

Progressive Action Against Child Labour In India

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Child Labour conjures up a particular image : Children, chained to looms in dark mills and sweat shops, in a long and nightmarish running from Lanchashire of the 1830s right to the South Asia of the 1990s. In reality, children do a variety of works in widely divergent conditions, which take place along a continuum. At one end of the continuum, work is beneficial, promoting or enhancing a child's physical, mental, spiritual, moral and various other ways of development without interfering with schooling, recreation and rest and at the other end it is palpably destructive or exploitative. Increasing industrialization and mechanization of agriculture lead to the destruction of the family based economy and the displacement of a large number of labourers in India during the mid- 18th and 19th century. Extreme poverty led to the entry of children into the labour market and their exploitation became common. In India, children were employed in cotton and jute mills and coal mines. Gradually, legal measures were introduced to tackle the problem and the new state wedded to the notion of social welfare assumed the responsibility of protecting the children.

Action Taken Before Independence

The Indian Government adopted constitutional, statutory and developmental measures to deal with the problem of Child labour. The origin of statutory protection of the Child Worker in India can be traced back to the Indian Factories Act, 1881, which prohibited the employment of children under seven years of age and also in two separate factories on the same

day. It limited the working hours of children to nine hours a day and stipulated at least four holidays to be given in a month. However this act concerned only factories employing hundred persons or more. This act was revised in the form of Indian Factories Act, 1891, which increased the minimum age limit to nine years and hours of work were reduced to seven hours for children between 7 and 14 years and prohibited work at night between 8 p.m. 5 a.m. In 1901 the Mines Act was passed which prohibited the employment of children under 12 years of age and employment dangerous to children's health and safety. In 1911 a new factories act was passed which further reduced the working hours.

In the period between 1920 and 1930 some more progress were made in protecting children. The formation of international Labour Organization in 1919 and the establishment of All India Trade Union Congress 1920 gave an impetus to reform laws relating to the condition of labour in general and Child Labour in particular. In the Factories Act 1922 the scope of factory was extended to cover any premise where 20 or more persons were employed and mechanized power was used and local governments which empowered to extend provisions to any premise where 10 or more persons were employed. It defined the child as a person who had not completed 15 years of age, reduced the working hours for children to six and necessitated the granting of half an hour interval for more than five and half hours of work. Children

were required by this act to have medical certificate along with a certificate of re-examination for continuing work. The Indian Mines Act 1923 raised the minimum age for employment from 12 to 13 years in mines. The Indian ports (Amendment) Act 1931 prescribed the age for employment of children in handling the goods as 12 years.

In the period between 1931 and 1949 more concrete efforts were made to deal with Child Labour. The stage was set with the publication of the report of the Royal Commission for labour, which recommended extensive reforms. The Tea Districts Emigrant Labour Act 1932 was passed to check the migration of labour to the tea cultivation districts. In 1933, the Children (pledging of Labour) Act was passed which prohibited the pledging of a child for the purpose of getting certain work done. The Factories Act of 1934 evolved elaborate provisions regularizing employment in respect of various age groups working in factories.

The ILO in 1937 adopted a convention fixing the minimum age where children were to be employed in certain occupations. The employment of Children Act 1938 was passed to implement this convention. It prohibited the employment of children under 15 in hazardous occupations like railways and ports. It also dealt with employment in industrial establishments not covered by the Factories Act. Though, the 1938 Act banned Child Labour in hazardous industries, it made an exception in favour of family labour.

The main purpose of the elimination of the evil of Child Labour could not be achieved in the preindependence era, one of the main reasons being as pointed out by a labour investigating committee being the inadequacy of the inspecting staff to enforce the provisions of law.

Post Independence Phase

The factories Act 1948 prohibited the employment of children by setting the limit of the

completion of fourteen year as the minimum age for working in any factory. The minimum Wages Act passed in 1948 defined child as a person who has not completed his 15th Year. However, this definition did not have any particular significance since the Act did not contain any important regulatory or prohibitory provision applicable only to Child Labour except that it provides for fixing or revising minimum rates of wages for adults, adolescents, children and apprentices. The Plantation Labour Act, 1951 prohibited children below 12 years from working in any plantation. The Shipping Act 1951 prohibited a person under 15 years of age from working in any capacity in any ship. The Mines Act 1952 prohibited the employment of children under 15 in mines. In 1954, the Factories Act was again amended to prohibit the employment of adolescents under the age of 17 years at night. In 1961, the Motor Transport Workers Act was passed to prohibit the employment of adolescents under the age of 15 in motor transport. In 1966, the Beedi and Cigar workers (Conditions of Employment) Act was passed which prohibited the employment of children under 14 in any industrial premise manufacturing beedies or cigars.

In 1978, the Employment of Children act 1938 was further amended so as to extend the prohibition of employment of a child below 15 years in railway premises such as cinder-picking or clearing of an ash-pit or building operation in catering establishments at a railway station or in occupations relating to construction of a railway station or any other work done in close proximity to or between the railway lines. These occupations were not covered before 1978.

Committees, Commissions and Boards

In 1968, a National Commission on Labour Welfare was instituted which observed that Child Labour was an economic problem and its practice amounted to a denial or opportunity to children for their proper physical development and education and recommended combination of

work with education and flexible employment hours which would not inhibit education.

A National Children's Board was established in 1975, with the Prime Minister as its President to create greater public awareness towards the need of children and to plan and review periodically the progress made in protecting and promoting the welfare of children, including working children. In 1976, the Government set up a one man commission headed by Harbans Singh which was of the view that banning Child Labour would not necessarily result in the stoppage of work by children altogether. The report suggests that working hours should be reduced, wages increased coupled with incentive for production.

Ministry of Labour

The Ministry of Labour appointed a 16 - member Committee under the chairmanship of M.S. Gurupadaswamy in 1979 to investigate the causes leading to Child Labour and examine the problems arising out of the employment of children. The committee noted that existing situation in respect of Child Labour in India can still be summarized as one of continuing drift. The regulation by law of employment, children covers only fringe of these occupations and ironically even where regulation has been sought, the enforcement is extremely half-hearted and tardy. In pursuance of one of the recommendations of the committee on Child Labour, the Central Advisory Board on Child Labour was set up in March 1981 to review the progress of welfare measures for working children, recommended industries and areas where there must be progressive elimination of Child Labour. It was reconstituted in 1987 under the chairmanship of the ministry of labour to render advice on the problems of Child Labour.

Child Labour (Prohibition and Regulation) Act, 1986

The Child Labour (Prohibition and regulation) Bill was introduced and passed in both

houses of Parliament in August 1986 with a view to prohibiting the employment of children in certain areas.

The act seeks to achieve the following objects:

- Ban the employment of children, i.e. those who have not completed their fourteenth year in specified occupations and processes.
- Lay down a procedure to decide modifications to the schedule of banned occupations and processes.
- Regulate the conditions of work of children engaged in forms of employment in which they are permitted to work.
- Prescribed enhanced penalties for employment of children in violation of the provisions of the acts that forbid the employment of children.
- Establish uniformity in the definition of child in laws concerning them.

National Programme of Action and Policy Against Child Labour

The national policy on Child Labour was approved by the cabinet on 14th August 1997, during the seventh plan period. The action plan of this policy has been set out under the following headings.

1. Legislative Action Plan
2. Focussing on general development programs for benefiting child labour wherever possible.
3. Project-based plan of action in areas of high concentration of child labour engaged in wage and quasi wage employment

Accordingly, projects were started in areas of high concentration of Child Labour.

- Match, fireworks and explosives industry in Sivakasi in Virudhanagar district in Tamil Nadu

- Precious stone polishing industry in Jaipur in Rajasthan
- Glass and bangles industry in Ferozabad, U.P.
- Brassware industry in Mirzapur, Varanasi Bhadoi U.P.
- Lock making industry in Aligarh in U.P.
- Tile industry in Jagampet in Andhra Pradesh.
- Slate industry in Markkapur in Andhra Pradesh.
- Slate industry in Mandswar in Andhra Pradesh.

The National Child Labour projects had the following components -

- Imparting non-formal education to enable the children released from work to receive functional literacy and acquire a level of equivalence with corresponding grade and level in the formal system.
- Supplementary nutrition through midday meals.
- Income and employment generation through impartation of skills
- Stepping up enforcement of Child Labour laws.

Task Force on Child-Labour

A task force on child labour was instituted on the recommendation of the Central Advisory Board on Child Labour under the Chairmanship of Dr.L.M. Singhvi to recommend the institutions and mechanisms necessary for implementing the Child Labour (Prohibition and Regulation) Act, 1986 and legal action plan contained in the NCLP. The task force made 11 general recommendations. Chief among them are

- Highest priority must be accorded to the child. To accomplish this there should be a joint committee of the houses of the parliament and similar committees in state legislatures to represent the un-represented constituency of the child.

- There should be a single ministry or department for child welfare at the centre and states in order to reduce the existing multiplicity of authorities.

- There should be a statutory system of Child Labour Ombudsman or Child Labour Commission entrusted with the task of investigation, resolution of grievances and disputes and giving authoritative directions to employers and others.

- A child code including within its scope a child labour code, must be formulated.

The task force also made the following recommendations with respect to the act of 1986

- A timetable with mandatory outer limits for act to come into force should be provided in the act.

- A uniform definition of child with reference to age is useful.

- An enabling provision should be enacted to to Section 3 of the 1986 Act to check malpractices employed in the exploitation of Child Labour under the guise of an occupier carrying a process with the aid of his family or children producing goods in schools receiving assistance or recognition from overnment.

- Maximun permissible punishment should be increased to simple imprisonment up to 3 months and the maximum permissible fine, which may be imposed, should be increased to Rs. One lakh.

With respect to the national policy and action plan the task force recommended that a white paper should be published explaining the historical background, analyzing the present situation giving reliable statistical and other data and projecting its own perceptions and policies in terms of targets, allocations and types of programmes and other activities it has envisaged.

On 15th August 1994, the former Prime Minister Mr. P.V. Narasimha Rao made a call to

eliminate Child Labour in hazardous employments by the year 2000 A.D. Following the call made by the Prime Minister the national authority for elimination of Child Labour headed by the Union Labour Minister was constituted on 26th September 1994 and Rs.850 crore have been earmarked for schemes to eliminate Child Labour in hazardous employments. The programme is some what unrealistic as it hopes to cover 2 million children in 5 years. The programme has made little headway because of a resource crunch and an ongoing tussle between the ministries of labour and human resource development over the issue of setting up special schools.

Supreme Court Order on Child Labour

To check the exploitation of Child Labour in hazardous industries, the Supreme Court on December 10, 1996 directed that all offending employers must pay a compensation of Rs.20,000/- for every such child, under the provisions of Child Labour (Prohibition and Regulation) Act, 1986. The court order indentified nine major industries as hazardous. Acknowledging that poverty was the main cause of Child Labour, the court said that unless an alternative source of income was assured to the family, the question of abolition of Child Labour will really remain a "will - of - the wisp". The court directed the states to conduct a survey on Child Labour which was to be completed within six months. The secretary to the ministry of labour, Government of India was required to apprise the court within one year about the compliance of directions. The court has held labour inspectors responsible for ensuring that children withdrawn from hazardous industries are provided proper education.

Conclusion and Police Implications

The magnitude of the problem of Child Labour in India with regard to all industries, occupations and processes is very large. Special attention is being devoted to industries,

occupations and process where employment of children is hazardous to their very safety. We have been able to cover about 1.05 lakh children under the umbrella of seventy six projects and 1800 special schools and need approximately 300 projects to cover 2 million children who need to be urgently released from hazardous occupations/processes and rehabilitated through a multi pronged and composite approach encompassing education for functional literacy, midday meal for supplementary nutrition, arrangements for regular health check-ups and vocational skill training for economic empowerment. These projects in their entirety were to be implemented over six years and would have entailed a financial commitment of Rs.2197.05 crore i.e. at Rs.376 per child per annum. Since resources of this magnitude were unavailable the expenditure finance committee in its meeting held on 25th June 1998 has only approved the continuance of the Seventy-six projects and 1800 schools during the 9th Plan Period which means we will not even be able to touch the fringe of this massive problem.

The share of the Child Population has increased from a stable level of about 38% during 1911-1951 to almost 42% in 1971. It declined in 1981 and has further gone down to about 36% in 1991. The decline when examined in the State has a distinct bimodal pattern. The absolute size of the child population peaked in Kerala in 1981 and in Tamil Nadu in 1991. One expects that Punjab, Himachal Pradesh, Andhra Pradesh, Karnataka, West Bengal, Maharashtra and Gujarat could experience a peak in the absolute size of Child Polulation between 1996-2001 A.D. In contrast Bihar, Madhya Pradesh, Rajasthan and UttarPradesh still have a long way to go.

Expansion of primary and middle school education in India between 1961 and 1991 has been impressive. Growth has been somewhat faster than the growth of Child Population in the primary section. The gender gap in literacy and in

primary schooling has declined on an all India basis. The major states have a clear bimodal distribution in the declining gender gap as well. States like Kerala has virtually eliminated the gap. Himachal Pradesh, Tamil Nadu and Panjab have been reducing the gender gap successfully and still have some distance to go in reaching Kerala levels. The worst performers in gender gap reduction are Uttar Pradesh, Rajasthan, Bihar and Madhya Pradesh.

A much larger socio-economically deprived subset of Child Population in India consists of children who are neither in the work - force nor in the education system (nowhere children). The number of nowhere children in India continued to grow from 89.5 million in 1981 to 97.7 million in 1991.

The educational needs of the growing Child Population (5-14 years) have been addressed by the expansion of primary and middle school enrolments. The gap between the Child Population and the children enrolled in schools increased between 1951 and 1961, and remained stable between 1961 to 1971 and also 1971 to 1981. Estimates for 1991 show a decline. However the number of children who are neither in school nor in the labour force (nowhere children) is still very large- 74 million in 1991.

There has been an obvious shift from children working on their own farms to children working as hired labour. The impression that the problem is solved in the agricultural sector and is now concentrated in manufacturing and trade and commerce is erroneous. There has been an increase in the employment of male and female child agricultural labour as well as child workers in manufacturing and trade and commerce. The major part of NGO efforts and international concerns about the employment of children concentrates on non-agricultural sectors. However, the contrast with agricultural labour

groups in terms of sheer numbers should be kept in mind. In absolute size in 1991 the number of full time child agricultural labourers was 3.1 million and those in manufacturing activity (rural and urban) was approximately 0.5 million. The number in trade and commerce has more than doubled over the 30 year period and stands at approximately 0.3 million in 1991.

The increasing number of female child workers since 1971 rose in absolute terms from 2.8 million to 3.5 million - is a cause of concern. Over 80% of these girls are still caught in the agricultural sectors mostly as full time agricultural labourers. Ignoring their plight is socially inappropriate and an economic disaster because of its implications for the pace of demographic transition.

The employment of child workers in urban India is growing much faster than in rural India. The proportion of urban child workers increased from 5.5% of the total child labour population in 1961 to 10% in 1991. Four sectors which need to be targeted in the elimination of child labour are manufacturing, transport, storage and communication but wage based agriculture in rural and urban India must not be ignored.

The proportion of population below poverty line is positively associated with the incidence of child labour with the correlation (0.41) for male child workers and some what weaker correlation (0.23) for female child workers. The most important negative correlation between the incidence of male child labour is with the middle school enrolment ratio suggesting that the higher the enrollment in middle schools the lower the incidence of male child labour.

The most important negative correlation of the incidence of child labour was the proportion of females in the nonagricultural labour force which was - 0.40 for male child workers in 1991. This suggests that the greater the participation of women in the non-agricultural labour force the lower will be the incidence of child labour.

The diversity in the pace and pattern of child labour use, its growth and subsequent decline which has been observed in Europe historically and now in East and South-east Asia can be seen in the different states and regions of India as well. The main determinants of the growth of child labour both from the demand and supply sides are in the nature of "Vicious Spiral" while factors affecting its decline are in the nature of a "Virtuous Spiral". Three main mutually reinforcing "drivers leading to these outcomes are, we believe, demographic factors, technology and public policy.

The difference in quality of primary and middle school education observed across states originating from different state public policies is strongly related to the existence of labour. Overall, for India as a whole, expansion of schooling facilities has just been able to cater to the growth of the child population without a major reduction in the use of child labour.

If child labour is to be successfully eliminated, getting "nowhere children" in to schools and attempting to retain a much larger proportion of children from primary to middle school stage should be important planks of the strategy. This also implies the need to conform to the constitutional guarantee provided in 1950 for education for all children up to the age of fourteen.

Hence, the need for a rational social choice in devising child focused strategies is self evident. In a federal polity with education as a state as well as central subject, an uneven pace and pattern of demographic and economic transition and without a concerted national effort, migration and child labour will continue.

International and national pressures to deal with industrial child labour in isolation, apart from questions of ethics have little chance of success as long as large pool of potential child labour persists. Short cuts and quick fixes would be wasteful in resources and time. Economic and demographic transition, as shown by Kerala,

Punjab, Himchal Pradesh and Tamil Nadu and the countries of East Asia, can be compressed within a couple of decades if appropriate public policies are pursued consistently.

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