

## THE 1<sup>ST</sup> YOUTH VIBE NATIONAL MOOT COURT COMPETITION, 2016

1. Islandia is a quasi-federal democratic republic country. The country gained freedom in 1957 after a long drawn struggle against a European nation which ruled the country for almost two hundred years.
2. As country had been a colony to the European nation for almost 200 years, the legacy of the same has been continued in the Islandia. The legacy of the Europeans can be witnessed in almost all sectors viz., education, infrastructure, industrial, social, economical and political.
3. The constitution of the Islandia was drafted in 1959 by the constituent assembly, which was constituted by the European nation under Government of Islandia Act, of 1955. Constitution of Islandia declares, Islandia as a sovereign, socialistic democratic & republic. In order to address the changing need of society the constitution of Islandia has been amended by the 30<sup>th</sup> constitutional amendment and words of secular & socialist were added. The Islandian Constitution is acknowledged worldwide for the fundamental rights guaranteed to its citizens.
4. The 2011 census of Islandia revealed an absolute increase of 181 million in the country's population during the decade 2001-2011, there was a reduction of 5.05 millions in the population of children aged 0-6 years during this period. The sex wise decline in children was 2.06 million males and 2.99 million females.
5. Islandia is home to 4.2 million child labourers according to National Sample Survey Organisation. According to the Census 2011, 11 million children were engaged in labour or seeking work. Out of 168 million child labourers in the world as depicted in the report of International Labour Organisation (ILO), Islandia alone accounts for 26 million.
6. The acceptance of the problem of child labour in the Islandian society is a 'necessary evil'. It not only implies a collective conscience that decriminalizes the act but also forms one of the main barriers to access to education for children in Islandia. Traditionally in Islandia, formal education has been a privilege that strongly adhered to caste and class, with the upper castes and classes monopolising access to education.

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7. In line with changing international and national discourse on human and child rights, education and child protection, Islandia amended its legal and policy framework to ensure access to education and protection for all children.
8. Balak Bachao Samiti (BBS), an unregistered non-governmental organization which symbolizes Islandia's largest grassroot movement for the protection of children, ensuring their quality education. As on October 2015, BBS has rescued more than 1,99,99920 victims of trafficking, slavery and child labour and has helped them re-establish trust in society also to find promising future for themselves.
9. This society has been established by the Nobel Laureate and the notable Islandian activist, Mr. Macoca. Since its establishment in 1980, BBS has led the world's largest civil society campaign (in the form of march) for abolition of child labour and has been at the forefront of laying down laws against child labour and trafficking in Islandia. The vision of BBS is to create a child friendly society, where all children are free from exploitation and receive free and quality education. In order to achieve the above said vision, the mission of BBS is to identify, liberate, rehabilitate and educate children in servitude, through direct intervention, child and community participation, coalition building, consumer action, promoting ethical trade practices and mass mobilisation.
10. The 2011 Islandian Census found an increase in the number of child labourers from 11.28 million in 2001 to 12.66 million in 2011. The major occupations engaging child labour are Pan, Bidi & Cigarettes (21%), Construction (17%), Domestic workers (15%) and Spinning & weaving (11%). As per census 2011, Unch Pradesh (15.22%) recorded the highest share of child labour in the country, followed by Kandra Pradesh (10.76%), Prajasthan (9.97%), Bilar (8.82%), Dhanya Pradesh (8.41%), and Behal (6.77%).
11. The census report of 2011 on issue of Child Labour left the Islandian Government (hereinafter referred as "the Government") in a state of utter shock. Despite various measures that had been taken by the previous governments as well as framing of National policy of Children concerning

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the needs and rights of children, National Policy on Education which mandates the compulsory education for children of age group of 0-14 years and The National Policy on Child Labour, 1987 of Islandia that contained the action plan for tackling the problem of child labour, no fruitful result has been achieved.

12. In addition to this Islandian Parliament had passed Child Labour (Prohibition and Regulation) Act, 1986 with an object to prohibit the engagement of children in certain employments and to regulate the working conditions of children in certain other employments. Time and again the adequacy of all these measures has been questioned by various activist, social groups and organizations.
13. The Islandian Prime Minister while participating in the protocol meeting of United Nations Convention on Rights of the Child (UNCRC) 1989 faced embarrassment at international level when 2011 census report was presented and efforts of Islandian Government were widely criticised.
14. As soon as the Prime Minister of Islandia returned, he constituted a high level committee to assess the problem of child labour and its implications on dream project of Make in Islandia, Skill Islandia and Smart Islandia. High Level committee closely audited the census report and in its findings suggested to bring about a change in the existing law to mitigate the possibility of child labour in the country.
15. As a result, the parliament of Islandia passed THE CHILD LABOUR (PROHIBITION AND REGULATION) AMENDMENT ACT, 2016 (hereinafter called as the amendment Act). The Amendment Act has been passed with the basic object to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto. The Amended Child Labour Act completely prohibits the employment of children up to the age of 14 years but allows them to work in family enterprises and farms after school hours and during holidays. Children working as artists in the audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities, except the circus, have also been granted exemption, provided the work does not affect their school education.

16. This amendment prohibits the child labour but has carved out an exception. The Constitution of Islandia and Child Labour legislations are *pari materia* to the Indian Constitution and Child Labour laws.
17. Mr. Macoca, Child Right Activist has approached the Supreme Court of Islandia by way of Public Interest Litigation condemning the adequacy of existing policy, legislations and efforts of the Government of Islandia for the abolishment of Child Labour in Islandia. He further challenged the constitutional validity of the newly inserted section 3, 3A of the Amendment Act which provides as follows:

**3. Prohibition of employment of children in any occupation and process:**

“3. (1) No child shall be employed or permitted to work in any occupation or process.

(2) Nothing in sub-section (1) shall apply where the child,—

(a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;

(b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed: Provided that no such work under this clause shall affect the school education of the child.

Explanation.—For the purposes of this section, the expression,

(a) “family” in relation to a child, means his mother, father, brother, sister and father’s sister and brother and mother’s sister and brother;

(b) “family enterprise” means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;

(c) “artist” means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2).”

**3A. Prohibition of employment of adolescents in certain hazardous occupations and processes:**

“3A. No adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule:

Provided that the Central Government may, by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under this Act.”

‘THE SCHEDULE

(See section 3A)

(1) Mines. (2) Inflammable substances or explosives. (3) Hazardous process.

Explanation.—For the purposes of this Schedule, “hazardous process” has the meaning assigned to it in clause (cb) of the Factories Act, 1948.’

16. According to Mr. Macoca the flaw in this legislation is the exception which have been carved out under section 3 (2) of the Amendment Act, 2016. According to him distinction is misleading, contradicts the object of the Child Labour Amendment Act, 2016 and also violates the Art 14 and 21 of Islandian Constitution. According to him the amendment which is based on the premise that education and work for children can go hand in hand itself violate article 14 and 21 of the Islandian Constitution as it defeats the very purpose of protecting children from exploitation. He also questions the legislative decision making while limiting the hazardous activities to three as specified in the annexed schedule.

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17. Government of Islandia who was appearing in the court on advance notice stated that PIL should not be entertained, as adequacy or inadequacy of legislation is not subject matter of Judicial Review and section 3 and section 3A of the amendment Act are constitutionally valid.

18. The Supreme Court of Islandia has found merits in the case and asked the government to substantiate the objections and respond to the issues raised by the petitioner.

