offences requires the sanction of an officer authorised by the appropriate government.

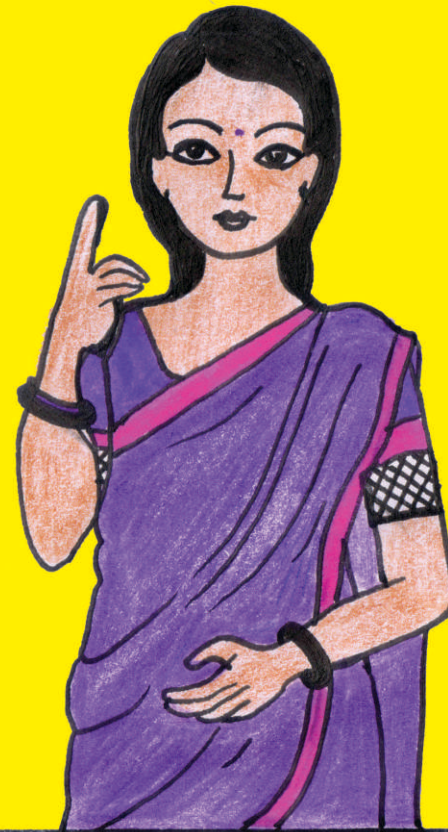
The RTE Act, 2009- Challenges

The Act does not speak about how the government or the local bodies are going to ensure attendance of children whose parents keep moving from one place to another very frequently in view of their vocation.

Significant discrimination is faced by children mainly belonging to minority groups or because they are inter-state migrants.

The RTE Act places a duty on the appropriate Government and the local authority to “ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds”

Authorities which offer protection and cater to interests of children



Authorities which offer protection and cater to interests of children

National Commission for Protection of Child Rights (NCPCR)

Setup in March 2007, under the Commissions for Protection of Child Rights Act, 2005.

The aim is to monitor all laws, policies, programmes and administrative mechanisms in the country to ensure that children's rights as enshrined in the Constitution of India and also in the United Nations Convention on the Rights of the Child (UNCRC) are protected.

The NCPCR is required to take suo moto cognisance of serious cases of violation of child rights (including but not limited to cases of child abuse and sexual offences against children, child trafficking and child labour) and to examine factors that inhibit the enjoyment of rights of children.

The NCPCR has been designated as the monitoring agency under the Right to Education (RTE) Act and the Protection of Children from Sexual offences (POCSO) Act.

Authorities which offer protection and cater to interests of children

The NCPCR - Other Mandates

Look into matters relating to children in need of special care and protection, including, children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures.

Spread child rights literacy among various sections of society and promote awareness of the safeguards available for protection of these rights through publications, media, seminars and other available means.

In the context of brick kilns, the mandate of NCPCR includes surveying and inspection of crèche facilities and schools set up by the authorities in and around brick kiln sites

Authorities which offer protection and cater to interests of children

The NCPCR - Functioning

1. Complaints may be made to the Commission in any language listed in the 8th Schedule of the Constitution.
2. No fee shall be chargeable on such complaints.
3. The complaint shall disclose a complete picture of the matter leading to the complaint.
4. The Commission may seek further information/affidavit as may be considered necessary.
5. The Commission inquires into complaints and takes suo moto notice of matters related to:
 - I. Deprivation and violation of child rights.
 - ii. Non-implementation of laws providing for protection and development of children.

Authorities which offer protection and cater to interests of children

- iii. Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children, or take up the issues arising out of such matters with appropriate authorities

Child Welfare Committees

Established under the Juvenile Justice (Care and Protection of Children) Act, 2000 and Amendment, 2006.

Caters to the rehabilitation and restoration of children who are in need of care and protection.

The Committee has the powers to restore any child in need of care and protection to his/her parent, guardian, fit person or fit institution, as the case may be.

Authorities which offer protection and cater to interests of children

Juvenile Justice Board

Also established under Juvenile Justice (Care and Protection of Children) Act, 2000 and Amendment, 2006.

The purpose of a separate court is to ensure social rehabilitation and reformation of the juvenile and not for punishment.

The JJB consists of a metropolitan magistrate or a judicial magistrate of the first class and two social workers, at least one of whom should be a woman.

The police have 24 hours to produce a child before the court once he is arrested. JJB are meant to resolve cases within a four month period.

Authorities which offer protection and cater to interests of children

Other Authorities

Complaints with regards to child labour and other issues can be filed at the nearest police station,

labour commissioner of the state,

assistant labour commissioner,

regional officers,

labour enforcement officers or

with CHILDLINE.

Policies and Programmes for Children



Policies and Programmes for Children

Survival and Early Childhood Care and Education (ECCE) :

The Government of India approved the National Early Childhood Care and Education (ECCE) Policy in 2013.

The Policy caters to all children under 6 years of age and commits to their psychosocial development and universal access to quality early childhood education.

The Ministry of Women and Child Development (MWCD) is the nodal department for ECCE.

MWCD is responsible for the Integrated Child Development Services (ICDS) programme, which is a centrally sponsored and state administered ECCE programme, covering around 38 million children through a network of almost 1.4 million anganwadi centres.

ICDS includes delivery of an integrated package of services such as supplementary nutrition, immunization, health check-up, preschool education, referral services and nutrition & health education.

Policies and Programmes for Children

ECCE and Brick Kilns

ICDS and MWCD issued a circular in 2011 to extend ICDS services to children of migrant workers and temporary residents by setting up mini-anganwadis even at the dispersed habitat of migrant workers.

The Department of Health and Women & Child Welfare is responsible for setting up and running anganwadi centers under the ICDS project. The concerned personnel in charge of overseeing such set ups is the Child Development Project Officer. Workers can visit the local anganwadi centers in order to register for availing benefits under the scheme.

Integrated Child Protection Services (ICPS):

The programme provides statutory care and rehabilitation services to children belonging to vulnerable families such as migrant families working in brick kilns, families living in extreme poverty, socially disadvantaged families, families subjected to or affected by discrimination, minorities, child beggars,

Policies and Programmes for Children

trafficked or sexually exploited children, children of prisoners and street and working children.

The aim is to institutionalise existing essential services and strengthen structures and ensure appropriate inter-sectoral response at all levels.

The local level authorities involved in the functioning and implementation of ICPS include: a. District Level (District Child Protection Unit | Child Welfare Committee, Juvenile Justice Board, Special Juvenile Police Unit, Sponsorship Foster Care Approval Committee, District Inspection Committee) b. Sub-District Level (CHILDLINE services)

The Sarva Shishka Abhiyan (SSA):

Providing universal access to elementary education is the foremost objective under SSA.

In recognition of the right of every child to access schooling facilities within his/her neighborhood one of the key interventions of SSA is to extend coverage

Policies and Programmes for Children

to unserved and underserved locations by providing a primary school within 1 km of the habitation and an upper primary school within 3 kms of the habitation.

Enrolment drives are regularly undertaken by the government with the assistance of local Civil Society Organisations.

Setting up of mobile schools, induction of language tutors, special drive to admit children to schools and mobilisation programmes to create awareness about education as an entitlement are some of the provisions provided under the scheme.

The SSA and Children in Brick Kilns

There are provisions of free school textbooks to girls & boys of the disadvantaged urban children, special schools like mobile schools, back to school camp, short term schools at the construction sites and facilities for girls, like residential schools, shelter home and toilets.

Policies and Programmes for Children

Out-of-School children are entitled to;

Seasonal hostels/residential camps to retain children in the sending areas during the period of migration;

Worksite schools at the location where migrant families are engaged; and

Bridge courses/remedial courses with a focus on mainstreaming out of school children.

Points to Remember

Child Labour

A child is defined as any human being below the age of 18 years, unless specifically otherwise provided by law.

Children's rights include their right to association with both parents, human identity as well as the basic needs for physical protection, food, primary education, health care.

Children are the worst affected by the poor living and working conditions at brick kilns sites.

Child labour has long-term physical and psychological harmful impact.

The law categorically stops and disallows working of children or adolescents to work at brick kilns which is considered a hazardous occupation.

Steps which can be taken to protect the interest of children

Inform the police or the child line. Ensure that the CHILD LINE provides counselling and legal services to the child.

Points to Remember

Mobilise community support. Know your law.

Under the law, the rights of children are protected by Juvenile Justice (Care and Protection of Children) Act, Right to Education Act, Child Labour (Prohibition and Abolition).

NCPCR is the foremost organisation, which caters to the needs and interest of children, while also ensuring that the aforementioned laws are being implemented in a correct manner.

Policies and programmes such as SSA, ECCE and ICDS have all been enacted to ensure the needs and interests of children are looked after.

By



In partnership with



**Funded By the
European Union**