

Reforms in Child Labour Law

Helen R Sekar



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Child labour Law is the pivot around which the strategies for addressing hard labour at tender age cluster. Law has always been viewed as an instrument not only to review societal norms, attitude and behavior of people and their manifestations but also to mitigate social evils which emerge from the mindsets, actions, customs and traditions. Intervention of law is therefore imperative in dealing with the extremely complex issue of child labour which is deeply interwoven in the socio-economic fabric. The National Child Labour Policy in India has Legislative Action Plan as one of its three ingredients which aims at progressive elimination of child labour in general and specifically in hazardous occupations. Law to emerge as an effective weapon needs to be free from loopholes and provisions which come in the way of its effective enforcement. The Child Labour (Prohibition and Regulation) Act 1986 was amended in the year 2016 primarily to prohibit employment of children in all occupations and processes to facilitate their enrolment in schools in view of the Right of Children to Free and Compulsory Education Act,

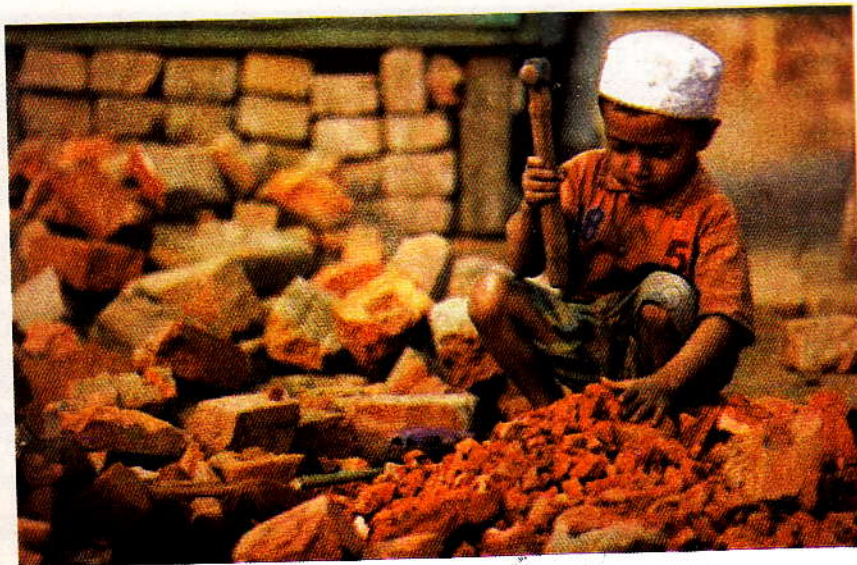
2009; and to prohibit employment of adolescents in hazardous occupations and processes and to regulate the conditions of service of adolescents in line with the ILO Convention 138 and Convention 182. According to the ILO Convention No. 138, the Minimum Age Convention, a minimum age of entry into work shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. ILO Convention No. 182: "Worst Forms of Child Labour" in Article 1 spells out to take immediate and effective measures to prohibit and eliminate the worst forms of child labour as a matter of urgency. This article discusses the recent reforms in child labour law in the context of the situation of working children in India.

Child labour is a twin term antithetical to each other. The term 'child' signifies innocence and tenderness and the term 'labour' implies toil and hard work. Children have been working all along the known history. It is believed that work inculcates confidence in children and enables them to gain self-esteem and also helps in the process of socialization. It is also deemed that by learning skills from

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an early age, the traditional skills are preserved and are passed on from one generation to the other. These positive aspects of work dramatically change when children are forced to work for long hours in situations damaging to their mental and physical health and when they are deprived of childhood and denied of educational and other rights and opportunities. Children in workforce are paid very low wages and at times work unpaid in lieu of the debt taken by their parents or their family members. There are different types and forms of child labour such as paid/unpaid child workers; bonded child labour, children working as a part of family; self-employed children; children in domestic works/industrial works; migrant/non-migrant child workers, etc.

Different data sources at various point of time indicate employment of children in different sectors of informal economy including agriculture, animal husbandry, forestry, manufacturing, food processing and other service sectors. In some occupations child labour is involved in all stages of production, from gathering the raw materials to assembling the finished product. Irrespective of the economic sectors, children work in unhygienic conditions and are exposed to toxic chemicals, insect bite, fall etc. Children working in various manufacturing units are exposed to metal and other dusts and become victims of diseases like silicosis (glass manufacturing), asbestosis (cement and slate), bronchial asthma (silk, garment, textile, carpet), tuberculosis (*beedi* making), tetanus (rag picking), eye diseases (embroidery work- *zardosi*, *hathari*, *zari*, *karchob*). Some of these diseases are incurable. To give an example of child labour in one of the processes brass-manufacturing the work in the box mould furnace, the child rotates the hand wheel to keep the furnace fire burning and checks the molten metal by opening the top of the underground furnace



and throwing a little chemical powder into it. If the molten brass is ready for casting, there would be blue and green flames shooting up from the mouth of the furnace. The child would then take a large pair of tongs and lift the crucible of molten brass from the furnace for pouring into the moulds and also help the adult to open the hot moulds and remove the pieces. Children stand barefoot around the furnace either to put the crucible in or to remove it. While carrying out these processes the workers also inhale the fumes and gases which are let off from the furnace and when the molten brass is poured into the moulds. The temperature in the furnace is about 1100°C. Children at work here inhale the fumes and gases which are let off from the furnace and when the molten brass is poured into the moulds they are not only exposed to the danger of getting badly burnt but there is a possibility of eye injuries, injury due to slipping of work piece being polished, pain in fingers from continuous holding the work piece against rotating bob, respiratory infection from inhalation of dust generated during polishing and the resultant diseases like ankylosis, spondilitis, and permanent spinal deformities. Child labour in processes such as polishing, electroplating and spray painting in Lock -manufacturing are also

exposed to such occupational hazards. Prevalence of Child labour is one of the areas of concern in global supply chains and child labour adversely affects the children and impedes their overall development. A clear national policy and governmental action focusing on the range of interrelated factors like poverty, unemployment, illiteracy is required to end such labour exploitation of children.

Government of India has been pro-active in addressing the issue of child labour which is evident from the provisions in the articles of the Constitution of India, provisions in various labour laws and other laws relating to children and their amendments from time to time. Government of India has made resource provision to ensure implementation of child labour legislation besides setting out objectives and priorities in the National Child Labour Policy. The Policy seeks to adopt a gradual and sequential approach with a focus on rehabilitation of children working in hazardous occupations and processes. The Government has introduced various schemes for rehabilitation of children withdrawn and rescued from work and has constituted Task Force to conceptualize the rehabilitation projects and to contribute to their planning, implementation and monitoring.

By the enactment of the Right of Children to Free and Compulsory Act 2009 (RTE Act), the Government of India has made the right to education, a fundamental right for children. Every child in the age group of 6-14 years is to be provided free and compulsory education. Realization of the objectives of child labour policy is reflected not only in the progressive increase in enrollment and school attendance of children but also in the reduction in the magnitude of child labour from 12.7 million in 2001 to 10.1 million in 2011. Around the same period the NSSO Survey report showed a decline of working children from 9.07 million in 2004-05 to 4.98 million in 2009-10.

The Child Labour (Prohibition and Regulation) Act 1986 prohibited employment of children below 14 years in 18 occupations and 65 processes. After the amendment in 2016, the Child and Adolescent Labour (Prohibition and Regulation) Act 1986 provides for complete ban on employment or work of children below 14 years in any occupation. The Act defines adolescents as persons who have completed fourteenth year of age but have not completed eighteenth year. All children below 18 years are totally prohibited from working in any of hazardous occupations or processes in mines, explosives, hazardous occupations set forth in the Factories Act, 1948. Immediately after the enactment of the Amendment Act, the Technical Advisory Committee (TAC) was constituted to review the existing schedule on hazardous occupations and processes of the Act and the TAC has already submitted its report recommending the schedule in two parts with part A covering hazardous occupations and processes in which adolescents are prohibited to work and part B covering hazardous occupations and processes in which children are prohibited to help. Part A nine categories of Occupations and Processes are given with specific mention of the underground and



under water related work, and a list of industries involving hazardous processes. To name a few from the recommended list - Ferrous and Non-ferrous metallurgical, a range of chemical industries, foundries, power generating industries, cement, rubber, petroleum, three fertilizer industries, drug and pharmaceutical industries,

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paper pulp, petro-chemical, paints and pigments, electroplating, leather tanning, fermentation, glass and ceramics, slaughter houses, construction, etc.

Exemptions are given to children helping their families or family enterprises after school hours and during vacations. Family means only child's mother, father, brother, sister and father's sister and brother,

and mother's sister and brother. It is important that the definition of school should be that of the RTE Act wherein "School" means a school that complies with 'the Schedule (Section 19 and 25), Norms and Standards' of the "Right of Children for Free and Compulsory education Act 2009" and 'help' which is purely voluntary and not 'employment' and not in hazardous occupations or processes. In any case the education of the child should not be affected. Children working 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, are exempted subject to such conditions and safety measures. Artist means child who performs or practices as an actor, singer and sportsperson.

The Child and Adolescent Labour (Prohibition and Regulation) Act 1986 provides stricter punishment. Offences under the section 3 or 3A committed by an employer shall be cognizable and the punishment is by way of imprisonment for a term which shall not be less than six months but which may extend to two years, or with Fine which shall not be less than Twenty Thousand Rupees but which may extend to Fifty Thousand Rupees, or with both and for repeat offence the violator of law is punishable with only imprisonment

for not less than one year but may extend to three years. The CALPR Act provides for punishment to parents and guardians if they permit child for commercial purposes in contravention of section 3 or 3A of the Act. There is no punishment for first offence. However, for repeat offence the parents and guardians are punishable with a fine which may extend to 10 thousand rupees.

Child and Adolescent rescued from workplace shall be rehabilitated in accordance with the law as the CALPR Act provides for constitution of Child and Adolescent Labour Rehabilitation Fund and details the procedure thereof. The Act directs the Appropriate Government to confer such powers or impose such duties on District Magistrate for effective enforcement of the Act and specifies ensuring of periodic inspections and monitoring by the Appropriate Government.

The objective of the amended child labour Act could be realized by carrying out preventive intervention by way of enrolling and retaining all children below the age of fourteen years in school. Simultaneously child labour should be identified, rescued and released for their educational rehabilitation and economic rehabilitation of their families by way of imparting employable skills and providing income generation avenues with special focus on migrants and vulnerable communities. Awareness Generation, Training, Capacity- building, Sensitization and Social Mobilization of State and non-State stakeholders will pave way of effective enforcement of child labour law thereby ending child labour in India. ■

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More than 12 Lakh Children Rehabilitated under National Child Labour Project Scheme since 1988

As per the information received from District Project Societies 12 Lakh 15 Thousand 755 Children have been rescued/withdrawn from work and rehabilitated and mainstreamed under the National Child Labour Project (NCLP) Scheme from its inception in 1988 to December 2016. The Scheme is sanctioned in 270 Districts of 21 States, out of which Special Training Centres (STCs) are, at present, operational in 104 Districts.

Under NCLP Scheme, funds are released to the District Project Societies headed by District Magistrates/ Collectors who in turn allocate the funds for the Special Training Centres run by NGOs/ Government agencies/ local bodies etc. The volunteers for the special schools are engaged by the NGOs etc., for which they are paid a consolidated amount of honorarium.

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