



# **Child Labour in India**

**A Situational Analysis  
By**

**HAQ: Centre for Child Rights  
New Delhi**

**For  
MISEREOR  
Germany**

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## **PREFACE**

This report on child labour has been undertaken for MISEREOR. The purpose of the report is to contribute in the improvement of MISEREOR's development support in the field of child labour in India, and enable a more strategic orientation.

We are grateful to our consultant on the project, Mr. Amit Mitra for his contribution, especially for the information from the field.

We are also grateful to Ms. Sherin Khan of ILO, Ms. Preet Verma (ex ILO); Ms. Preet Rustagi of Institute for Human Development; Mr. Biswarup Banerji of Save the Children India for sharing information with us for the chapter on interventions. We also record our appreciation for the NGOs in the different locations who have supported and facilitated the field visits.

We are also thankful to the different organisations who have given us their inputs for the Interventions chapter.

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New Delhi. November 2013

# CHAPTER 1

## THE CHANGING FACE OF CHILD LABOUR IN INDIA

### Background

The past two decades have been described as those of “complete intellectual triumph of the trinity of liberalisation, privatisation and globalisation”<sup>1</sup>. Economic reform which started in 1991 and the post-reform period put India on a high pedestal on many indicators of economic growth and resilience to external shocks. According to the data released by the Planning Commission on 22 July, 2013, poverty in India has declined from 37.2 percent in 2004-05 to 21.9 percent by 2011-12. However, it is worth noting that despite an average growth rate of about 8.5 per cent between 2004-05 and 2011-12, reduction in poverty has not been very remarkable. The Indian Economy has been a part of the trillion-dollar club since 2009. But as the value of rupee dips to an all time low, and the growth rates fall to about 5 percent nationally, with no signs of going back to an 8 per cent growth rate in the near future, “it is not difficult to imagine how abysmal poverty reduction will be over the next few years. We may end up failing another generation of India’s poor”.<sup>2</sup>

In the wake of a growing fiscal deficit, the social sector is bound to suffer as industry and commerce gain priority. As financial capital gained importance over all sectors, the common man was relegated to oblivion. Unfortunately, India’s rural poor have had to bear the brunt. The agrarian sector has seen far and sweeping changes. The proportion of agriculture in total employment in India has been steadily declining.<sup>3</sup> Most small farmers have little access to credit, and long-term credit goes mostly to large farmers. The slow progress in the diversification of India’s employment structure has led to large-scale withdrawal of women from the labour force, with the number of women thus “missing” being as large as the population of Brazil.<sup>4</sup> Children too have fallen prey to the market economy. As CJ George, South Asia Regional Coordinator of Terre des Hommes Germany notes, “It was as if there were conflicts of interest between two sets of legal persons, the children on the one hand and the corporations on the other. The interests of the corporations were promoted and those of children neglected”.

### Child Labour in India

Walking through the villages of 24 Parganas of West Bengal one suddenly comes upon bags of hair. Young girls are engaged in cleaning out this hair to be turned into fancy wigs. Little

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<sup>1</sup> HAQ: Centre for Child Rights and Terre des Hommes (Germany), *Twenty Years of CRC: A Balance Sheet*, Vol. 1, p. 12. A CRC20BS Collective Initiative. New Delhi, 2011.

<sup>2</sup> Pavan Srinath, *Infographic – Growth and Poverty in India*, October 11, 2013, Available at: <http://catalyst.nationalinterest.in/2013/10/11/infographic-growth-poverty-in-india/>

<sup>3</sup> HAQ: Centre for Child Rights and terre des hommes (Germany), *Twenty Years of CRC: A Balance Sheet*, Vol. 1, p. 13. A CRC20BS Collective Initiative. New Delhi, 2011.

<sup>4</sup> Jayan Jose Thomas, *Economic & Political Weekly*, Vol XLVII, No. 51, *India’s Labour Market during the 2000s-Surveying the Changes*, p. 39. December 22, 2012.

did they know that they were contributing to an industry wherein the Indian supplies meet nearly 80 per cent of the global demand.<sup>5</sup>

In parts of North East Delhi, one will come across youngsters employed in the hazardous computer and electronic recycling units. A majority of these youngsters are Muslims from Uttar Pradesh and Bihar and are in the age group of 8 years to 15 years.<sup>6</sup> Indeed, the capital city is filled with children engaged in 'helping their families ' in producing a variety of goods that are produced at home starting from the ubiquitous *bindi* that adorns most of Indian women's foreheads to the grand *zari* work that are made into fashionable clothes.

"Panchla is just about 10 Km from Kolkata and close to the national highway, but entering it gives the feeling that one has been transported to some dark century in the past. There is no drainage, proper toilet facilities or tap water. The artisans were busy doing the eye straining job of embroidering the sequins on to the saris and dress materials in the dim natural light. As for tube lights, the tubes were there, but no light. With deft fingers, the girls and boys were working on intricate designs in the light that was coming from the slits in the bamboo roofs. They all sat around the material which was attached to a bamboo frame. Above the frame was a green plastic sheet to shield the expensive material from the rain so that direct light only seeped through a few holes in the plastic. The beads and sequins were in little bowls on top of the material, glittering in the dark. How is it that the zari workers of Kolkata, whose work is famous all over India and the clothes they create carry the labels of famous designers, were living in such misery? "Child labour is welcome here because their tiny, slim fingers can weave the tiny seed like beads deftly into the embroidery. They are paid less than Rs.10 an hour and the adults around Rs.30 to 50 a day. Here too, the business part of the zari work—i.e., the supply of raw material, design and loans—is the domain of the ubiquitous middlemen. Rarely do the Kolkata designers come over to see how things are or to give instructions"

Jayshree Sengupta, Indian Handicraft and Handloom Workers -Life and Working Conditions in Villages. A Brief Survey

<http://www.observerindia.com/cms/sites/orfonline/documents/orfwps/orfwps1.pdf>

India has seen an entry of the young into the labour markets in spite of the legal provisions and mandatory requirement of universal coverage and retention of all children from the ages of 6-14 years in schools.

The nature of occupations that children are engaged in and the conditions in which they are employed is dynamic and changing. For example in 1986 when the law on child labour was drafted, there were no computers and hence there was no question of children being employed in dealing with micro-chips as they are now.

In the wake of globalisation and growing consumerism, children find their way into newer occupations every day. Rescue operations carried out in Delhi and Mumbai in 2007-08 have exposed the employment of children in the textile and garments industry, including their employment by sub-contractors and suppliers who work for large export houses and companies such as the US clothing giant GAP. With the boom in exports in recent years, textiles have emerged as one of the largest contributors to India's exports and to foreign

<sup>5</sup> Himani Chandna Gurtoo. *Got Long Hair? Don't forget to take your cut*. Monday January 14, 2013 <http://www.hindustantimes.com/india-news/newdelhi/long-hair-don-t-forget-to-take-your-cut/article1-989258.aspx>

<sup>6</sup> Avneep Dhingra New Delhi | 24th Jun 2012. *Child labour rampant in computer recycling units* <http://www.sunday-guardian.com/investigation/child-labour-rampant-in-computer-recycling-units>

exchange earnings. India's domestic textile market too takes its toll on children. Children are employed in cotton-seed farming, mining and the diamond industry. Growing informalisation of labour has led to so many new home-based occupations that are emerging, that it is often difficult to keep track. Accompanying this is the invisibilisation of the child workforce and use of children for illegal activities such as drug peddling and liquor vending or transportation. Between 2011 and 2012, the Crime in India statistics report an over 40 per cent increase in the number of cases booked against children under the Excise Act. These children do not brew their own liquor or own liquor shops; they work for others, and are used by their employers to transport liquor. They figure in crime statistics but never in the statistics on child labour. Many of them end up in jails or institutions for juveniles, when they should be treated as children requiring care and protection.

While on one hand this is a reflection of the compulsions of the households who assist or propel their children into taking up work, on the other hand are the societal perceptions and beliefs of employers who accept these workers if not actively seek them out. This is particularly visible among the domestic workers in urban India as well as in the processes of migration and trafficking that often end up in underage children working in myriad occupations across both rural and urban milieu.<sup>7</sup> Who would have imagined that the 'hair industry' where hair cut from people's head is collected and cleaned to make wigs and hair extensions would become such a huge industry and would employ children? Much of the work by children is in dark rooms, tucked away from public eye or within homes in the far away villages which only the contractors and middle-men know about.

Not surprisingly, as the government itself is forced to admit, "nearly 85 per cent of child labourers in India are hard-to-reach, invisible and excluded, as they work largely in the unorganised sector, both rural and urban, within the family or in household-based units."<sup>8</sup>

### **Number crunching**

An elated Union Minister for Women and Child Development, Krishna Tirath said, "The statistics are beginning to show a definite decline in the working child population which is a good sign. Our ministry has been working very closely with the HRD and Labour Ministries to make amendments to the existing Child Labour (Prohibition and Regulation) Act, 1986. While the bill has already been tabled in Parliament, it is presently under examination by the Standing Committee."<sup>9</sup> Is this a statistical illusion or sheer propaganda in a pre-election year? This is something to wait and see.

There has been a drop of 45 per cent in the child labour force in India if data of the National Sample Survey (NSSO), 2009-10 (68<sup>th</sup> Round) is to be believed<sup>10</sup>. The NSSO is one of the two leading organisations (the other being the National Population Census) that provides data

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<sup>7</sup> Institute for Human Development (IHD), New Delhi and International Labour Organisation (ILO), Geneva, National Workshop on "*Child and Adolescent Workers: Issues relating to Migrant, Trafficked and Domestic Workers*", Background Note, April 19, 2013, p.3.

<sup>8</sup> Government of India, 2012, *Children in India, 2012 – A Statistical Appraisal*, Social Statistics Division, Central Statistics Office, Ministry of Statistics and Programme Implementation, Chapter 6, p. 70.

<sup>9</sup> Ibid.

<sup>10</sup> 'Child labour down 45 %, shows survey', *The Sunday Pioneer*, New Delhi, Sunday, August 18, 2013, p. 5.



on a regular basis on employment. Neither source gives data on child labour as such but has to be gleaned from the age distribution of workers in age groups.

The NSSO pegged the child labour population, in the age group 5-14 years, at 9.075 million in 2004-05, that is stated to have fallen sharply to 4.984 million in 2009-10<sup>11</sup>.

On the other hand, the Census data on child labour is outdated.

Indeed the head count keeps all home-based and invisible work by children in the informal sector out of any form of enumeration.

Conflicting and unreliable data continues to be a problem, forcing one to ask if this is by design or is it sheer incapacity of the government to keep a track of its 47 million child population? Perhaps it is a combination of both.

## **The Challenge**

From the very beginning, the definition of child labour has been the biggest issue in addressing the problem. Who forms the child labour force? Are they only those who are at work for a certain number of hours? Are they only those who are employed in hazardous occupations and processes? Does it include all those children who are out of school? Various definitions abound in the existing literature, which complicates matters further in terms of a fair assessment of the magnitude of the problem as well as formulation and implementation of laws.

The Child Labour (Prohibition and Regulation) Act, 1986 (CLPRA 1986) was adopted in December 1986 despite huge protests from child rights activists.

Over the years a lot has happened in this area. There have been some amendments to CLPRA 1986, whereby many more occupations have been added to the list of prohibited occupations and processes; international organisations, particularly the UNDP and ILO have initiated and supported interventions across the country. However, the basic structure and orientation of the law has remained the same. It has remained a law that distinguishes between hazardous and non-hazardous occupations, allows the offence of employing children to be non-cognizable and bailable and leaves huge gaps for implementation.

A major development in legislation on children has been the passing of the Right to Education (RTE) Act that came into force from 1<sup>st</sup> April 2010 and subsequently ratified by the state governments between 2010 and 2011. The RTE Act makes free and compulsory education for all children aged 6-14 a right under Article 21A of the Indian Constitution. However, there is a contradiction between the existence of child labour and the constitutional guarantee of fundamental right to education for all children.

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<sup>11</sup> NSSO Estimate of Child Labour in Major Indian States, 2004-05 (Age group 5-14) and NSSO (66th round of Survey) on Child Labour in Major Indian States, 2009-10 (Age group 5-14), Available at - <http://labour.gov.in/upload/uploadfiles/files/Divisions/childlabour/NSSOEstimateofChildLabourinMajorIndianStates.pdf>

What is more, since the distinction was made between hazardous and non-hazardous work, all attention and intervention was directed towards those children employed in the hazardous sectors. It truly is a no-win situation. Just because an occupation is judged to be “non-hazardous” and therefore not prohibited by law, there is no intervention made by the Government to address the situation of children employed in these sectors. On the other hand, when an occupation is designated as “hazardous” or employment of children is prohibited, as in mines, the government sometimes pretends that there are no children employed.

Child labour is a phenomenon that continues to persist and assume new dimensions. Clearly the existing interventions made by both government and non-governmental agencies require some re-thinking. For instance, evidence clearly shows that since its inception in 1988, the National Child Labour Project of the Labour Ministry has not been able to reach the two million children reported to be engaged in hazardous occupations by the Ministry’s own sources. At the same time, some activities need to be scaled up and the issue needs to be addressed in the light of India’s development policies that affect people living on the margins.

### **Objectives of this Report**

This study seeks to understand the changing scenarios and discourses on child labour in India. It is divided into the following sections:

1. The Changing Face of Child Labour in India: The first chapter of the study provides the socio-economic and political backdrop within which the situation of child labour needs to be understood.
2. Definitions and Statistics: An attempt is made here to examine the various data sources and definitions used in them to contextualise the arguments made in the rest of the study.
3. Laws Policies and Legislations: In this section the entire policy and legislative framework relating to child labour is critically examined.
4. Interventions: This section lays out the various kinds of interventions, state and non-state relating to child labour.
5. Glimpses from the field: In this section, realities from the field, including in Koraput (Orissa), Gorakhpur (Uttar Pradesh), Tiruppur (Tamil Nadu) and Dungarpur and Udaipur (Rajasthan) are presented.
6. Conclusions and the way forward: The concluding chapter sums up the arguments made in the previous chapters and suggests ways forward.



## CHAPTER 2

### STATISTICS AND THE MAGNITUDE OF CHILD LABOUR IN INDIA

Defining or conceptualising child labour has been and continues to be one of the most complex issue as it involves three difficult-to-define concepts “child”, “work” and “labour”. Each of them is defined differently by different countries and internationally. As stated by Burra, “those who have argued for narrow definition have best been motivated in part by the desire to reduce the size of the problem and thus make it manageable. But this conceptual sleight of hand flies in the face of common sense and results in making the work of millions of children invisible to public policy and public action.”<sup>12</sup>

This aptly describes the situation as it exists in India today. With the law on child labour, unclear in its definition and organisations working on children also defining child labour differently, the confusion continues, affecting law, policy as well as intervention. Lack of adequate number of schools, poor infrastructure, and lack of basic facilities such as drinking water and toilets in schools, the expense of schooling, poor quality of schooling, teacher absenteeism, and corporal punishment in schools are factors that push children out of school and into work. Weak law enforcement fails to check the increase in the demand for children as cheap and convenient labour.<sup>13</sup>

#### **Child Work and Child Labour**

This debate of child work vs. child labour has plagued interventions addressing the issue ever since there has been a focus on it. Even after 26 years, since the Child labour (Prohibition and Regulation) Act was first discussed, and some employment of children in some occupations clearly prohibited, this is a question that continues to be asked by general public, and more importantly by bureaucrats, officials and police who are meant to protect children.

Not surprisingly, some scholars/activists strongly advocate the need for distinguishing between ‘child work’ and ‘child labour’. G K Lieten<sup>14</sup> argues that the concept of work should be used as the generic term, and would refer to “any type of work being done in any mode of employment relationship and for any purpose; it should serve as a description of the physical (or mental) involvement in a job,” while the concept of (child) labour should be “restricted to the production of goods and services, including work in the household, that interfere with the normative development of children as defined in 1989 the UN Convention on the Rights of the Child”. He cites ILO’s view that such a distinction is important; otherwise it will “trivialize the genuine deprivation of childhood faced by the millions of children involved in the child labour that must be effectively abolished.” (ILO 2002: 9).<sup>15</sup>

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<sup>12</sup> Myron Weiner, Neera Burra and Asha Bajpai, 2006: *Born Unfree. Child Labour, Education and the State in India*. OUP. New Delhi. Pg.XXV.

<sup>13</sup> HAQ: Centre for Child Rights 2008.Still Out of Focus, *Status of India’s Children* 2008, HAQ: Centre for Child Rights.

<sup>14</sup> Leiten, GK, 2005: *Child Labour—Burning Questions*, Amsterdam University Press, Amsterdam.

<sup>15</sup> ILO,2002: *A Future Without Child Labour*, International Labour Conference, 90<sup>th</sup> Session 2002, Report 1b, ILO Geneva.

Therefore, “child work” is work that was not considered particularly harmful and “child labour” is work which was “likely to damage children’s chances of fulfilling their other rights, most importantly, education”.<sup>16</sup>

The International Labour Conference held in 1983 used this classification to explain all the activities performed by children. The report adopted the first five categories of activities as ‘economic activities in which children participate’. In the NSSO data, tied or bonded labour, wage labour and a major part of the marginal activities are generally characterised as ‘labour’ or ‘work’, but domestic work is classified as domestic *duties*.

The distinction between the two categories of child work and child labour is made to emphasize the benefits of child work. ILO, in fact, goes on to say, “Millions of young people legitimately undertake work, paid or unpaid, that is appropriate for their age and level of maturity. By doing so, they learn to take responsibility, they gain skills and add to their families’ and their own well-being and income, and they contribute to their countries’ economies”. Such a stand has actually resulted in consolidation of interests who are demanding “right to work” for children. A few of the important international organisations (ProNats, FEZ, Germany) made a declaration in Berlin in May 2004 honouring the ‘working childhood’ stated that “child work is an important human right, and work allows children to resist with dignity the economic, political and suppressing model that criminalizes and excludes them.”<sup>17</sup>

Child work vis-à-vis child labour distinction is generally made based on the following parameters. Firstly, “child work” takes place within the family system; hence children would not be victims of exploitation due to relations of production. An assumption is made here that family would not extract labour out of children to the level of exploitation. However, family as a unit would still be part of those relations of production that could be exploitative; and therefore a child part of the family labour has to face those adversities caused by labour relations. The capacity of a family to absorb all the adversities is limited upon the socio-economic deprivations that the family faces.

Further, ‘child work’ will increasingly be seen as a substitute to adult labour, so that adults are free to engage in more remunerative labour. In such cases, a child’s right to protection and development will not be fully realized<sup>18</sup>.

The second reason given is that child work socializes children in the cultural traditions; which is also a child’s right. This requires a greater investigation, especially through a gender lens. The assumption, that “cultural traditions’ have to be accepted without intruding into the inherent inequalities, might perpetuate certain historic exploitative practices. It has been argued that any abstraction of child labour from children’s work accords social

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<sup>16</sup> Crawford, James (2000), “The UN Human Rights Treaty System: A System in Crisis,” in Philip Alston and James Crawford (ed) 2000: *The Future of UN Human Rights Treaty System*, Cambridge University Press, Cambridge.

<sup>17</sup> Final Declaration of the 2nd Meeting of the World Movement of Working Children and Adolescents, Berlin, Germany, April 19th to May 2nd 2004

<sup>18</sup> ILO, 2002: *ILO, 2002: A Future Without Child Labour*, International Labour Conference, 90<sup>th</sup> Session 2002, Report 1b, ILO Geneva.

acceptability to some forms of child-work masking marked ideological and gender biases in society.<sup>19</sup> This has been explained in the earlier section on “domestic work”.

The third reason usually given is the need for children to learn artisanal skills, and the need to protect certain artisanal traditions. This argument is strengthened by the other argument regarding “non-relevance” of school education, especially the formal education, to the employment aspects of people. This reasoning supports the need for children acquiring artisanal skills by being ‘on job’ from childhood. Such child work is considered as beneficial as it assures a working adulthood, which our education system does not guarantee. In this regard, one has to differentiate between ‘training’ and ‘job’, as in case of latter, a child is under pressure to contribute for the livelihood at this young age. This pressure hinders her realisation of her rights to education and development. If it is a part of training process, which can be categorized as education, the pressure on child is not so overwhelming that would lead to exploitation.

Rodgers and Standing (1981)<sup>20</sup> categorised activities in which children participate into nine categories: **domestic work; non-domestic, non-monetary work; tied or bonded labour; wage labour; marginal economic activities; schooling; idleness and unemployment; recreation and leisure; reproductive activities.**

Children undertake domestic chores in almost all societies. This may take the form of simple cleaning tasks and washing clothes to sibling-care and fetching water or collecting firewood, depending on the nature of household needs. Many of these domestic works are not imposed upon children; nonetheless often they are ‘actively’ promoted in the name of child-rearing process.

Apparently non-exploitative, the notion of domestic work needs unpacking in the light of the fact that many children never get enrolled in school or are forced to drop out because they have to look after the home chores or undertake sibling care, and this is especially true for girls.

This was an area that was highlighted and discussed even when the debate around child labour was at its nascent stage and continues to be discussed. Little has changed.

There is yet another level of domestic work. This is the employment of children for domestic work. For a long time this kind of employment was not considered non-hazardous work till evidence showed otherwise. With increasing reports of abuse and exploitation of children employed in other people’s homes, this was added to the list of hazardous occupations in 2006.

According to the report of ILO, 1983,<sup>21</sup> **Non-domestic, Non-monetary Work** formed a major part of child activity in subsistence communities, encompassing farm work, and collection of goods, tailoring, weaving etc. Although these activities are non-domestic, they are non-

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<sup>19</sup> Sumi Krishna (1996), *Restoring Childhood: Learning, Labour and Gender in South Asia*, Konark, New Delhi, p21

<sup>20</sup> Rodgers G and Guy Standing (eds) 1981: *Child Work, Poverty and Underdevelopment*, ILO Geneva.

<sup>21</sup> ILO, 1993: *World Labour Report*, ILO Geneva.

remunerative as well, and therefore do not qualify for being part of the conventional definition of 'labour' or 'work', they do take children away from their right to education. NSSO captures these activities of children as well.

The gender stereotyping of such activities is the most clearly visible because of non-remunerative nature of these activities. However, boys are not spared. This is because many children are employed in home based or family based work. As has been discussed in the chapter on law, the gap in the existing law that allows for children to work even in hazardous occupations, if it is carried with the aid of the family (Section 3), is a huge escape route for employers.

**Bonded labour** arises as one of the obligations to landlords/occupiers whereby children's labour is pledged as part-payment of the debts. The parents in need of money have no other option but to pledge children's services against a paltry sum. Although poverty and absence of livelihood options are cited as the major reasons for bonded labour, it is actually demand factors, which attribute value to child labour. This has been clearly defined in the Bonded Labour Act 1976 and has been interpreted broadly by the Indian Judiciary so as to include those employments that do not provide minimum wage to the workers.

The **Wage employment** covers children working as part of a family group or individually in agriculture, manufacturing and services, either on a piece rate or time rate basis, as regular or casual workers." Children as part of a family group are very common in agriculture production. In the last two decades, with greater informalisation of manufacturing sector, such a system can widely be seen in manufacturing sector as well, such as in the bangle or brick making industries.

In both cases, the relations of production actually play a major role in creating exploitative conditions of child labour, as children do not work within the 'protective' realm of the family, and even if they do, the external relations of production overshadows the other relations.

**Marginal Economic Activities** are typically characterised by their irregularity and short-term nature, though some of those individuals practicing the activities may do so on a regular, long term basis. This type of work includes the selling of newspapers, sweets and other small items; running errands; shining shoes and sorting garbage. Most of the activities undertaken by street children as part of their livelihood needs come under this category. In most of the cases, street children are 'self-employed', in the sense that children are not under one employer. However, that does not discount the incidence of exploitative elements, as children work and live under difficult circumstances.

However, over the years different definitions of child labour have been put forward. It is important the National Commission for Enterprises in the Unorganised Sector (NCEUS) in its *Report on the Conditions of Work and Promotion of Livelihoods in the Unorganised Sector*, which was established by the Government of India, has expanded the definition when examining the issue of child labour.<sup>22</sup> According to their report "The Commission does not

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<sup>22</sup> National Commission for Enterprises in the Unorganised Sector, 2007, *Report on the Conditions of Work and Promotion of Livelihoods in the Unorganised Sector*, August Pg. 101

consider it appropriate to view child labour purely from a definitional point of view of who is a worker and who is not. This is because there is a significant proportion of children who are out of school and are not reported as child labour.” The report recognises that even if they are not reported as workers, chances are that they are engaged in some activity by way of helping their parents or in activities that are not perceived as income-earning by the reporting parents. It categorically states, “since the banning of child labour through legislation confined to hazardous industries has not proved to be effective, further legislative efforts should aim regulating child labour and restricting their employment in all sectors, consistent with the needs of their development.”<sup>23</sup> The report of the Commission establishes a close relationship between the provision of education and the elimination of child labour. It clearly says that **it is only the participation of children in schools that can ensure that they are not at work.**

### ***Varying Definitions:***

*The **ILO definition** on child labour is by far the most widely accepted definition. It states:*

*“Child labour includes children prematurely leading adult lives, working long hours for low wages under conditions damaging to their health and to their physical and mental development, sometimes separated from their families, frequently deprived of meaningful education and training opportunities that could open up for them a better future.”<sup>24</sup>*

*The **Campaign against Child Labour**, a network of over 1000 organisations defines child labour as:*

*“Child labour includes children (under 18) prematurely leading adult lives, working with or without wages, under conditions damaging to their physical, mental, social, emotional and spiritual development, denying them their basic rights to education, health and development.”*

*Organisations such as **MV Foundation** define ‘all children out of school as child labour’.*

*The **National Commission for Enterprises in the Unorganised Sector (NCEUS)** in its Report on the Conditions of Work and Promotion of Livelihoods in the Unorganised Sector has expanded the definition when examining the issue of child labour. According to their report “The Commission does not consider it appropriate to view child labour purely from a definitional point of view of who is a worker and who is not. This is because there is a significant proportion of children who are out of school and are not reported as child labour.”*

All these varying definitions make it difficult for data collection and computation. Added to this is the complication arising out of dividing the occupations into the hazardous and non-

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<sup>23</sup> Ibid. Pg 103

<sup>24</sup> ILO (1983): Child Labour -- Extract from the report of the Director-General to the International Labour Conference, 69<sup>th</sup> Session. ILO, Geneva.

hazardous category. The exiting government programmes to address child labour are designed to address children rescued from hazardous occupations, and hence collects data only on this category.

What is clear is that any work that denies a child his/her right to childhood, education and is exploitative, whatever the compulsions that drive the child or the nature of work, must be considered labour.

After 65 years of independence, when India claims to be marching to becoming a super-power, it cannot take the plea that child labour is 'due to poverty' and a 'necessary evil'. It has to take responsibility to ensure that all children are in school and out of labour. And doing so there cannot be any ambiguity anymore in defining child labour.

### **Who is a Child and Who is a Child labourer?**

On the face of it, defining a child using the age criteria should be really simple. Given that India is a signatory to the United Nations Convention on the Rights of the Child (UNCRC), which treats any human being upto the 18 as a child (unless the country's own legislative framework defines otherwise), and that two very important laws, Juvenile Justice (Care and protection of Children) Act 2000 and the Protection of Children from Sexual Offences Act, 2012 also do the same, it would be easy to assume that all persons under 18 would be considered children by the government of India. But as has been discussed in the chapter on Law and Policy, this is not the case.

What is even more confusing is that the laws that deal with labour of children also address it differently. While the Constitution of India and Child Labour (Prohibition and Regulation Act) defines a child as a person upto the age of 18 years, the CLPRA 1986 only goes to 14 years, Mines Act, 1952, and the Mines (Amendment) Act, 1983, lays down that no person below 18 years of age shall be allowed to work in any mine or part thereof (Section 40) or in any operation connected with or incidental to any mining operation being carried on (Section 45), it simultaneously allows for children of 16 years to be apprentices and trainees. Yet the Apprentices Act (1961) as well as the Factories Act (1948) defines children as persons below 14 years or not less than 14 years. The Juvenile Justice (Care and Protection) of Children Act, 2000, which deals with children upto the age of 18 years, also addresses child labour in Section 26.

At the same time, the Indian Majority Act, 1875 (amended 1999)<sup>25</sup> states that from the age of 18, persons acquire the capacity to exercise all the rights of an individual. Many of the subsequent laws refer to this Act to define 'adults' as well as 'minors'. If the Majority Age framework be extended to child labour, a child, who cannot enter into any contract, should also be incapable to enter into an employment contract with any employer. But, the Child labour (Prohibition and Regulation) Act, 1986 allows employment of children in non-hazardous occupation.

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<sup>25</sup> [http://en.wikipedia.org/wiki/Majority\\_Act\\_\(India\)](http://en.wikipedia.org/wiki/Majority_Act_(India))

## **The Problem of Data on Child labour**

While India remains a nation with the highest number of child labourers in the world, getting accurate figures on the actual number of child labourers in the country still remains a challenge. There are varying estimates of the number of working children in the country due to differing definitions and methods of estimation.

The varying definitions of child labour means varying data, depending on the definition. It is in this context that defining child labour becomes extremely crucial for the accurate estimation of the number of children working as well as for designing and implementing comprehensive and effective strategies to ensure the rights of all children, as enshrined in our constitution and in the UNCRC.

Enumeration of child labour is seldom reliable. While the Labour Departments maintain one set of data based on the number of children rescued and on those in the centres established under the NCLPs, the Child Welfare Committees (CWCs) maintain data on the number of child labour cases they receive and dispose of. Children rescued by the Labour Department must be accounted for in the database of the CWCs also, as they are responsible for their rehabilitation. However, the records of the Labour Department and the CWCs seldom match. Clearly, not all children rescued by the Labour Department are produced before the CWCs, and not all child labourers produced before the CWCs are necessarily rescued by the Labour Department. The lack of coordination between the two structures is bound to defeat any attempts at setting up a child tracking system. Moreover, it is quite possible that a child is counted twice.

In this chapter an attempt has been made to present the different data that is available on child labour.

The main sources of official information, the National Sample Survey Organisation (NSSO) and the Census of India, NFHS and the annual health survey provide different estimates. Neither has a specific definition of child labour. Indeed the biggest tragedy is that many child labourers still remain unaccounted for.

### **Census**

The census data available dates back to 2001. This is because the data collected in the census 2011 is yet to be made available to the public.

The analysis of Census data of 2001<sup>26</sup> reveals that out of the total estimates of 12.6 million working children (6.8 million boys and 5.8 million girls), around 5.77 million are classified as 'main' workers and 6.88 million as 'marginal' workers. The share of workers of the country aged 5-14 years to the total workforce is 3.15 per cent. In addition, the data shows that majority of 'main' workers are boys, whereas the majority of 'marginal' workers are girls. It also highlights that children are engaged in various types of work, including those that are classified as 'hazardous', i.e. harmful to the physical, emotional, or moral well-being of children.

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26 Census of India 2001



Number of child workers (5-14 years) engaged in Hazardous Occupations as per 2001 Census		
1.	Pan, Bidi & Cigarettes	252574
2.	Construction	208833
3.	Domestic workers*	185505
4.	Spinning/ weaving	128984
5.	Brick-kilns, tiles	84972
6.	Dhabas/ Restaurants/ Hotels/ Motels*	70934
7.	Auto-workshop, vehicle repairs	49893
8.	Gem-cutting, Jewellery	37489
9.	Carpet-making	32647
10.	Ceramic	18894
11.	Agarbati, Dhoop & Detergent making	13583
12.	Others	135162
	<b>Total</b>	<b>1219470</b>
*Inclusion following the Government's notification to include children working as domestic workers and in dhabas/restaurants, hotels, etc. in the list of hazardous occupations w.e.f. 10 <sup>th</sup> October 2006 cited in Planning Commission. Government of India. Working Group on Child Labour for the XIth Five Year Plan Strategy Formulations. pp. 5. Undated		

The census data reveals that the trend on the magnitude of child labour is not uniform across the country. On one hand, there is considerable increase in the absolute number of child labour between 1991 and 2001 in the states of Uttar Pradesh, Rajasthan, Jharkhand, Chhattisgarh, Bihar, West Bengal, Haryana, Uttaranchal, Himachal Pradesh, Punjab, Nagaland, Assam, Meghalaya, and Delhi. On the other hand, Maharashtra, Andhra Pradesh, Madhya Pradesh, Tamil Nadu, Karnataka, Orissa, Gujarat and Kerala have shown significant decline in the number of child labour. It is also to be noted here that there is a general increasing trend in the magnitude of child labour in the north east region of the country. Sikkim had the highest Child Work Participation Rate (WPR) in the country with 12.04 per cent child labourers among total children in the age group of 5-14 years, followed by Rajasthan 8.25 per cent and Himachal Pradesh (8.14 per cent) during 2001. The other states having higher than the national average of five per cent WPR for children are Andhra Pradesh (7.7 per cent), Chhattisgarh (6.96 per cent), Karnataka (6.91 per cent), Madhya Pradesh (6.71 per cent), Jammu & Kashmir (6.62 per cent), Arunachal Pradesh (6.06 per cent), Jharkhand and Assam (5.07 per cent).<sup>27</sup>

### National Family Health Survey

The National Family Health Survey -3 gives data on the percentage of children age 5-14 years, who were engaged in different activities in the seven days preceding the interview, by background characteristics. As per the NFHS -3 (2005-06), nearly one in every eight (11.8 per cent) children aged 5-14 years works either for their own household or for somebody else. Among the children who work for others, 2.2 per cent children are engaged in paid work and 2.9 per cent are engaged in unpaid work. 3.1 per cent children are engaged in household chores for 28 or more hours in a week, and 4.8 per cent are engaged in work in a

<sup>27</sup> Children in India 2012- A Statistical Appraisal. Social Statistics Division. Ministry of Statistics and Programme Implementation. Pg.53

family business. Since children are involved in multiple activities, the total work participation rate of 12 per cent is less than the sum of the percentages of children engaged in each type of work.

The work participation rate as revealed by NFHS 3 is the same for girls (12 per cent) as it is for boys (12 per cent). The very young children (age 5-7 years), both boys and girls, are mainly doing unpaid work for someone who is not a member of their household. The older boys aged 12-14 are mainly engaged in paid work or family work, whereas girls in this age group are involved mainly in household chores or family work. It also finds that at all ages, girls are more likely than boys to be doing chores and boys are more likely than girls to be working for someone who is not a member of the household or doing other family work.

The NFHS also found that more rural children age 5-14 years (12.9 per cent) are likely to be engaged in work than their urban counterparts (8.6 per cent).

Further, the percentage of children engaged in work activities decreases steadily with mother's increasing education, father's increasing education, and increasing wealth quintile. With parents' higher education and greater household wealth, there is a substantial reduction in the extent of paid work, involvement in household chores, and other family work, but involvement in unpaid work for someone who is not a member of the household remains more or less the same.

<b>Percentage of Children age 5-14 who were engaged in different activities by type of work, according to State , India, 2005-06</b>						
<b>Sl. No.</b>	<b>State/UTs</b>	<b>Work for Someone who is not a member of the household*</b>		<b>Household Chores for 28 or more hours per week</b>	<b>Other family work**</b>	<b>Total working***</b>
		<b>Paid work</b>	<b>Unpaid work</b>			
	<b>India</b>	<b>2.2</b>	<b>2.9</b>	<b>3.1</b>	<b>4.8</b>	<b>11.8</b>
<b>North</b>						
1	Delhi	1.7	8.9	1.5	1.3	12.8
2	Haryana	1.5	3.4	3.3	1.8	9.6
3	Himachal Pradesh	0.5	0.3	1.7	3.1	5.0
4	Jammu & Kashmir	0.8	0.2	1.3	3.9	5.8
5	Punjab	1.9	6.3	1.8	2.0	11.2
6	Rajasthan	1.7	7.0	4.6	9.2	19.6
7	Uttaranchal	1.3	0.9	3.8	9.6	13.5
<b>Central</b>						
8	Chhattisgarh	0.7	0.1	1.9	2.6	5.1
9	Madhya Pradesh	2.1	1.9	4.3	4.6	12.1
10	Uttar Pradesh	1.5	1.8	3.3	6.0	11.7
<b>East</b>						
11	Bihar	1.6	1.4	5.2	5.6	12.2
12	Jharkhand	2.2	1.0	5.3	3.0	10.6
13	Orissa	3.2	0.6	2.9	5.2	11.1
14	West Bengal	2.7	1.3	2.2	4.3	9.7
<b>Northeast</b>						
15	Arunachal Pradesh	1.7	1.4	8.2	12.8	20.1
16	Assam	3.6	3.0	2.2	3.9	11.7

17	Manipur	0.8	3.4	1.7	3.2	8.4
18	Meghalaya	0.8	0.1	5.8	1.0	7.2
19	Mizoram	0.5	0.1	1.9	1.9	4.0
20	Nagaland	1.0	0.4	5.3	2.1	8.3
21	Sikkim	0.9	0.3	3.3	2.5	6.7
22	Tripura	1.8	7.3	3.5	3.4	14.2
<b>West</b>						
23	Goa	0.8	0.4	0.7	1.3	3.0
24	Gujarat	5.5	19.5	3.7	7.3	31.6
25	Maharashtra	2.3	2.4	1.6	3.6	9.0
<b>South</b>						
26	Andhra Pradesh	4.6	0.6	1.5	4.7	9.2
27	Karnataka	3.2	0.2	2.9	3.5	8.8
28	Kerala	0.8	1.7	0.3	0.4	3.0
29	Tamil Nadu	1.2	3.6	0.8	1.0	6.11
<p>Note: * Any Work, paid or unpaid, for someone who is not a member of the household by children age 5-11 and for 14 or more hours by children age 12-14</p> <p>** Includes any work on the farm, in a business, or selling goods in the street by children age 5-11 and for 14 or more hours by children age 12-14.</p> <p>*** Includes children age 5-11 years who, in the 7 days preceding the survey, worked for someone who is not a member of the household, with or without pay, or did household chores for 28 or more hours or engaged in any other family work and children age 12-14 years who in the 7 days preceding the survey, worked for someone who is not a member of the household, with or without pay, for 14 or more hours or did household chores for 28 or more hours or engaged in any other family work for 14 or more hours.</p> <p>Source: NFHS-3 (2005-06)</p>						

## Annual Health Survey

The **Annual Health Survey 2010 – 11** revealed that in the Eight Empowered Action Group States and Assam, the percentage of children aged 5-14 engaged in work varied between 2.2 per cent in Uttarakhand to 5 per cent in Rajasthan.

<b>Children engaged in work in 8 Empowered Action Group States &amp; Assam</b>				
<b>Children age 5-14 years engaged in work (%)</b>		<b>Total</b>	<b>Rural</b>	<b>Urban</b>
<b>Assam</b>	<b>Person</b>	<b>3.4</b>	<b>3.6</b>	<b>2.1</b>
	Male	4.4	4.6	2.8
	Female	2.3	2.4	1.4
<b>Bihar</b>	<b>Person</b>	<b>3.6</b>	<b>3.7</b>	<b>3.1</b>
	Male	4.0	4.0	3.8
	Female	3.1	3.2	2.3
<b>Chhattisgarh</b>	<b>Person</b>	<b>3.3</b>	<b>3.6</b>	<b>2.0</b>
	Male	3.5	3.8	2.3
	Female	3.0	3.4	1.5
<b>Jharkhand</b>	<b>Person</b>	<b>3.2</b>	<b>3.6</b>	<b>1.9</b>
	Male	3.7	4.1	2.4
	Female	2.7	3.1	1.3
<b>Madhya Pradesh</b>	<b>Person</b>	<b>4.5</b>	<b>5.0</b>	<b>3.4</b>
	Male	5.1	5.6	4.1
	Female	3.9	4.4	2.7
<b>Odisha</b>	<b>Person</b>	<b>4.1</b>	<b>4.3</b>	<b>2.9</b>
	Male	4.5	4.7	3.3
	Female	3.8	4.0	2.4

<b>Rajasthan</b>	<b>Person</b>	<b>5.0</b>	<b>5.4</b>	<b>3.7</b>
	Male	4.9	5.1	4.2
	Female	5.1	5.6	3.1
<b>Uttar Pradesh</b>	<b>Person</b>	<b>2.7</b>	<b>2.7</b>	<b>3.0</b>
	Male	3.5	3.4	4.1
	Female	1.8	1.8	1.7
<b>Uttarakhand</b>	<b>Person</b>	<b>2.2</b>	<b>2.0</b>	<b>2.8</b>
	Male	2.6	2.3	3.3
	Female	1.7	1.6	2.2

Source: Annual Health Survey 2010-11

### National Sample Survey Organisation (NSSO)

The NSSO is yet another important source of data for child labour. What it however presents is work participation rate by age from which the work participation rate of children in the 5-14 age group is extracted and presented as child labour data.

NSSO has consistently shown a decline in the number of working children in the country. In 1993-94 in its 50<sup>th</sup> round it reported 13.86 million child labour, in 2004-05 in its 61<sup>st</sup> round it reported 9.07 million and the 2009-10 in its 66<sup>th</sup> round is 4.98 million child labour.

<b>Data on Child Labour based on Employment Unemployment Survey during NSS 66<sup>th</sup> Round (2009-10)</b>					
<b>Sl. No.</b>	<b>Major State all India</b>	<b>Age Group 5-14</b>			
		<b>Rural</b>		<b>Urban</b>	
		<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
1	Andhra Pradesh	88156	110191	20767	15548
2	Assam	144655	31909	11833	757
3	Bihar	224292	38665	11017	2548
4	Chhattisgarh	3669	7321	363	0
5	Delhi	-	-	18576	0
6	Gujarat	150487	207973	15945	16282
7	Haryana	22664	17471	28073	3988
8	Himachal Pradesh	2300	2942	2156	0
9	Jammu & Kashmir	11274	16872	1139	0
10	Jharkhand	63684	14661	4123	0
11	Karnataka	89796	113429	20793	2479
12	Kerala	1182	0	0	1583
13	Madhya Pradesh	91454	32812	57688	9063
14	Maharashtra	66370	127996	54230	12077
15	Orissa	54390	38288	36522	5363
16	Punjab	16802	6433	15664	9937
17	Rajasthan	93055	261871	43184	7826
18	Tamil Nadu	0	13880	3471	0
19	Uttarakhand	14810	7239	3219	2103
20	Uttar Pradesh	1012294	546320	147820	68899
21	West Bengal	357265	134657	31946	27716
All India		2511101	1727271	546897	198602

Source: Annexure Referred To In Reply To Part (A) Of Lok Sabha Starred Question No. 191 For Answer On 11.3.2013 Regarding Child Labour By Shri Ashok Tanwar And Shrimati Supriya Sule.

Child labour in India is overwhelmingly rural. Nearly 80 percent of estimated child labourers are engaged in agricultural production. Often this work is seasonal in nature, and some of it

may involve bonded labour as part of debt repayments to moneylenders. Till the end of the decade of the 1990s, numerous urban centers had high concentrations of child labour. Some of these were carpet weaving in Bhadohi, gem polishing in Jaipur, lock making in Aligarh, glassware in Firozabad, and firecrackers in Sivakasi. Field-based accounts describe child labour in these sectors as highly exploitative, typically involving long hours, low wages, and abysmal work conditions.<sup>28</sup>

As shall be discussed in chapter five, employment patterns in many of these centres have changed and the preferred pattern is contracting to households that engage the children in work at home. There is evidence to show that efforts to regulate illegal labour practices such as child labour in hazardous industries have led simply to a shift of production from industrial sheds and workshops to home-based settings. In fact, it shifts the illegal labour practice from more organised industrial settings to unorganised settings of home-based production.<sup>29</sup>

### **The National Commission for Enterprises in the Unorganized Sector (NCEUS)**

The National Commission for Enterprises in the Unorganized Sector (NCEUS) in its report includes data on child labour as well as out-of school children, which according to this report constitutes the potential labour pool. Out-of-school children comprise the workers and the non-workers. They together signify a measure of deprivation among children and can be considered as a potential labour pool, always being at the risk of entering the labour force. They constitute nearly 18 per cent of the children. It highlights that the states with higher incidence of child labour are not necessarily the ones with high incidence of out-of-school children. Often some children are found both in schools and also engaged in child labour after/before school hours. There are some states that find a place in both conditions such as Uttar Pradesh, Rajasthan, Bihar, Chhattisgarh and Orissa.

<b>States with High Incidence of Child Labour and Out-of-School Children (Labour Pool) (5-14 Years) (Percentage) 2004-2005</b>				
<b>Sl. No.</b>	<b>State</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>
<b>Child Labour</b>				
1	Andhra Pradesh	6.1	7.1	6.6
2	Orissa	5.3	4.6	5.0
3	Rajasthan	3.8	5.9	4.8
4	Meghalaya	5.8	3.3	4.6
5	Karnataka	4.3	4.8	4.6
6	Chhattisgarh	3.6	5.5	4.5
7	Uttar Pradesh	4.7	3.4	4.1
8	West Bengal	4.3	3.2	3.7
9	Maharashtra	3.2	3.7	3.5
<b>All India</b>		<b>3.5</b>	<b>3.3</b>	<b>3.4</b>
<b>Out-of-School Children</b>				
10	Bihar	29.9	40.1	34.4
11	Jharkhand	20.0	27.4	23.4
12	Uttar Pradesh	20.3	25.7	22.8

<sup>28</sup> Neera Burra, 1995: *Born to Work: Child Labour in India* (New Delhi, Oxford University Press, 1995).

<sup>29</sup> National Commission for Enterprises in the Unorganized Sector (NCEUS). *Conditions of Work and Promotion of Livelihoods in the Unorganised Sector* Pg.71

13	Rajasthan	15.6	29.2	22.2
14	Arunachal Pradesh	19.7	24.1	21.7
15	Madhya Pradesh	17.3	26.4	21.5
16	Orissa	17.3	23.7	20.4
17	Chhattisgarh	14.0	23.0	18.6
<b>All India</b>		<b>15.4</b>	<b>20.8</b>	<b>17.9</b>

## **Girl Children and their vulnerabilities**

Girls below the minimum age of employment can be found working in a wide range of occupational sectors and services and often in the worst forms of child labour. Large numbers of young girls labour in agriculture and in the manufacturing sector, frequently working in dangerous conditions. A major sector of employment for young girls is domestic work in third party households. Often this work is hidden from the public eye, leading to particular dangers and risks. The extreme exploitation of girls in the worst forms of child labour includes slavery, bonded labour, prostitution and pornography.<sup>30</sup>

Girls do enormous work at home and in the fields. They carry water, collect fuel wood, cook, clean, wash, take care of siblings and act like little mothers. They also work relentlessly, in all seasons, as agricultural labourers. As part of this study, a field survey was conducted to explore the attitudes associated with the various thematic areas covered. Interestingly, while most of the women surveyed on average claimed 17 years as the minimum age of employment of children, a majority of them believed that there are exceptional cases where the minimum age for the employment of children does not even apply – mainly domestic labour, farm work, when children are working at home or a family business and so forth. So, day after day they toil away at jobs that most around them do not even view as child labour. Most surveyed did not even think that child labour was a major problem for the girls in their community.

Several hundreds of girls also work in stone and lime quarries. They carry head loads of earth and rubble from the pits at least fifty feet down the risky, narrow stairways. At the end of the day, these tired girls just collapse with body aches and pains about which they cannot even complain. There are several home-based jobs where girls outnumber boys, where they need not leave the house. Hybrid cotton-seed farming is another such example. 90 per cent of the labour force in this sector is girls who are engaged in most operations. Even in areas where adults are available, cross-pollination work is exclusively done by girls as it is believed that if undertaken by girls, the plants will flower better.<sup>31</sup>

In a survey conducted by the MV Foundation of the families of girl children engaged as farm labourers in cotton seed farms, it was found that while girls worked 29.4 days in a month on wage work, the women worked 22.2 days and the men 18.6 days. Further the contribution of the girl to the family income was 28.7 per cent, of the women 28.3 per cent and of the

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30 World Day 2009: Give girls a chance: End child labour,  
<http://www.ilo.org/ipecc/Campaignandadvocacy/WDACL/WorldDay2009/lang--en/index.htm>

31 HAQ: Centre for Child Rights, *Status of Children in India, Inc* 2005 and *Still Out of Focus*, Status of India's Children 2008

men 42.8 per cent during that month. It has also been found that the girls are being engaged in new forms of exploitative relationship vis-à-vis the employers.<sup>32</sup>

According to ILO, the most recent global estimate<sup>33</sup> indicated that more than 100 million girls are involved in child labour, and many are exposed to some of its worst forms. Girls face a number of particular problems that justify special attention, including:

- Much work undertaken by girls is hidden from public view, which creates particular dangers. Girls make up the overwhelming number of children in domestic work in third party households and there are regular reports of the abuse of child domestic workers;
- In their own homes, girls take on household chores to a much greater extent than boys. Combined with economic activity outside the household, this imposes a “double burden” that increases the risk of girls dropping out of school; and,
- In many societies, girls are in an inferior and vulnerable position and are more likely to lack basic education. This seriously restricts their future opportunities.

Investing in the education of girls is an effective way of tackling poverty. Educated girls are more likely to earn more as adults, marry later in life, have fewer and healthier children and have decision-making power within the household. Educated mothers are also more likely to ensure that their own children are educated, thereby helping to avoid future child labour.<sup>34</sup>

### **The Adolescent Dilemma**

The contemporary focus on children upto the age of 14 years has led to the neglect of those in the age group 14-18 years. This is despite the fact that “adolescents (children aged 10-19 years) account for 22.8 per cent of the population and girls below 19 years of age constitute one-fifth of India’s fast growing population (NFHS-3, 2005-06).

Indian children in the 14-18 years age group number 100.2 million according to the 2001 census (11 per cent of the population), majority of whom have been forced to assume the role of adults, grapple with poverty, economic and personal security, ill health, early marriage, lack of education and exploitative environment from an early age both at home and in society. Legislations exist for protecting children up to 14 years such as the Right to Education Act (RTE Act) which guarantees children aged 6-14 eight years of elementary education; the Child Labour (Prohibition and Regulation) Act (CLPRA) which focuses on children upto 14 years of age and prohibits and regulates their employment in certain specified hazardous occupations, and so on, there is a big gap for children between 14 and 18 years.

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32 Girl Child Labour and Education, Shantha Sinha, chairperson MV Foundation April 1998, <http://www.indianet.nl/ka-giree.html>

33 ILO says crisis increases risk of girls becoming child labourers, [http://www.ilo.org/global/About\\_the\\_ILO/Media\\_and\\_public\\_information/Press\\_releases/lang--en/WCMS\\_107801/index.htm](http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang--en/WCMS_107801/index.htm)

34 [http://www.ilo.org/global/About\\_the\\_ILO/Media\\_and\\_public\\_information/Press\\_releases/lang--en/WCMS\\_107801/index.htm](http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang--en/WCMS_107801/index.htm)



There are more than 400 million people in India's total workforce in the country, out of which adolescents (14-18 years) constitute close to 32 million. Of the 312 million employed as main workers, adolescents constitute over 20 million, and of the 90 million workers employed as marginal workers, adolescents are over 11 million of the total approximately. Hence, while the total number of children in the 14-18 age group is 100.2 million (Census 2001), approximately 32 million of these children are employed in the workforce.

According to the NFHS -3, 33.4 per cent of girls and 50.4 per cent of boys (in the 15-24 years age group) are engaged in labour. Among boys, 60.9 per cent of the workforce is in the rural sector and in production occupations and 88 per cent of employed adolescent boys earn wages in cash. Significantly 70.5 per cent of urban boys are engaged as workers.

In contrast only 22.2 per cent of girls are employed in the rural sector and 64 per cent of young women engaged in agricultural work are employed by a family member, 28 per cent are employed by a non-family member, and 7 per cent are self-employed. More than half of the girls engaged in agricultural work (54 per cent) are employed seasonally. Unlike boys, less than two-thirds of them earn cash for their work. 11 per cent of employed adolescent girls are paid only in kind and 26 per cent are not paid at all and are unpaid family workers. Only 39.5 per cent of urban girls – about half the proportion of boys - are in the work force.

Adolescent boys are in the labour market as wage earners on either long term or short term contracts or as daily wage earners, while girls continue in hidden and invisible work, most of which is non-wage work rendered for their families and unaccounted for. Thus, while girls in this age group lag behind boys in terms of education, they are also hidden in the labour force with most of their work in the informal, unorganised sector.

It is perhaps in recognition of this neglect the new The Child Labour (Prohibition and Regulation) Amendment Bill, 2012, has attempted to address this category of children and also referred to them as "Adolescents".

### **Some Recent Studies**

In 2010, HAQ: Centre for Child Rights, along with Samata, Dhatri and Mining Minerals and People's Network undertook a study on impact of mining on children. One of the areas studied was child labour in mining.<sup>35</sup>

Mining is a sector in which child labour has been unequivocally banned. However, it is also a sector around which there is a lot of child labour. Children are found to be working in mining or related activities such as load ferrying or in other kinds of labour around the mining areas. Displacement of populations and forced migration, leading to families falling into indigence, force children into work to support the households. However, poverty is not the only reason for this. The global economy ensures that child labour suppresses wage levels; children continue to be employed in this sector because companies can pay them less than

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<sup>35</sup> Dhatri Resource Centre for Women and Children-Samata, Visakhapatnam, HAQ: Centre for Child Rights, New Delhi in partnership with: mines, minerals & PEOPLE, 2010: *India's Childhood in the "Pits"-A Report on the Impacts of Mining on Children in India*. (March )

adults to carry out the same work. Privatisation and informalisation of labour has directly led to increase in child labour, particularly in the mining industry which keeps the workers impoverished and indebted in a vicious trap.

Most of these children are found to be working in illegal mining activities where the surveillance is lower. They were part of the unorganized labour force that formed the backbone of this industry.

<b>Total number of children working in mining and quarrying in India (Main and Marginal Workers)</b>			
<b>S. No.</b>	<b>State</b>	<b>Total main and marginal worker</b>	
		<b>5-14 Year</b>	<b>5-19 Year</b>
1	Andaman and Nicobar Islands	11	107
2	Andhra Pradesh	11,660	37,586
3	Arunachal Pradesh	3	30
4	Assam	591	3,101
5	Bihar	689	2,906
6	Chandigarh	2	17
7	Chhattisgarh	426	2,897
8	Dadra and Nagar Haveli	13	97
9	Daman and Diu	2	18
10	Delhi	939	3,208
11	Goa	196	1,198
12	Gujarat	2,120	12,323
13	Haryana	886	4,473
14	Himachal Pradesh	20	453
15	Jammu and Kashmir	58	268
16	Jharkhand	2,862	13,346
17	Karnataka	4,669	18,276
18	Kerala	239	3,487
19	Lakshadweep	0	0
20	Madhya Pradesh	2,747	12,655
21	Maharashtra	2,095	11,758
22	Manipur	5	36
23	Meghalaya	154	881
24	Mizoram	64	216
25	Nagaland	3	54
26	Orissa	2,257	11,203
27	Puducherry	11	57
28	Punjab	61	537
29	Rajasthan	4,296	29,498
30	Sikkim	26	148
31	Tamil Nadu	2,708	14,879
32	Tripura	76	198
33	Uttarakhand	2,045	4,870
34	Uttar Pradesh	1,094	6,309
35	West Bengal	2,107	9,630
36	<b>India</b>	<b>45,135</b>	<b>206,720</b>
Source: Census, 2001			

In these mines, contractors often preferred to hire migrant labour, as they were easier to control and less likely to organise. It also enabled them to hire whole families, as they could just officially employ the adult members of the family, but the parents brought the children

along to work with them. This pattern of employment could be seen in unorganised mines and quarries across the country, from Rajasthan, to Maharashtra and Karnataka. For example, children in the stone quarries in Pune district, Maharashtra had come from Nepal, Bihar, Uttar Pradesh, West Bengal and Orissa and In Meghalaya, the children employed in rat hole coal mining came from Nepal and Bangladesh.

Although there is no data to show the extent of migration for mining and quarrying work in India, evidence suggests that migration in general is increasing, and the number of children involved below 14 years may be close to nine million. These children were torn away from their education and social networks. Estimates suggest that somewhere between half a million to 12 million migrant labourers work in small-scale mines in India. Regular streams of new migrants leave the tribal belts of Bihar, Orissa, Chhattisgarh, Jharkhand and other states to seek work in the mines. Migrants comprise the most vulnerable sections of society, with the majority coming from Scheduled Castes and Scheduled Tribes.

In Kallali, in Bellary district, Karnataka, large numbers of children from the Madiga community (a Scheduled Caste) are engaged in stone crushing work, prescribed to be their traditional occupation. Over 20 per cent of the children aged between 8-14 years from the villages in this area are said to be working at the mining sites. According to the children, there are over 100 crushing machines in the surrounding area, and at each crushing site at least 20-25 children are working, most of them girls, earning around Rs.100-110 per day for their labour.

As well as working in the mines and quarries, there is a high incidence of other forms of child labour in the mining areas across India — in all likelihood, due to low wages and high rates of illness amongst adult mine workers, due to which the children are forced to work when the adults fall ill. These have long term impacts on the lives of the children. In Rajasthan, for example, the high incidence of injuries and illnesses amongst mineworkers, and the lack of any health care or insurance, meant that adult workers frequently got into debt, as they had to borrow from the contractors during difficult times. They were then forced to provide free labour whilst they pay off these debts. This form of bondage often becomes inter-generational, with children working to pay off the debts of their parents when they are unable to do so.

Education for children is the first casualty for seasonal migrants or those displaced by mining. This goes simultaneously with their entry into labour. For example, in Panna district, Madhya Pradesh, most of the boys and girls start working by the age of 10. They begin to attend school but by fifth grade and join the mines labour. Parents explained that as future breadwinners of families, they have to learn the work early in life. Besides, diamond mining work is seasonal and only available six to eight months of the year, so during the other months they migrate elsewhere in the country for work, forcing children to stop school and move with the parents.

Similar problems were reported in the stone quarrying districts visited in Maharashtra. In 2004-05, there were 2,055 children enrolled in Santulan's *Panshan Shala* – schools in the mining areas. However, in the same year, 946 of these children migrated to other places with their family. In Bellary district, Karnataka, landless families are also migrating to

different parts of the area for work, which is resulting in children dropping out of school and discontinuing their education and getting into labour.

In villages visited in Koraput district, child labour figures are extremely high. According to the Census 2001, 5.67 per cent of the child population (0-14 years) were working in the district. However, Annual Survey of Education (ASER) report, published by Pratham in 2008 found that 17 per cent of children in Koraput are out of school, showed that the district had one of the highest numbers of out of school children in the country. There was a high incidence of child labour around the NALCO area, although there was no child labour within the company premises.

A very large number of children belonging to the families who had been displaced due to mining and related activities, were working in *dhabas*, tea stalls, *pan* stalls and as domestic labour. People reported that school dropout rates had increased since they had been displaced, as children had to earn money for the family's survival. According to the Displaced Peoples' Union, between 100 to 200 children in the displaced peoples' camps of Amalabadi and Champapadar were working as casual labourers. As 131 families of the Displaced Peoples' camp were headed by widows, most of the children of these families were working as manual labour in mining and associated activities. Many of them were seen to be working in hotels, restaurants, paan stalls, and other small shops and it can be estimated that in total, around 500-1,000 children of the project affected areas were working as labourers in the local area. Many youth were also reported to have migrated to Chennai, Mumbai, Hyderabad and other cities for livelihood. The rehabilitation of the community displaced by NALCO, even after almost three decades, still remained incomplete. There had been no impact assessment of the region undertaken during this period and no stock taking of the rehabilitation process, or review of the basic services provided. Particularly, there had been no assessment of the impact on children, even when a high incidence of child labour, school dropout rate and malnourishment were visibly evident.

Child labour is one of the most vicious impacts of mining that one sees. However, laws to address the employment of children in such hazardous conditions are weak. The Child Labour (Prohibition and Regulation) Act, 1986, prohibits the employment of children below the age of 14 in mines (underground and underwater) and collieries (Schedule Part A). It also prohibits employment of children in certain mining related processes listed in Schedule B. This is a huge gap in the law because it does not unilaterally ban employment of children in all mining, thereby leaving them vulnerable to abuse and exploitation. Even while prohibiting the employment of children in mines, the Mines Act leaves open a window of opportunity for exploitation. While the Mines Act, 1952, and the Mines (Amendment) Act, 1983, lay down that no person below 18 years of age shall be allowed to work in any mine or part thereof (Section 40) or in any operation connected with or incidental to any mining operation being carried on (Section 45), it simultaneously allows for children of 16 years to be apprentices and trainees. It also leaves it to the discretion of the Inspector to determine whether the person is a worker or apprentice/trainee and fit to work (Section 43.1). The National Mineral Policy has one line under its section on infrastructure development (section 7.7) that indirectly deals with children when it says that "a much greater thrust will

be given to development of health, education, drinking water, road and other related facilities...”, failing to mention who will do it and how.

The first and most important step with respect to children in mining is to acknowledge that despite all bans children continue to be working in mining. We must not live in denial. There is indeed a strong reason for an urgent comprehensive assessment of the status of children in mining areas — children of mine workers as well as of local communities, child labour engaged in mining and the status of the institutional structures for them. It also calls for addressing the glaring loopholes in the law, policy and implementation related to mining in general, and private and small scale/rat hole mining in particular that are related to children, to develop guidelines for migrant labour and the un-organised sector and pre-conditions that need to be fixed before mining leases are granted. Foremost is the need for strengthening protection mechanisms for children and campaigns against child labour in these regions. Given the extreme hazardous nature of the activity, the Mines Act, 1952 and the Mines (Amendment) Act, 1983 must be amended to ensure that children below 18 years of age are not working in the mines as trainees and apprentices from the age of sixteen. The lacunae in the Child Labour (Prohibition and Regulation) Act, 1986 with respect to children working in mines must be addressed by amending the law to include all mining operations in Schedule A of Prohibited Occupations.

The Institute of Human Development with support from ILO has undertaken three very significant studies on child labour:

1. Impact of Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGA) on Child Labour
2. Child Migration, child trafficking and child labour in India
3. Focus on child and adolescent domestic workers in Delhi and Ranchi

The *study on the Impact of MGNREGA on child labour* has shown that MGNREGA (2005), which came into force initially in 2005 and was extended to all the districts in 2008, has potential and demonstrable positive impacts on the practice of child labour in India. There is no incidence of child labour in the age group of 5-14 years in the MGNREGS. However **there were cases of adolescents working in MGNREGS**. Out of the 1249 workers present at worksites, only **three in the Mirzapur district** of UP and **one in the Pudukottai district** of Tamil Nadu were below the age of 18 years.<sup>36</sup> Detailed interviews of 400 workers having children below the age of 18 years revealed that **32 households (including 15 in Lalitpur, 7 in Mirzapur, 9 in Nagapattinam and 1 in Pudukottai)** reported that their children aged 15-17 years had worked in the MGNREGS at some point of time. This also includes children who had worked in the MGNREGS earlier. Further, out of the 32 households which reported their children to be working, 17 had **worked along with their parents to support them** in earning minimum wages that are paid according to the task rate system. Five of them were **sent by the parents to earn for the family** and two of them had **worked as proxy workers** for their parents. Six of them had got **job cards prepared in the names of their adolescents**. Another two reported that since their **children do not go to schools**, so, they are sent to work.

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<sup>36</sup> Institute for Human Development. Impact of Mahatma Gandhi National Rural Employment Guarantee Scheme (NREGA) on Child Labour. Executive Summary. 2013

**However, the researchers warn that finding should not be generalized and limit only to the study areas.** It was also found that there were families that had increased their spending on education and health with increase in income from MGNREGA.

The study on ***child Migration, child trafficking and child labour in India*** is based on research in five selected districts, Katihar, (Bihar), Sahibganj (Jharkhand), and Kalahandi (Orissa) (identified as sending areas), Ujjain (Madhya Pradesh, (MP) identified as both a sending and receiving area), and Surat(Gujarat) (identified as primarily a receiving area).<sup>37</sup>

The study found that 53 per cent of children, both migrant and trafficked, were accompanied by both parents as they moved out of the village. Children moving out on their own (18 per cent) were vulnerable to being trafficked. However what needs to be emphasized is that poor migrant children, whether accompanied by parents, relatives, or known persons, or on their own, were all at risk of being trafficked. The research shows that among the larger numbers of child migrants, the facilitators of their migration were persons close or known to them including parents, relatives, and friends, persons from the village, employers' agents and the like. Interestingly, as stated earlier, the employers' agents came from Surat, to places such as Katihar and Sahibganj, to recruit child workers. Such persons took children away mostly with parental consent. The kidnapping of children by traffickers was hardly applicable. Further, the outcomes of the process of migration from the village were highly exploitative for children, with insecurity, abuse, lack of basic amenities as consequences, irrespective of who they moved out with. Even when accompanied by parents, or known persons, the children were put to work on their own for most of the time in conditions where they were exploited and faced considerable risks. The study also found that child migration and trafficking was found to cut across socio-economic groups and did not pertain to any particular caste or tribe. It found that child migrant labour closely resembles trafficked labour in terms of conditions of transfer, destinations, working conditions, treatment at the workplace, extent of abuse, options available, pressures on them, parental roles etc.<sup>38</sup>

***Focus on child and adolescent domestic workers in Delhi and Ranchi***<sup>39</sup> shows that the persistence of child labour in domestic work stems from a number of factors including the availability of cheap labour supply, the fact that employers perceive that they can exercise more control over children than adults, as also the social tolerance of this phenomenon. Further, the push factors have been found to be both economic and social: the desperate poverty of the families of these workers, the low levels of education of their household members, lack of employment opportunities for adults, death or disability of the breadwinner and problems of alcoholism. There is a close link between child labour and the inability to attend school or low academic performance and drop out. Many older girls

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<sup>37</sup> Manoshi Mitra and Sunil Kumar Mishra. Child Migration, child trafficking and child labour in India. Institute of Human Development. Executive Summary.2103

<sup>38</sup> Ibid.

<sup>39</sup> Shivani Satija Preet Rustagi. Focus on child and adolescent domestic workers in Delhi and Ranchi. Institute of Human Development. Executive Summary.2013

reported dropping out of school due to financial pressures, but wanted to work so that their younger siblings might be able to complete their education.

The study finds that the increase in demand for domestic workers is attributed to urbanization, the rise of the urban middle class and the entry of women into the world of work. This causes changes in traditional family structures resulting in aging parents and young children being cared for by non-family care givers. Young girls are often preferred by employer households seeking to hire the services of domestic help for childcare. This is because of the ostensible control that employers can exercise over younger domestic workers. Further, low levels of awareness about their rights and consequently less likelihood of assertion of these rights among the younger workers, account for the preference of employers for these workers over the older ones. The study says that, “ostensibly, agents do not play an important role in the placement of child and adolescent domestic workers”. The majority of them in both Delhi and Ranchi entered through a parent or guardian or through other domestic workers. In the gated colonies of Delhi, the security guards often mediate placement of young domestic workers in the households of the colony. Interviews with non-government organisation staff revealed that young girls from rural areas are often lured into domestic work in cities by a chain of intermediaries who are difficult to identify as they operate at different points of the migration route. Most often, the child or adolescent worker cannot negotiate the terms and conditions of work and the wages paid for it.

As many as 45 per cent in Delhi and 18 per cent in Ranchi felt that the work had a negative impact on their health. Pain in the limbs and headaches were the main complaints of young workers in Delhi, while those in Ranchi added that they had lost weight. More than 65 per cent of the respondents in Ranchi and 55 per cent in Delhi felt that they were being made to work for long hours, which they considered beyond their capacity. Besides, many of child and adolescent workers said they were subjected to discrimination in terms of food and general treatment vis-à-vis the children of their employers. Girls, in particular, also face the risk of sexual harassment and abuse, and often can do nothing about it due to their vulnerability and the lack of access to justice and redress. On the positive side, the large majority stated that they received their wages on time, that they were given food and medicines by their employers and had access to a toilet. Full-time and live-in workers were also allowed to watch television. On the whole, adolescent workers had better access to facilities than child workers.

## **Conclusion**

The debates surrounding definition and hence the data on child labour has continued for over two and a half decades. Unless it is resolved, we will continue to have inadequate and conflicting data, impacting planning and implementation of any intervention to address the issue.



## **CHAPTER 3**

### **LAW AND POLICY**

#### **International Legal Instruments**

Internationally, there are several conventions and legal instruments that seek to promote and set international standards for upholding the rights of children and protecting them from harmful working conditions. Some have been ratified by India, while the ratification of some others is still under discussion. An overview of India's international commitments on child labour is as follows:

**(1) The UN Convention on the Rights of the Child (UNCRC)** was ratified by India in 1992. Under Article 32, harmful work is defined as "work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." The term 'child labour' usually refers to this kind of work. There are other important articles in the UNCRC which are related to child labour, namely the right to protection from exploitation (article 36), the right to education (articles 28 and 29), the right to leisure and play (article 31), the right not to be trafficked (article 35) and the right to good health (article 24).

India has ratified the UNCRC with a declaration on Article 32, stating:

*"While fully subscribing to the objectives and purposes of the Convention, realising that certain of the rights of the child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international co-operation; recognizing that the child has to be protected from exploitation of all forms including economic exploitation; nothing that for several reasons children of different ages do work in India; having prescribed minimum age for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum age for admission to each and every area of employment in India-the Government of India undertook to take measures to progressively implement the provisions of Article 32, particularly paragraph 2(a), in accordance with its national legislation and relevant international instruments to which it is a State Party."*

#### **(2) ILO Conventions**

India has ratified four of the eight core ILO labour Conventions, namely Forced Labour Convention, Abolition of Forced Labour Convention, Equal Remuneration Convention and Discrimination (Employment Occupation) Convention. India has not ratified the core ILO Conventions on the Worst Forms of Child Labour, the Convention on Minimum Age, Convention on Freedom of Association, and the Convention on Collective Bargaining.

As far as the ILO Convention on Minimum Age is concerned, Article 9 of the Convention provides that "the provisions of Articles 2 (prohibits employment of children under fourteen years of age), 3, 4, 5, 6 and 7 of this Convention shall not apply to India[...], should legislation be enacted in India making attendance at school compulsory until the age of

fourteen". Since India has already enacted a special law on free and compulsory education for all, it automatically gets exempted from this provision.

According to a senior government official at the Ministry of Labour and Employment, not ratifying the ILO conventions is mainly because India recognizes child labour till the age of 14, not 18. But "we follow everything else in the treaty". In view of restrictions on trade union rights, the prevalence of child labour and forced labour as well as discrimination, determined measures are needed to comply with the commitments India accepted at Singapore, Geneva and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO Declaration on Fundamental Principles and Rights at Work. There are several restrictions with regard to freedom of association, collective bargaining and the right to strike, both in law and in practice. Public sector workers are even further restricted in their rights. Proposals that have been made to amend the legislation would further restrict trade union rights.

The eight **Core Conventions** of the ILO (also called fundamental/human rights conventions) are:

- Forced Labour Convention (No. 29)
- Abolition of Forced Labour Convention (No.105)
- Equal Remuneration Convention (No.100)
- Discrimination (Employment Occupation) Convention (No.111)
- Freedom of Association and Protection of Right to Organised Convention (No.87)
- Right to Organise and Collective Bargaining Convention (No.98)
- Minimum Age Convention (No.138)
- Worst forms of Child Labour Convention (No.182)

**Only the first four of the above listed ILO Core Conventions have been ratified by India.**

While India has ratified the core ILO Convention on Equal Remuneration as well as the Convention on Discrimination, it can however be seen that there are legal shortcomings and, in practice, there is discrimination in employment and wages. In particular, Dalits are subject to serious discrimination and are employed in the most exploitative jobs.

On ratification of ILO Convention No. 182 [Worst Forms of Child Labour], there is a strong voice of dissent among civil society actors. The arguments are that as of date there are already 16 occupations and 65 processes in which child labour is banned and the list of hazardous occupations is progressively being expanded (See Annexure 1). This takes India way beyond the ILO 182 recommendation. The only worst form of labour not covered by the Indian law is child prostitution. Since prostitution of minors is an offence, civil society groups have opposed bringing it within the purview of labour. Also, with recent 2013 amendment to the criminal laws, insertion of new sections 370 and 371 in the Indian Penal Code takes care of various forms of child trafficking, including trafficking for prostitution and slavery.

Despite efforts, child labour remains a serious problem in India and includes hazardous child labour and bonded child labour.

### **National Laws and Policies**

Child labour has been addressed in the Constitution of India, laws, policies and plans of the government of India. The plans and policies have laid down goals that have shifted over the

years, and still remain to be achieved. This chapter discusses the different laws, judicial pronouncements and policies relating to child labour in India.

The decade prior to Independence saw two very specific laws addressing the issue of child bondage and child labour respectively. The first amongst these was the Children (Pledging of Labour) Act, passed in 1933, which for the first time, acknowledged the problem of child bondage and prohibited agreements made to pledge the labour of children. The Employment of Children Act that followed in 1938 was the first enactment addressing the issue of 'child labour' as such. While the former defined a child as a person below the age of 15 years, the Employment of Children Act, 1938 did not do so. However, it did give a sense of who was being recognised as a child, the maximum age addressed being 17 years. It followed a graded pattern for dealing with employment of children in terms of age groups as well as two distinct sectors of employment categorised as 'occupations' and 'processes'. In the category of occupations, while employment of children below the age of 12 years was prohibited in some occupations, employment of those between the age of 15 and 17 years was meant to be regulated in others. In the category of processes, employment of children below the age of 14 years was prohibited in 10 processes carried out in workshops, except those where children worked as part of family or in any state funded or state supported school. Although the 1938 law did not lay down any clear basis for deciding on occupations requiring total prohibition and those requiring regulation with respect to child labour, the guiding factor was perhaps some notion of what could be considered as 'hazardous' and 'non-hazardous' sectors for children of a certain age.

While this scheme of things found its way even in the Constitution of India, a close look at the 1938 law and Article 24 of the Constitution of India suggests that the 1938 law was more progressive in as much as it addressed the employment of children above the age of 14 years by way of regulating the employment of those aged between 15 and 17 years. The Constitution of India (adopted long before the UNCRC was ratified), identifies child labour as only those children below the age of 14 years and bans employment of child labour in only hazardous employments. In doing so, it remains silent on employment of children above the age of 14 years and allows a statutory distinction between 'hazardous' and 'non-hazardous' sectors of employment, which has resulted in a serious challenge in dealing with the issue. The Constitution of India has since its inception been the source of post-independence legislation and jurisprudence on child labour in India and hence this position has received substantial criticism from child rights groups for taking away the protection cover, which otherwise all children are entitled to, irrespective of their situations and circumstances.

Efforts and ideas that emerged from the deliberations and recommendations of various committees on child labour led to the present Child Labour (Prohibition and Regulation) Act, 1986 (CLPRA). Significant among them were the National Commission on Labour (1966-1969), the Gurupadaswamy Committee on Child Labour (1979) and the Sanat Mehta Committee (1984).<sup>40</sup> The Gurupadswamy Committee examined the problem in detail,

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<sup>40</sup> Planning Commission of India, Government of India, report of the Working Group for Social inclusion of Vulnerable Group like Child Labour and Bonded and Migrant Labour in the 12th Five Year Plan (2012-17), Para 4.2. Available at: [http://planningcommission.gov.in/aboutus/committee/wrkgrp12/wg\\_vulnerable\\_groups.pdf](http://planningcommission.gov.in/aboutus/committee/wrkgrp12/wg_vulnerable_groups.pdf). Accessed on 19 September 2013

“noted flagrant violations of the laws, difficulties in regulation, the paucity of prosecution, and the meagreness of penalties prescribed”,<sup>41</sup> and made some far-reaching recommendations. It recommended “a law that would adopt uniformity in defining the child”<sup>42</sup> and also observed that as long as poverty continued, it would be difficult to totally eliminate child labour and hence, any attempt to abolish it through legal recourse would not be a practical proposition. The Committee only reiterated the position of banning employment of children in only hazardous sectors and regulating and ameliorating the conditions of work in others on the grounds that in the present circumstances, this was the only suitable alternative. It thus recommended that a multiple policy approach was required in dealing with the problems of working children.

Until the enactment of the present Child Labour (Prohibition and Regulation) Act of 1986 (CLPRA), the Employment of Children Act, 1938 prevailed, with amendments made from time to time to the list of occupations and process banning employment of children and a specific amendment in 1948 raising the age for total prohibition of employment of children in the category of ‘processes’ from 12 years to 14 years to bring the law in consonance with Article 24 of the Constitution of India. One significant difference between the statutes of 1938 & 1986 is that the latter envisaged the constitution of a Child Labour Technical Advisory Committee, which has to investigate on a continuing basis the ‘occupations and processes’ in order to determine what is hazardous and what is not. Thus, over the years, while the basic structure of the CLPRA has not changed, the list of hazardous occupations and processes is progressively being expanded on the recommendations of Child Labour Technical Advisory Committee. Following the Act a National Policy on Child Labour was formulated in 1987, which continues till date, oblivious of the changes made in the National Education Policy and the most recent National Policy for Children, 2013.

Ideally the policy framework should guide the formulation of laws, programmes and schemes. However, a revision in the National Policy on Child Labour does not seem to be on the anvil, while on the other hand the proposal to amend the CLPRA (Child Labour (Prohibition and Regulation Amendment Bill, 2012) is already cleared by the Cabinet and the proposed amendments are in discussion in the Parliament. The most significant among these is the proposal to do away with the distinction between ‘hazardous’ and non-hazardous’ occupations and processes to totally ban “all forms” of employment of children below the age of 14 years, and to provide for prohibition and regulation of employment of children aged 14 to 18 years in ‘hazardous’ and ‘non-hazardous’ sectors respectively. This is perhaps also the right time to consider an amendment to Article 24 of the Constitution also.

To reiterate, as of now the legal regime addresses children in hazardous occupations leaving out the vast majority who work in a large number of sectors considered non-hazardous.

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<sup>41</sup> Usha Ramanathan, *Evolution of the Law on Child Labour In India*, International Environmental Law Research Centre. Published in Hugh D. Hindman ed., *The World of Child Labor – An Historical and Regional Survey* (Armonk, NY: ME Sharpe, 2009), p. 783. Available at: <http://www.ielrc.org/content/a0905.pdf>. Accessed on 19 September 2013.

<sup>42</sup> Ibid.

## Laws relating to child labour

While laws in India banning employment of children date back to 1881, when India was under the British rule,<sup>43</sup> a list of minimum age of employment or admission to full-time or part-time work under existing laws is given at Annexure 3. Some of these laws and relevant provisions are explained briefly as follows.

**(1) The Constitution of India:** Through various articles enshrined in the Fundamental Rights and the Directive Principles of State Policy, it lays down that:

- The State shall provide free and compulsory education to all children 6 - 14 years of age. (Article 21 (A));
- 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 (Article 24);
- The State shall direct its policy towards securing that the health and strength of workers, men and women and the tender age of children are not abused and that they are not forced by economic necessity to enter vocations unsuited to their age and strength (Article 39-e);
- Children shall be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth shall be protected against moral and material abandonment (Article 39-f);
- The State shall endeavour to provide, within a period of 10 years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of 14 years (Article 45).

**(2) The Child Labour (Prohibition and Regulation) Act, 1986 (CLPRA):** In December 1986, the CLPRA came into force after a heated debate. Defining a 'child' as a person below the age of 14 years, this Act seeks to prohibit their employment in certain types of jobs and also regulates the conditions of employment of children in some others. Thus, it reflects a rather targeted and priority based approach. Initially, it prohibited employment of children in 6 occupations and 14 processes. Today, it prohibits the employment of children in 18 occupations and 65 processes that are hazardous to the children's lives and health (*Annexure 1*).<sup>44</sup>

These occupations and processes are listed in the Schedule to the Act. In October 2006, the Government has included children working in the domestic sector as well as roadside eateries and motels under the prohibited list of hazardous occupations. More recently, in September 2008 diving as well as processes involving excessive heat (e.g. working near a furnace) and cold; mechanical fishing; food processing; beverage industry; timber handling and loading; mechanical lumbering; warehousing; and processes involving exposure to free

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<sup>43</sup> Passing of the Indian Factory Act on 15<sup>th</sup> April, 1881 at Britain, by Lord Ripon (1880-1884), which banned employment of children below the age of seven in factories, is the first action of the Indian government against child labour. As mentioned in 'Dharmendra Kumar Mishra, *Strengthening Government's Action Against Child Labour: The Milestones*, Odisha Review, May 2012, Available at: <http://orissa.gov.in/e-magazine/Orissareview/2012/May/engpdf/19-24.pdf>. Accessed on 19 September 2013.

<sup>44</sup> *Annual Report 2012-13, Ministry of Labour & Employment, Government of India* <http://labour.nic.in/upload/uploadfiles/files/Reports/ANUAL%20REPORTs%202012-2013.pdf>. Accessed on 19 September 2013.

silica such as slate, pencil industry, stone grinding, slate stone mining, stone quarries as well as the agate industry were added to the list of prohibited occupations and processes.

CLPRA regulates the condition of employment in all occupations and processes not prohibited under the Act. According to the provisions of the Act, any person who employs any child in contravention of the provisions of section 3 of the Act is liable for punishment with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than Rs 10,000 but which may extend to Rs 20,000 or both (Section-14). The Central and the State Governments enforce the provisions of the Act in their respective spheres. While the Central Government formulated the Rules for implementation of this law in 1988, only 17 out of 35 states and Union Territories have made their own rules. Rajasthan follows the Central Rules and information on other states is not available (*Annexure 2*).

**(3) The Children (Pledging of Labour) Act, 1933:** The Act declares any agreement by a parent or guardian to pledge the labour of a child below 15 years of age for payment or benefit other than reasonable wages and to the detriment of the child, to be illegal and void. It also provides punishment for such parent or guardian as well as those who employ a child whose labour is pledged. However, the punishment is payment of fine which ranges from fifty rupees (for parents or guardians who pledge the labour), to two hundred rupees (for those who make the agreement to pledge the labour and those who employ the labour of a pledged child).

**(4) The Factories Act, 1948:** The Act prohibits the employment of children below the age of 14 years, and exhaustively deals with the working conditions of adolescents in factories and formulates regulations on their employment on dangerous machineries. The Act defines adolescents as young persons between 15 to 18 years and calls for the appointment of DMs as Inspectors, as well as surgeons to certify the age and capability of young persons in the concerned factory. An adolescent can be employed in a factory only if he obtains a certificate of fitness from an authorized medical doctor. The Act also prescribes four and a half hours of work per day for children aged between 14 and 18 years and prohibits their working during night hours.

Since 1948 many kinds of technical industries have come up with varied kinds of dangerous machineries in use. Most adolescents working in them are not technically trained to administer such machines and are given minimal training on such machines by the supervisor. Moreover such diversity in the industrial sector makes it manifestly impossible for the government to analyse every machine to declare a machine unfit for operation by adolescents. Thus a perusal of the provisions of the Act indicate that while it attempts to lay down adequate regulations for employment of adolescents in factories and near dangerous machines, it finds itself unable to cope with the pace of developments in this sector. The work rendered by the adolescent remains unregulated. Further, the Act places more of a moral responsibility upon the factory than a legal obligation to inform the adolescents of the perils of a machine and the precautions which need to be observed. Under the Act, a great amount of duty rests upon the respective State governments to issue rules for safeguarding the rights of adolescents working in factories. The appropriate government should at regular intervals take cognizance of the conditions prevalent in the factories with

Section 23, The Factories Act, 1948 Section 2 (b) in relation to employment of adolescents. However there is no evidence of such an exercise.

**(5) The Mines Act, 1952:** The Mines Act, 1952 was first amended in 1983, and while it banned employment of persons below the age of 18 in mines, trainees and apprentices above the age of 16 could still work therein. However, the trainees (not apprentices) need the approval of the Chief Inspector or the Inspector, as appointed under this Act, before they are allowed to work. Unfortunately, not many such Inspectors have been appointed under the Act.

Also, though the Act bans employment of persons below the age of 18 in mines, the punishment for such violation of law is a fine of merely five hundred rupees and no imprisonment. The 2011 Bill for Amendment of the Act, which is still pending in the Parliament, aspires to amend the provision to increase the fine to rupees fifty thousand rupees. The Bill though has not been made into a law and amendment to the provision will only act as a proper deterrent to employers from employing adolescents and children in mines.

**(7) The Apprentices Act, 1961:** Under this law, a person is qualified to be engaged as an apprentice only if he is not less than 14 years of age, and satisfies such standards of education and physical fitness as may be prescribed.

**(8) The Juvenile Justice (Care and Protection) of Children Act, 2000:** This Act was last amended in 2002 in conformity with the UN Convention on the Rights of the Child covers young persons below 18 years of age. Section 26 of this Act deals with the Exploitation of a Juvenile or Child Employee, and provides in relevant part, that whoever procures a juvenile or a child for the purpose of any hazardous employment and keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable for fine. In some States, including Delhi, Karnataka and Maharashtra, this provision has been used effectively to book many child labour employers who are otherwise not covered by any other law and to give relief and rehabilitation benefits to a large number of children. However, persons procuring children for employment are seldom brought to the book.

**(9) The Minimum Wages Act, 1948:** Prescribes minimum wages for all employees in all establishments or to those working at home in certain sectors specified in the schedule of the Act. Central and State Governments can revise minimum wages specified in the schedule. Some consider this Act as an effective instrument to combat child labour in that it is being used in some States (such as Andhra Pradesh) as the basis on which to prosecute employers who are employing children and paying them lower wages.

**(11) The Plantations Labour Act, 1951:** This Act categorizes persons into three groups- 'adult', 'adolescent' and 'child'. An adolescent is one who is between 14-18 years of age, while a child is one who is below 14 years of age. It does not prohibit the employment of children or adolescents in plantations, but provides for conditions of regulation of their employment. Before being allowed to work, children and adolescents require a certificate of fitness from a certified surgeon. Children and adolescents cannot work more than twenty-



seven hours a week. Child workers may work in night hours, after obtaining permission from the State Government. Contravention of these provisions can incur a punishment of imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

**(12) The Beedi & Cigar Workers (Conditions of Employment) Act, 1966:** The Act covers three categories of persons- adult (more than eighteen years of age), young persons (between fourteen and eighteen years of age) and child (less than fourteen years of age). It prohibits the employment of children in any industrial premises, and allows young persons to work in industrial premises only between 6 A.M. and 7 P.M. A general penalty for contravention of provisions is given, which is a fine of upto two hundred and fifty rupees, and for the second or subsequent offence imprisonment for a term between one to six months, and/or a fine between one hundred and five hundred rupees.

**(13) Indian Penal Code, 1860:** There is no special provision for punishment for child labour, but S.374 prescribes a punishment of imprisonment of one year and/or fine, for unlawful compulsory labour. S.370 makes the buying or disposing of any person as a slave an offence punishable with imprisonment which may extend to seven years and/or fine.

**(14) The Central Civil Services (Conduct) Rules, 1964:** Section 22-A of these rules prohibit government servants from employing children below 14 years of age.

### **Important Judgements on Child Labour**

Over the years, several petitions have been filed in courts that have addressed child labour. Some major ones have been discussed in this section.

The Supreme Court, in 1982, deliberated on the issue of child labour in ***People's Union for Democratic Rights v Union of India***<sup>45</sup>. The issue concerned the conditions of workmen engaged in the construction work of various projects connected with the Asian Games, including child labour. The Court held that Article 23 was intended to abolish every form of forced labour, because it was violative of human dignity and was contrary to basic human values. 'Forced labour' was defined to include 'begar' i.e. a form of forced labour under which a person is compelled to work without receiving any remuneration, all other labour that is supplied unwillingly out of force and compulsion, irrespective of whether remuneration is paid or not, and labour or services for which the remuneration is less than the minimum wages. The Court clarified that forced labour is labour that is supplied. The Court also clarified that the force implied need not be a legal or physical force only; it could also be economic compulsions arising out of poverty, hunger and deprivation.

Despite absence of a legislative provision banning employment of children in construction work in the then applicable Employment of Children Act, 1938, the Court relied on Article 24 of the Constitution to outlaw construction work for children. The Court held that construction work was 'plainly and indubitably a hazardous employment', wherein employment of children below the age of 14 years would amount to a violation of

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<sup>45</sup> AIR 1982 SC 1473

fundamental rights under Article 24 of the Constitution. The Union of India, the Delhi Administration and the Delhi Development Authority had to ensure that this constitutional obligation was obeyed by the contractors to whom they had entrusted the construction work of the various Asiad projects.

Supreme Court's ruling in the *PUDR* case, when read with Section 2 (g) of the Bonded Labour System (Abolition) Act, 1976 helps construe child labour as a form of forced labour, thus rendering all agreements providing for such labour as void. It is clear that child labour is, in its very essence, forced labour. No child would willingly submit himself/herself to work and only does so in the face of great deprivation and economic and social hardships. Identifying child labour as a form of forced labour, irrespective of the work being done, would help one understand the practice as a violation of fundamental rights of a child and as being against the spirit of the Constitution. All offences under the Bonded Labour System (Abolition) Act are cognizable and non-bailable. This Act can be used as a strong tool for booking those employing children.

In 1996, the Supreme Court passed a seminal judgment in ***M.C. Mehta v State of Tamil Nadu***<sup>46</sup>, highlighting the State's failure to effectively implement the CLPRA. The judgment urged the immediate implementation of the Act and issued directions to that effect. A year later, the Supreme Court in *Bandhua Mukti Morcha v Union of India*<sup>47</sup> reiterated the need for the speedy implementation of the directions given in the *M.C. Mehta* case. The Court further stated that the policies should provide for compulsory education for all children, periodical health check-up and nutritious food.

However, the follow up action has been disillusioning and has rendered the well-reasoned directions ineffectual. Due to the unnecessary publicity of the *M.C. Mehta* case, the employers began disengaging and withdrawing children from working openly, and over time, most children went underground. Some employers in Sivakasi closed shop, and the children moved to another location, and this further compounded the difficulties of inspection and survey. In the case of the carpet industry for example, the looms reached children in their homes instead of children coming to the

**Supreme Court Judgement 1996: Salient features**

1. Under the CLPRA, 1986, every offending employer must be asked to pay compensation amounting to Rs. 20,000 for every child employed in contravention of the Act.
2. This Compensation should be deposited in the "Child Labour Rehabilitation-cum-Welfare fund". The fund so generated shall form a corpus whose income shall be used only for the concerned child.
3. One adult member of the family whose child is employed in a factory, mine or in any other hazardous work should get a job anywhere in lieu of that child. Where it is not possible to provide a job to an adult member of the family, the government concerned should deposit Rs. 5000 per child in the Child Labour Rehabilitation cum Welfare Fund.
4. A survey should be conducted of the type of child labour under issue, which should be completed within six months from the day of this judgement. The survey could be taken up in relation to Article 24, which might be regarded as the basis for determining which hazardous aspect of employment should be treated as the criterion, the most hazardous form of employment.
5. On discontinuation of the employment of the child, free education should be assured in a suitable institution to make him a better citizen. It would be the duty of the inspectors to ensure that this direction of the Constitution is complied with.

<sup>46</sup> (1996) 6 SCC 756

<sup>47</sup> (1997) 10 SCC 549

looms. So, the results of the survey carried under the Judgement put the total number of children employed in both hazardous and non-hazardous sectors at half a million or, less than 5 per cent of the actual child labour force of 11.28 million enumerated in the 1991 Census.

The state machinery's callousness was not restricted to this survey. There is still no confirmed and complete data on the total number of children released from work and put into formal schools. Despite the Ministry of Labour and Employment claiming to have taken pro-active measures to provide for economic rehabilitation of families of children released from work through convergence with other ministries and departments such as the Ministry of Human Resources Development, Ministry of Women and Child Development, Ministry of Rural and Urban Poverty Alleviation, Ministry of Panchayati Raj, etc. there is no data available on the number of families assisted with employment for the adult or with a compensatory amount being deposited in the Fund as per the 1996 Supreme Court directions in *M.C. Mehta v State of Tamil Nadu*. Second, the rate of prosecution and convictions remains poor and data in this regard is completely unreliable. The enforcement data available on the website of the Ministry of Labour and Employment shows more prosecutions than violations, which is impossible!

Enforcement of Child Labour (Prohibition and Regulation) Act, 1986				
Year	Inspections	Violations	Prosecutions	Convictions
2007	351279	9979	12705	617
2008	355629	2709	11149	742
2009	295572	1719	11033	1312
2010	213544	2219	8854	1226
2011	39963	1258	3904	366
<b>Total</b>	<b>1255987</b>	<b>17884</b>	<b>47645</b>	<b>4263</b>
Source: Ministry of Labour and Employment, Government of India. URL - <a href="http://labour.nic.in/content/division/directions-of-supreme-court.php">http://labour.nic.in/content/division/directions-of-supreme-court.php</a>				

Details of inspections carried out, prosecutions launched, convictions made against the guilt employers under the Child Labour Act during the last three years									
State	No. of Inspections			No. of Prosecutions			No. of Convictions		
	2010	2011	2012	2010	2011	2012	2010	2011	2012
Andmn & Nico I. U.T.	108	56	NA	0	0	NA	0	NA	NA
Andhra Pradesh	741	NA	NA	74	1275	NA	22	NA	NA
Arunachal Pradesh	0	0	0	0	0	0	0	0	0
Assam	2332	4785	5748	12	30	112	1	2	8
Bihar	12288	11330	7197	632	1258	716	67 (since 2007)		NA
Chandigarh U.T.	1497	1329	622	33	18	2	2	1	2
Chhattisgarh	1780	NA	NA	62	NA	NA	2	NA	NA
Dadra & Nagar H U.T.	0	0	0	0	0	0	0	0	0
Daman & Diu U.T.	0	0	0	0	0	0	0	0	0
Delhi U.T.	NA	NA	118	581	614	185	8	NA	NA
Goa	756	225	332	0	0	NA	0	0	NA
Gujarat	12640	18442	6863	112	240	95	23	41	1

Haryana	2537	2934	3955	210	82	105	81	120	100
Himachal Pradesh	NA	NA	NA	22	44	NA	0	NA	NA
Jammu & Kashmir	2144	4681	3868	4	38	27	16	25	2
Jharkhand	5215	NA	NA	14	NA	NA	3	NA	NA
Karnataka	13609	11593	7174	479	232	101	112	48	24
Kerala	1322	3908	5274	NA	NA	NA	1	NA	NA
Lakshadweep U.T.	2			0	0	0	0	0	0
Madhya Pradesh	5772	NA	NA	5772	170	NA	324	NA	NA
Maharashtra	8472	8617	3573	146	120	125	8	4	3
Manipur	704			4			NA	4	0
Meghalaya	NA	388	NA	NA	2	NA	0	2	NA
Mizoram	12	12	12	0	0	Na	NA	NA	0
Nagaland	NA	NA	NA	0	0	NA	0	NA	NA
Odisha	325	766	474	16	46	34	1	5	NA
Pondicherry U.T.	9932	NA	NA	0	10	NA	0	7	NA
Punjab	12616	26386	9936	415	1011	260	137	478	159
Rajasthan	2707	3429	2768	18	45	17	5	11	NA
Sikkim	0	0	0	0	0	0	0	0	0
Tamil Nadu	14266 8	NA	NA	38	26	NA	56	26	NA
Tripura	5439 (since 1997)			1	NA	NA	NA	NA	NA
Uttar Pradesh	2335	853	455	356	655	36	444	101	156
Uttaranchal	404	NA	NA	2	5	NA	2	NA	NA
West Bengal	380	620	133	0	9	17	0	0	0
Source: Annexure referred to in reply to part (e) of Lok Sabha Un-starred question no. 6299 for answer on 06.05.2013. URL: <a href="http://labour.nic.in/upload/uploadfiles/files/Divisions/Parliament/lu6299(1).pdf">http://labour.nic.in/upload/uploadfiles/files/Divisions/Parliament/lu6299(1).pdf</a>									

The claims regarding number of children rehabilitated under NCLP do not match the number of inspections carried out, prosecutions and convictions as reflected in responses to two separate questions raised in the Indian Parliament.

No. of child labourers rescued, rehabilitated and mainstreamed through National Child Labour Project scheme during the last three years and current year, State-wise					
No. of Children Mainstreamed					
Si. No.	State	2009-10	2010-11	2011-12	2012-13 Up to Dec. 2012
1	Assam	3685	274	227	10848
2	Andhra Pradesh	13689	1858	13202	7840
3	Bihar	7998	8552	19673	1162
4	Chhattisgarh	1063	5164	4914	2004
5	Gujarat	1437	2129	609	569
6	Haryana	1354	1293	1895	1722
7	Jammu & Kashmir	Nil	43	184	132
8	Jharkhand	1816	1015	2216	4003
9	Karnataka	3217	135	3761	742
10	Maharashtra	5150	5113	4532	4328
11	Madhya Pradesh	9692	13344	17589	5044

12	Orissa	10585	14416	13196	10309
13	Punjab	1023	123	168	0
14	Rajasthan	12326	4415	1020	4155
15	Tamil Nadu	6321	6325	5127	3537
16	Uttar Pradesh	40297	28243	29947	10617
17	West Bengal	13187	2215	7456	3117
Source: Annexure referred to in reply part(d) of Lok Sabha Starred Question No.191. for answer on 11.3.2013 regarding child labour by Shri Ashok Tanwar and Shrimati Supriya Sule					

***PUCL vs Union of India and others***,<sup>48</sup> in 1998, dealt with the trafficking of children for labour. The court ordered that Rs. 200,000 be paid as compensation to the brother of a child who was trafficked for labour and beaten to death by the trafficker. Further, the court also ordered compensation of Rs.75000 be paid to three other boys who were also trafficked. While the states were asked to pay the compensation, they were also implored by the court to actively work towards eradicating trafficking of children for labour or else become responsible for compensating victims within their jurisdiction.

In ***Bachpan Bachao Andolan vs. Union of India and others***,<sup>49</sup> in 2011, the Supreme Court, while dealing with the working and living conditions of children working in circuses, stressed on the fundamental right of children to free and compulsory education, as enshrined in Article 21A of the Constitution. It directed the Central Government to issue notifications prohibiting the employment of children in circuses within two months, so as to implement the fundamental right to education. Directions were also given to conduct simultaneous raids in all the circuses to liberate the children and check the violation of fundamental rights of the children. The rescued children were to be kept in the Care and Protective Homes till they attain the age of 18 years. A proper scheme of rehabilitation of rescued children from circuses was sought.

In ***A. Srirama Babu vs The Chief Secretary***,<sup>50</sup> (1997) the High Court of Karnataka was of the opinion that there should be a total ban on employing children below the age of 10 in any employment and that the law should also extend to children in the unorganised sector. Assisted by the Campaign against Child Labour (CACL), the court acknowledged the need to remove the distinction between ‘hazardous’ and ‘non-hazardous’ employments and stated that “*Hazard* is not to be understood as a physical threat or injury alone. If the consequence of the labour rendered by him renders the child a sick and prematurely aged person, such labour certainly causes hazard to the health of the worker”. Measures to ensure deterrence were also part of the court’s directions. These included non-renewal of license of an erring employer, denial of statutory benefits such as tax holiday, rebate, etc. and punishment or penalty under CLPRA to be in addition to those prescribed under other laws that may apply to an employer for employing children. The court also directed action against parents and guardians responsible for neglecting their children and their welfare.

In ***Court on its Own Motion v Government of NCT, Delhi***<sup>51</sup>, the Delhi High Court, in 2009, took note of the lack of implementation of the constitutional mandate and statutory

<sup>48</sup> (1998) 8 SCC485

<sup>49</sup> AIR 2011 SC 3361

<sup>50</sup> ILR 1997 KAR 2269

<sup>51</sup> 163 (2009) DLT 641

provisions regarding children and the absence of coordination between different agencies of the Government of NCT of Delhi and other authorities. It directed the implementation of the Delhi Action Plan, as prepared by National Commission for Protection of Child Rights, by the Labour Department, with some modifications. The Action Plan provides a detailed plan for the interim care and protection of children rescued from labour, and details responsibilities of various authorities. The police have the power to arrest the employers of the child labour as well as the owners of the premises let out to such employers. In a situation where reports of physical, sexual and economic exploitation of 16-17 year old maid servants in cities like Delhi were on the rise, this judgement came as a great relief. The Court said that while the CLPRA would not be applicable to the rescue of children above the age of 14 years and the liberation of child workers from non-hazardous occupations, these situations would be governed by the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Bonded Labour System (Abolition) Act, 1976.

The judiciary in India has shown itself to be progressive and has been proactive in various cases. Although courts have been sympathetic to the cause of child welfare, their approach is marked with caution. No judgment calls for the total and complete elimination of child labour. In fact, in ***Labourers working on Salal Hydro Project v State of Jammu and Kashmir***<sup>52</sup>, (in 1983) the Court remarked that child labour was an economic problem and could not be solved through legislation alone, and as long as poverty and destitution persist, it would be difficult to eradicate child labour. This sentiment is found in other judicial pronouncements as well. This reflects a flawed and limited understanding of the problem. Child labour contributes to a vicious circle of exploitation and deprivation, where adults, in the face of child labour, go unemployed, leading to further impoverishment; children are unable to study or acquire skills, thus feeding the cycle. In the *Bandhua Mukti Morchha* case, the Court opined that “Immediate ban of child labour would be both unrealistic and counter-productive. Ban of employment of children must begin from most hazardous and intolerable activities like slavery, bonded labour, trafficking, prostitution, pornography and dangerous forms of labour and the like.” But all forms of child labour are hazardous and intolerable. They all rob a child of his/her right to overall growth and development.

The Courts seem to want to manage the problem, accepting it as an inevitable evil, rather than looking to eliminate it. Judiciary needs to take a firm stand on the problem, and issue pragmatic and clear directions.

## **Policies and Plans**

### **National Child Labour Policy**

As mentioned earlier, the policy for child labour is 25 years old.

The three components stated in the National Policy on Child Labour are: (a) Legislative Action Plan emphasizing strict and effective enforcement of legal provisions relating to Child Labour, (b) Focus on General Development Programmes for benefiting children and their

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<sup>52</sup> (1983) 2 SCC 181

families, and (c) Project-based Plan of Action focusing on areas with high concentration of child labour through implementation of National Child Labour Project.

Over the years child labour has been incorporated in different plans of action for children as well as the five year plans.

### **Different policy documents have highlighted different goals for eliminating child labour**

<b>Plan/ Policy</b>	<b>Goals/Commitments</b>
National Policy on Education, 1986	<ul style="list-style-type: none"> <li>• All students, irrespective of caste, creed, location or sex, have access to education of a comparable quality.</li> <li>• Universal retention of children up to 14 years of age.</li> </ul>
The National Child Labour Policy (NCLP), 1987	<ul style="list-style-type: none"> <li>• Focus on general development programmes to benefit children wherever possible</li> <li>• Have project based action plans in areas of high concentration of child labour engaged in wage/quasi-wage employment.</li> </ul>
National Plan of Action, 1992	<ul style="list-style-type: none"> <li>• To strengthen prevention of Child Labour, emphasis will be on compulsory education for all children and on strengthening anti-poverty and development programmes and focussing them on at risk families.</li> <li>• National Child Labour Policy 1987 will be taken up more vigorously for implementation</li> </ul>
National Plan of Action(NPAC), 2005	<ul style="list-style-type: none"> <li>• To eliminate child labour from hazardous occupations by 2007, and progressively move towards complete eradication of all forms of child labour.</li> <li>• To intensify and implement strategies to protect children from economic exploitation.</li> <li>• Institute a rights-based uniform definition of child labour and bonded child labour in existing labour laws</li> <li>• To rescue and remove children below ten years of age from the workforce by 2010.</li> <li>• To expand the list of hazardous occupations to facilitate progressive elimination of all forms of child labour</li> <li>• To recover and rehabilitate children from socially stigmatised occupations like manual scavenging, rag picking</li> <li>• To universalise and accelerate school enrolment, attendance and retention so that children are prevented from being employed as labour.</li> <li>• To take immediate and effective measures to prohibit and eliminate the worst forms of child labour and to provide for the rehabilitation and social integration of the rescued children.</li> <li>• To prevent and prohibit trafficking of children for the purpose of labour including domestic service and other informal sectors.</li> <li>• To create programmes and preventive interventions specially targeted towards the high supply areas, linking these with anti-poverty and developmental measures.</li> <li>• Enforce laws that protect the equal rights of the girl child, like Child Marriage Restraint Act, PNDT Act, ITPA, Juvenile Justice (Care and Protection of Child) Act, Child Labour (Prohibition and Regulation) Act etc. by generating social support and through other necessary action.</li> <li>• Link the child labour elimination efforts with education measures with an attempt to ensure that all children in the age group of 5-8 years get directly linked to school and the older children are mainstreamed to the formal education system through the rehabilitation centres by 2012.</li> <li>• Country-wide survey to ascertain the existence, prevalence and nature of child labour below ten years of age in both the organised and un-organised sectors</li> <li>• Request the Census of India 2011 to enumerate the number, gender, caste, religion, occupation and ages of children engaged in all kinds of child labour</li> </ul>

National Policy for Children, 2013 (MWCD)	<ul style="list-style-type: none"> <li>• Ensure that every child in the age group of 6-14 years is in school and enjoys the fundamental right to education as enshrined in the Constitution</li> <li>• Promote affordable and accessible quality education up to the secondary level for all children.</li> <li>• Ensure that all out of school children such as child labourers, migrant children, trafficked children, children of migrant labour, street children, child victims of alcohol and substance abuse, children in areas of civil unrest, orphans, children with disability (mental and physical), children with chronic ailments, married children, children of manual scavengers, children of sex workers, children of prisoners, etc. are tracked, rescued, rehabilitated and have access to their right to education.</li> <li>• To promote child friendly jurisprudence, enact progressive legislation, build a preventive and responsive child protection system, including emergency outreach services, and promote effective enforcement of punitive legislative and administrative measures against all forms of child abuse and neglect to comprehensively address issues related to child protection.</li> <li>• To take special protection measures to secure the rights and entitlements of children in need of special protection, characterised by their specific social, economic situations, including their need for rehabilitation and reintegration, in particularly street children, children of sex workers, children forced into commercial sexual exploitation, abused and exploited children, children forced into begging, children in situations of labour.</li> </ul>
9 <sup>th</sup> Five Year Plan	<ul style="list-style-type: none"> <li>• To enforce the ongoing legal (The Child Labour (Prohibition and Regulation) Act, 1986) and other remedial cum rehabilitative measures to eliminate Child Labour not only by strengthening various instruments that prevent / combat the problem of Child Labour but also ensuring their effective implementation</li> <li>• To this effect, strong regulatory and administrative measures to prevent exploitation of child labour will also be taken up. In the areas where child labour exists on a large scale, special preventive-cum- developmental measures will be put into action with the strength and support of legal/punitive measures.</li> <li>• The enforcement of the National Policy on Child Labour (1987) will be given a fresh look to make it more effective. To organize suitable functional literacy/vocational training programmes and recreational facilities after working hours for the overall development of the working children.</li> <li>• Public opinion against the social evil like child labour will also be mobilised through the print and electronic media and the support of the pressure/activist groups.</li> </ul>
10 <sup>th</sup> Five Year Plan	<ul style="list-style-type: none"> <li>• To protect children from all types of exploitation through strict enforcement of the Immoral Traffic (Prevention) Act, 1956; the Juvenile Justice (Care and Protection) Act, 2000; the Child Labour (Prohibition and Regulation) Act, 1986; the Hindu Succession Act, 1956; Indian Penal Code, 1860 and the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.</li> <li>• Concentrate efforts to eliminate all forms of discrimination and violation of the rights of the Adolescent/Girl Child by undertaking strong legal measures, including punitive ones. These include strict enforcement of relevant legislations along with eradication of the harmful practices of female foeticide/female infanticide, child marriage, child abuse, child labour, child prostitution etc.</li> </ul>
11 <sup>th</sup> Five year Plan, 2007-2012	<ul style="list-style-type: none"> <li>• Start bridge schools with quality education packages for girl children and street children, child labourers, seasonal migrants and all those who are out of the formal education system.</li> <li>• Necessary to take adequate measures for the protection, rehabilitation, and education of (child labourers).</li> <li>• Efforts must also be made towards rehabilitation and reintegration of trafficked children.</li> </ul>



	<ul style="list-style-type: none"> <li>• A suitable form of penalization should be imposed in such local and State Governments that seem to be paying only 'lip service' to curb the problem of the use of 'cheap cost child labour'.</li> <li>• To take adequate measures for the protection, rehabilitation, and education of these Children. To address the rehabilitation of the children including shelter, education, food, health and other needs and return to families based on review of their situations.</li> </ul>
12 <sup>th</sup> Five Year Plan, 2012-2017	<ul style="list-style-type: none"> <li>• Amend the Child Labour (Prohibition and Regulation) Act in line with the RTE</li> <li>• Designing a strategic approach to respond holistically to the emerging needs of children of particularly vulnerable tribal groups, Minorities, other disadvantaged communities, including urban poor communities.</li> <li>• With the enactment of Right to Education (RTE), introduction of the National Skills Qualification Framework (NSQF) and integration of vocational education with the secondary education, drop-out rates are likely to decrease.</li> <li>• To meet the education targets of near full universalisation of secondary education (&gt;90 per cent), GER of 65 per cent in higher secondary classes and expected increase of enrollment in universities and colleges from 200.3 lakhs in 2011–12 to 300.2 lakhs by 2016–17, about 28 million will be drawn out of the labor force (15–59 age group)</li> <li>• The stricter implementation of SSA and Child labour regulations to ensure that the child labour is eradicated from the country.</li> <li>• To link with Ministry of Labour to address Child Labour holistically.</li> <li>• Ensure that provisions of relevant legislations are implemented for women.</li> <li>• Strengthen implementation of provisions for maternity protection and child care support.</li> <li>• Undertake review relating to provisions for special target groups like women and children, seasonal/migrant labour to strengthen implementation of Rashtriya Swasthya Beema Yojana and also use RSBY cards as an opportunity for nutrition, education/IEC to BPL families.</li> <li>• Strengthening the protective environment for all children—with a focus on prevention of vulnerability to abuse and exploitation.</li> </ul>

### National Child Labour Project

Based on the understanding that the first priority needs to be addressing children in hazardous labour, the Ministry of Labour & Employment is implementing National Child Labour Project (NCLP) in 266 districts of the country including metros for rehabilitation of children rescued/ withdrawn from work. Under the Project, children rescued/withdrawn from work are enrolled in the special schools, where they are provided with bridge education, vocational training, nutrition, stipend, health care, etc. before mainstreaming into formal education system.<sup>53</sup>

At present about 7311 special schools are running with enrollment of 3.2 lakh children under the NCLP Scheme. For orphan children, Ministry of Women & Child Development is

<sup>53</sup> Ministry of Labour and Employment, Annual Report 2012-13, p 92. Available at: <http://www.labour.nic.in>. Accessed on 18 September 2013.

implementing a Centrally Sponsored Scheme i.e Integrated Child Protection Scheme (ICPS) under which inter- alia financial assistance is being provided to State Government/UT Administration for setting up and maintenance of homes for children in difficult circumstances including orphan children.<sup>54</sup> Under the Scheme, funds are given to the District Collectors for running special schools for child labour. Most of these schools are run by the NGOs in the district.

Critiquing the NCLP, the National Commission for Protection of Child Rights (NCPCR) has said that, “NCLP has so far addressed only those children notified in the Schedule of the Child Labour (Prohibition & Regulation) Act, 1986, targeting children working in some notified sectors alone has not solved the problem of child labour. It has been found that a new set of children have taken the place of those who have been withdrawn from work. If there has to be an end to such child labour then it is important to ensure that children are not available in the labour pool to feed into various sectors of labour force.”<sup>55</sup>

### **Current Policy Framework for Adolescent Labour**

In a world of rapidly changing technology, evolving markets, demanding workforce requirements and necessary economic growth and social development, the Government has designed a policy framework for the welfare of adolescent youth, which has a strong and consistent focus on skill development and improvement in the employability potential of the youth. In pursuance of this, The Ministry of Labour and Employment has introduced a Skill Development Initiative Scheme which targets early school drop-outs, unemployed adolescents and existing workers in the unorganized sector. The stated priority is for those children above the age of 14 years who have been withdrawn from work as child labour.<sup>56</sup>

The aim of this scheme is to provide vocational training, certify skills and improve employability. There is no upper age limit, and registration can be done with the Directorate General of Employment and Training (MoLE), which provides assistance with job placements and career counselling. Till 10<sup>th</sup> July 2013, 1492 short term training courses based on Modular Employable Skills (MES) in 74 Sectors had been identified.<sup>57</sup> As per a report by the National Commission for Protection of Child Rights, till 30<sup>th</sup> October 2010, 6084 Vocational Training Providers (VTP) were registered and a total of 1.4 million persons trained/tested<sup>58</sup>.

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<sup>54</sup>National Legal Research Desk, *National Child Labour Project (NCLP)*. Available at: <http://nlrd.org/resources-childs-rights/child-labour/schemes-policy-document-child-labour/national-child-labour-project-nclp>. Accessed on 18 September 2013.

<sup>55</sup> National Commission for Protection of Child Rights, *National Child Labour Project (NCLP): A Critique*, Available at: <http://www.ncpcr.gov.in/Reports/NCLP%20130212%2012Plan.pdf>. Accessed on 18 September 2013.

<sup>56</sup> Directorate General of Employment & Training, Ministry of Labour & Employment, Government of India, *Modular Employable Skills (MES) under Skill Development Initiative Scheme (SDIS)*. Available at: <http://dget.nic.in/mes/index.htm>. Accessed on 24 September 2013

<sup>57</sup> Directorate General of Employment & Training, Ministry of Labour & Employment, Government of India, *List of MES Courses approved by NCVT, Skill Development Initiative Scheme (SDIS)*. Available at: <http://dget.nic.in/mes/annex4.pdf>. Accessed on 24 September 2013

<sup>58</sup> National Commission for Protection of Child Rights, *Status of Children in 14-18 Years: Review of Policy, Programme and Legislative Framework 2012-13*, pp 14. Available at <http://www.ncpcr.gov.in/status%20of%20children%20in%2014-18%20years.pdf>. Accessed on 24 September 2013

With a target of improving the employability of school dropouts, the National Institute of Open Schooling has Distance Vocational Education Programmes. Under this programme, Accredited Vocational Institutes (AVIs) provide practical training to school leavers with 5th, 7th, 8th and 10th pass for terms ranging from six months to two years. Similarly, Industrial Training Institutes (ITIs) provide vocational training to adolescents after class VIII or X.<sup>59</sup>

The Ministry of Rural Development has shown its commitment to the cause of upliftment of the youth by launching a programme called *Parvaaz*. This pilot programme focuses on the comprehensive skills and education program for rural, Below Poverty Line (BPL), minority youth, and aims to mainstream them by equipping them with the necessary education and skill. On enrolment, the BPL youth are taught a NIOS certified basic foundation course in academics and given the required training for developing employability skills. They are then assisted in finding employment in the organized sector. Since the inception of the programme in 2011, 2735 youth have enrolled so far, 703 have been trained and 443 have been placed.<sup>60</sup>

While the intention of these schemes is laudatory, there is however little cause for celebration. Even going by the outdated 2001 Census figures of close to 32 million out of school children, including child labour in the 14-18 years, it is estimated that only two to three million adolescents would have availed of these schemes each year.<sup>61</sup>

### **The proposed Child Labour (Prohibition and Regulation) Amendment Bill, 2012**

Following demands from both government<sup>62</sup> and non- government organisations, to bring the child labour law in harmony with the law on right to education, the Government of India has proposed the Child Labour (Prohibition and Regulation) Amendment Bill, 2012, which is placed before the Parliament. This bill addresses children up to 18 years, but divides them into two categories – ‘child’ (those up to the age of 14 years) and ‘adolescents’ (those aged 14-18 years). This definition of the ‘child’ and the ‘adolescent’ is problematic as it contradicts the definition laid down in other acts such as the Juvenile Justice (Care and Protection) Act 2000, which also deals with employment of children, or the Protection of Children from Sexual Offences Act 2012 and the new National Policy for Children, 2013. It would have made better sense to have divided the application of the act into two categories of “labour” in the context of these two age groups, rather than making an attempt to change the definition of the ‘child’ as such.

The Bill prohibits employment of children up to the age of 14 years in any occupation or process, thus bringing the Act in harmony with the Right of Children to Free and Compulsory Education Act, 2009. It however allows children helping their family in the house or in fields after school hours, forest produce gathering or attending technical institutions during vacations for the purpose of learning as long as there is no subordinate relationship of

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<sup>59</sup> Ibid.

<sup>60</sup> *Parvaaz, Aims and Outcomes*. Available at: <http://parvaaz.in/site/page/view/aimsandoutcomes>. Accessed on 24 September 2013

<sup>61</sup> National Commission for Protection of Child Rights, *Status of Children in 14-18 Years: Review of Policy, Programme and Legislative Framework 2012-13*, pp 15. Available at <http://www.ncpcr.gov.in/status%20of%20children%20in%2014-18%20years.pdf>, Accessed on 24 September 2013

<sup>62</sup> For example see <http://wcd.nic.in/reportsgtdt01032012.pdf>. pg 96

labour or work which are outsourced and carried out in home. As is seen from the implementation of the current law, such relaxation of the law for home based work for children is one of the biggest escape routes for employment of children. Many children today are engaged in home-based work and work under very poor conditions affecting their health, survival, development and protection.

With more and more work coming into the unorganised, home-based sector, this provision in the law will ensure that children continue to be employed and deprived of their rights. Also, allowing children to work after school hours will only add to the burden of the child. It will also be very difficult to monitor which work is being done as part of work outsourced to a family by sub-contractors and sub-sub contractors. Also, the Bill is silent on the course of action to be taken against parents or guardians of a child who has a valid complaint against them.

The new category of 'adolescents' proposed in the Bill is not permitted to be employed in specified hazardous occupations and processes, such as in mines, explosives and processes listed as hazardous under the First Schedule to the Factories Act, 1948. Many of the hazardous occupations and processes thus notified in the Schedule to the present CLPRA get left out of the purview of proposed bill.

Activists have argued that if all occupations and processes are hazardous for children below the age of 14 years, they cannot be seen as beneficial for children aged 14-18 years. Additionally, since the new National Policy for Children, 2013 recognises all persons below the age of 18 years as children, the ban on employment of children below the age of 14 years in all occupations and processes carried out outside the home should extend to 'adolescents' too. Attention has also been drawn to the fact that there are many child domestic workers in the 14-18 year age group who continue to be exploited at the hands of traffickers as well as employers, especially girls from tribal areas. The 10 October 2006 gazette notification making an amendment to the Schedule to Child Labour (Prohibition and Regulation) Act, 1986, provided relief to many child domestic workers below the age of 14 years as well as those aged 14-18 years under the CLPRA and Section 26 of the JJ Act respectively. But by keeping domestic work out of the list of hazardous occupations and processes in the present bill, these girls would be denied their basic right to freedom from exploitation.

A large proportion of the child labour today are trafficked children, the absence of recognition of this in the Amendment Bill is a gap. While the proposal to make child labour a cognizable offence is a positive development and will help in increasing the rate of prosecution of offenders, non-recognition of 'trafficking' of children for labour as an offence will continue to allow the traffickers to flourish. Law enforcement officials can rely upon Section 370 and 370 A of the Indian Penal Code which is a new insertion in the criminal law and deals with human trafficking for slavery or servitude, but often enough they are not trained to be creative in the use of law. Also, with specialization in every field, human trafficking cases are to be dealt with by a separate unit of the police called the Anti-Human Trafficking Units (AHTUs), while the Child Labour Act largely falls within the purview of the Labour Department, who are not trained in criminal law. Hence in all probability, unless

specific provision regarding trafficking for labour is provided for in the child labour law, many cases will remain unaddressed.

The punishment for employing a child has been increased and punishment for employing an adolescent in hazardous occupations has been added. But the proposed punishment is less than the maximum term of three years and fine already provided for under section 26 of the JJ Act.

#### **Penalty under the Proposed CLPRA Amendment Bill, 2012**

Employing a child can now attract a punishment of imprisonment between 6 months and two years, and fine of Rs 20,000 to Rs 50,000 or both. For employing an adolescent in hazardous occupations or processes, a penalty of imprisonment between 6 months and two years or a fine of Rs 20,000 to Rs 50,000 or both can be given.

#### **Role of the National Commission for Protection of Child Rights and the State Commissions**

The National Commission for the Protection of Child Rights (NCPCR) is a statutory body with a mandate to review all policies, laws and programmes related to children's rights. The State Commissions have a similar role, where ever they are set up. In addition these bodies have been given special mandates under different laws to act as a monitoring body for the implementation of those laws, as for example, under the Right of Children to Free and Compulsory Education Act, 2009, and under the Protection of Children from sexual Offences Act, 2012.

However, there are still some states where these bodies do not exist, or the Commissions are incomplete. Issues concerning transparent selection of members to these Commissions also pose a challenge in the effective functioning of the Commissions.

Another challenge arises from the limited or complete lack of training of the members of these Commissions to see the linkages between the various child specific legislations they are supposed to monitor. Fortunately, since the Commissions are supposed to monitor implementation of the Right to Education Act, the child labour issue also gets covered on the basis of the understanding that every child out of school is a potential child labour. However, while dealing with the issue of child labour, the Members need not necessarily be able to make a connection with the sexual abuse law even when they come across a case of sexual violence against a child rescued from labour.

In addition to the Children's Commissions mentioned above, the state of Bihar is the only state to have set up the **Bihar Child Labour Commission**. This Commission is a statutory body with defined mandate under Section 7 of the Bihar Child Labour Commission Act, 1996. The Commission has very important role to perform in the elimination and rehabilitation of the child labour. However, elimination of child labour would need a strong social movement involving all stakeholders. It is expected that the Commission while performing its defined mandate would also start and lead such a movement. In doing so, it would undertake all such programs and activities which may lead to building of an enabling environment and awareness in the society against the pernicious practice of child labour; the Commission is supposed to build a broad coalition of social stakeholders including Government departments, NGOs, child rights organisations, Panchayats, intelligentsia, civil

society organisations, employers and even parents against the engagement of children into work. It is also supposed to play a significant role in holding public hearings on child labour issues, monitoring and reviewing the implementation of legislations and measures for welfare of child labour, and advise the Government on matters related to child labour.

Initially this Bihar Child Labour Commission seemed to be quite active. However, over the years, especially since the formation of the Bihar State Commissions for Protection of Child Rights, the Bihar Child Labour Commission is not to be heard of.

### **Inadequate Laws and Tardy Implementation**

A simple analysis of the laws and jurisprudence on this issue shows an unwillingness to tackle the issue head-on. Child labour is dangerous, pernicious and detrimental to the growth of the children concerned, and it should face total prohibition. Watered-down provisions which seek to regulate instead of outlawing, and creating artificial distinctions between 'children' and 'adolescents' and 'hazardous' and 'non-hazardous' show a regressive attitude and one that actively harms the interests of children. There needs to a paradigm shift in the very approach to eradication of child labour- one that moves away from a labour welfare issue to viewing it as a child protection issue.

A study of the child labour laws reveals a tolerance towards children working and being employed. Unfortunately, as mentioned earlier, the Constitution of India which is the fount of all our laws, implicitly legitimizes the employment of children above the age of 14 years, and has no objection to children below the age of 14 years being employed in non-hazardous jobs. Even after 65 years of independence, and 35 years since Gulpadaswamy said that child labour was a harsh reality because of poverty, and therefore cannot be banned, our laws uphold the same view.

Hence the CLPRA distinguishes between hazardous and non-hazardous occupations and processes, and only prohibits the employment of children in certain hazardous occupations and processes, and violates the fundamental right of the working to education as enshrined in Article 21A of the Constitution, and the Right to Free and Compulsory Education Act 2009 (RTE Act).

Needless to say, this distinction between hazardous and non-hazardous work is unnecessary, arbitrary and dangerous. For children, all work is hazardous and perilous. Agriculture work and house work, often interpreted as non-hazardous work, engage the full time and attention of the child, thus providing an impediment to the pursuit of the child's right to education, health and development. Legal sanction of child labour, however measured and regulated, runs against the very philosophy of child rights.

The lack of priority for abolition of child labour is also reflected in the paltry punishment and fines offences under the various child labour laws attract, which are treated as civil offences and not criminal offences. The CLPRA prescribes a penalty of imprisonment for three months to a year, and/or a fine not less than ten thousand rupees but not more than twenty thousand rupees, for people who employ children.

The dated and obsolete, Children (Pledging of Labour) Act imposes only a fine of 50 rupees or 200 rupees, depending on who commits the offence. The offences are non-cognizable and bailable.

The prosecution under the present laws is also a matter of concern. Between 2009 and 2011, 22,468 prosecutions were launched under the CLPR Act and 2,896 employers were reported to have been convicted, which makes it only 12.9 per cent conviction.<sup>63</sup> There is thus a problem of weak punishment and tardy enforcement. Taking recourse to the choice given, in almost all cases the employers are let off with a fine.

There is no recognition of the plight of female child laborers. Very often, girls have to carry out the tasks of cooking, cleaning, fetching fuel, working in the fields. The legal sanction of this kind of labour only serves to further compound the violations and deprivations faced by girl children.

The fact that India continues on its declaration on Article 32 related to child labour once again shows the lack of political will and importance given to this issue. The government is yet to implement the CRC Committee's recommendation that the Child Labour Act, 1986 be amended so that government schools and training centres are no longer exempt from prohibitions on employing children. The CRC Committee also recommended that agriculture and other informal sectors be included under the Child Labour Act, the Factories Act be amended to cover all factories or workshops employing child labour and the Beedi Act be amended so that exemptions for household-based production are eliminated; the Government is yet to implement any of these. The CRC Committee's recommendation to India to withdraw its Declaration on Article 32 of the Convention seems to have been ignored.

## **Way forward**

Major contradictions that exist in India's approach to the issue of child labour and indeed child rights needs to be resolved. This includes the very definition of a child and a reluctance to accept all those below 18 as children, leading to a rather dubious play on words by introducing the term adolescent, to justify the labouring of those above 14 years, who are then denied all rights as children and also as workers.

It is this confusion about the definitions and the different conceptualisations of labour and work that further obfuscate the issue, leading to diverse statistics from the major government agencies like the Census and the NSSO. The NSSO claims that there has been a drastic fall in the number of child labourers. At the same time, the figure of 12.6 million of the Census 2001 is a huge number: more than one and a half times that of the city of London in 2011 (population 8.17 million).

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<sup>63</sup> *Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013), C029 - Forced Labour Convention, 1930 (No. 29) India (Ratification: 1954)*. Available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO::P13101\\_COMMENT\\_ID:3080124](http://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO::P13101_COMMENT_ID:3080124) and

Education needs to be seen as an essential and indispensable tool for the eradication of this problem. In ***Unnikrishnan v. State of Andhra Pradesh***<sup>64</sup>, the Supreme Court, in 1998, cogently articulated the importance of education: “The fundamental purpose of education is the same at all times and in all places; it is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the sublimation of the emotion and the illumination of the spirit. Education is a preparation for a living and for life, here and hereafter.” It is precisely for this preparation for a dignified, equitable and just life, that children need to be taken out of work and put in classrooms. And again it must be reiterated that this must be done without distinction.

The issue of girl child labour is a much serious issue and unless preventive measures are taken to ensure that girls do not fall out of the protective net and into exploitative situations, there is very little that can be done to reduce their vulnerability. Girl child education is one such preventive measure. Others include ensuring that the existing laws have a deterrent effect. The fact that girls are often lured into exploitative work, needs to be checked.

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<sup>64</sup> AIR 1993 SC 2178



## ANNEXURE 1

### LIST OF HAZARDOUS OCCUPATIONS AND PROCESSES

#### OCCUPATIONS

Any occupation concerned with:

- (1) Transport of passengers, goods or mails by railways;
- (2) Cinder picking, clearing of an ash pit or building operation in the railway premises;
- (3) Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from the one platform to another or in to or out of a moving train;
- (4) Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines;
- (5) A port authority within the limits of any port;
- (6) Work relating to selling of crackers and fireworks in shops with temporary licenses;
- (7) Abattoirs/Slaughter House;
- (8) Automobile workshops and garages;
- (9) Foundries;
- (10) Handling of toxic or inflammable substances or explosives;
- (11) Handloom and power loom industry;
- (12) Mines (underground and under water) and collieries;
- (13) Plastic units and fibreglass workshops;
- (14) Domestic workers or servants;
- (15) Dhabas (roadside eateries), restaurants, hotels, motels, tea shops, resorts, spas or other recreational centres;
- (16) Diving
- (17) Circus
- (18) Caring of Elephants

#### PROCESSES

- (1) Beedi-making.
- (2) Carpet-weaving.
- (3) Cement manufacture, including bagging of cement.
- (4) Cloth printing, dyeing and weaving.
- (5) Manufacture of matches, explosives and fire-works.
- (6) Mica-cutting and splitting.
- (7) Shellac manufacture.
- (8) Soap manufacture.
- (9) Tanning.
- (10) Wool-cleaning.
- (11) Building and construction industry.
- (12) Manufacture of slate pencils (including packing).
- (13) Manufacture of products from agate.
- (14) Manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos.

- (15) "Hazardous processes" as defined in Sec. 2 (cb) and 'dangerous operation' as notice in rules made under  
section 87 of the Factories Act, 1948 (63 of 1948)
- (16) Printing as defined in Section 2(k) (iv) of the Factories Act, 1948 (63 of 1948)
- (17) Cashew and cashewnut descaling and processing.
- (18) Soldering processes in electronic industries.
- (19) 'Aggarbatti' manufacturing.
- (20) Automobile repairs and maintenance including processes incidental thereto namely, welding, lathe
- (21) work, dent beating and painting.
- (22) Brick kilns and Roof tiles units.
- (23) Cotton ginning and processing and production of hosiery goods.
- (24) Detergent manufacturing.
- (25) Fabrication workshops (ferrous and non ferrous)
- (26) Gem cutting and polishing.
- (27) Handling of chromite and manganese ores.
- (28) Jute textile manufacture and coir making.
- (29) Lime Kilns and Manufacture of Lime.
- (30) Lock Making.
- (31) Manufacturing processes having exposure to lead such as primary and secondary smelting, welding and  
cutting of lead-painted metal constructions, welding of galvanized or zinc silicate, polyvinyl chloride,  
mixing (by hand) of crystal glass mass, sanding or scraping of lead paint, burning of lead in enameling  
workshops, lead mining, plumbing, cable making, wiring patenting, lead casting, type founding in  
printing shops. Store typesetting, assembling of cars, shot making and lead glass blowing.
- (32) Manufacture of cement pipes, cement products and other related work.
- (33) Manufacture of glass, glass ware including bangles, florescent tubes, bulbs and other similar glass products.
- (34) Manufacture of dyes and dye stuff.
- (35) Manufacturing or handling of pesticides and insecticides.
- (36) Manufacturing or processing and handling of corrosive and toxic substances, metal cleaning and photo  
engraving and soldering processes in electronic industry.
- (37) Manufacturing of burning coal and coal briquettes.
- (38) Manufacturing of sports goods involving exposure to synthetic materials, chemicals and leather.
- (39) Moulding and processing of fiberglass and plastic.
- (40) Oil expelling and refinery.
- (41) Paper making.
- (42) Potteries and ceramic industry.
- (43) Polishing, moulding, cutting, welding and manufacturing of brass goods in all forms.
- (44) Processes in agriculture where tractors, threshing and harvesting machines are used and chaff cutting.

- (45) Saw mill – all processes.
- (46) Sericulture processing.
- (47) Skinning, dyeing and processes for manufacturing of leather and leather products.
- (48) Stone breaking and stone crushing.
- (49) Tobacco processing including manufacturing of tobacco, tobacco paste and handling of tobacco in any form.
- (50) Tyre making, repairing, re-treading and graphite beneficiation.
- (51) Utensils making, polishing and metal buffing.
- (52) 'Zari' making (all processes)'.  
(52) Electroplating;
- (53) Graphite powdering and incidental processing;
- (54) Grinding or glazing of metals;
- (55) Diamond cutting and polishing;
- (56) Extraction of slate from mines;
- (57) Rag picking and scavenging.
- (58) Processes involving exposure to excessive heat (e.g. working near furnace) and cold;
- (59) Mechanised fishing;
- (60) Food Processing;
- (61) Beverage Industry;
- (62) Timber handling and loading;
- (63) Mechanical Lumbering;
- (64) Warehousing;
- (65) Processes involving exposure to free silica such as slate, pencil industry, stone grinding, slate stone mining, stone quarries, agate industry."

**Source: Annual Report 2012-13, Ministry of Labour & Employment, Government of India**  
<http://labour.nic.in/upload/uploadfiles/files/Reports/ANUAL%20REPORTs%202012-2013.pdf>. Accessed on 19 September 2013.

**Annexure 2**  
**State Rules under the Child Labour (Prohibition and Regulation) Act, 1986**

<b>S. No.</b>	<b>State</b>	<b>Year in which the rules were framed</b>
1.	Arunachal Pradesh	1993
2.	Assam	1991
3.	Bihar	1995
4.	Delhi	1988
5.	Goa	1994
6.	Gujarat	1994
7.	Haryana	1988
8.	Karnataka	1997
9.	Kerala	1993
10.	Madhya Pradesh	1993
11.	Meghalaya	2013
12.	Mizoram	2009
13.	Orissa	1994
14.	Punjab	1997
15.	Rajasthan	Follows the Central Rules dated 1988
16.	Sikkim	1995
17.	Tamil Nadu	1994
18.	West Bengal	1995

**Annexure 3**  
**Legal provisions relating to child labour**

<b>Minimum age of employment or admission to part-time or full-time work</b>		
<b>EXISTING LAWS AND LEGAL PROVISIONS RELATING TO CHILD LABOUR</b>	<b>AGE FOR BOYS (in years)</b>	<b>AGE FOR GIRLS (in years)</b>
The Constitution of India – Article 24	< 14	< 14
The Children (Pledging of Labour) Act, 1933	< 15	< 15
Child Labour (Prohibition and Regulation ) Act,1986	< 14	< 14
The Apprentices Act, 1961	< 14 (A person is qualified to be engaged as an apprentice only if he is not less than 14 years of age, and satisfies such standards of education and physical fitness as may be prescribed).	< 14 (A person is qualified to be engaged as an apprentice only if he is not less than 14 years of age, and satisfies such standards of education and physical fitness as may be prescribed).
The Mines Act,1952	< 18	< 18
The Merchant Shipping Act, 1958	< 15	< 15
The Motor Transport Workers Act, 1961	< 14	< 14
The Beedi and Cigar Workers Act, 1966	< 14	< 14
The Plantations Labour Act, 1951	< 14	< 14
The Factories Act, 1948	< 14 (A child below 14 years of age is not allowed to work in any factory. An adolescent between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorised medical doctor. A child	< 14 (A child below 14 years of age is not allowed to work in any factory. An adolescent between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorised medical doctor. A child

	between 14 to 18 years of age cannot be employed for more than four and a half hours).	between 14 to 18 years of age cannot be employed for more than four and a half hours).
Juvenile Justice	< 18 (Under the Juvenile Justice (Care and Protection of Children) Act, 2000, care and protection is ensured to all children below 18 years of age. Procuration, employment and exploitation of children for labour is recognised as a special offence).	< 18 (Under the Juvenile Justice (Care and Protection of Children) Act, 2000, care and protection is ensured to all children below 18 years of age. Procuration, employment and exploitation of children for labour is recognised as a special offence).

## CHAPTER 4

### INTERVENTIONS

Since the promulgation of the Child Labour Prohibition and Regulation Act 1986 and the Child Labour Policy, there have been a number of organisations across the country working on this issue. As Neera Burra observed, “During the period 1986-1996 there was active interest in the issue of child labour and education. NGOs mushroomed across the country.”<sup>65</sup> While the rhetoric was non-negotiable, the action was one of finding compromise solutions.

There were different approaches that the NGOs adopted. On the one hand were organisations that worked on the belief that “there was no harm if education was combined with work. “Since the government also supported alternate education for the poor, many NGOs took up the challenge of running night schools for working children, schools after work, as well as the challenge of providing education to children at the work place.”<sup>66</sup>

These organisations believed that children should have the right to work, and it must be ensured that they are not exploited. Prominent among the organisations that held this view is the Concerned for Working Children (CWC) in Bangalore which has taken the stand that, instead of criminalising working children, it is important to tackle the root causes of child labour, and recognising the positive role that age-appropriate work can play in childhood.<sup>67</sup>

On the other hand there have been NGOs that believed that all forms of child labour must be banned. Organisations such as MV Foundation in Andhra Pradesh and CREDA, Bandhua Mukti Morcha and Bachpan Bachao Andolan and others who believe that child labour is a violation of child rights and hence must be eradicated. All of them share the common belief that children have a right to education, and that education is the most important means of getting children out of work.

MVF for the first time took a non-negotiable stand and defined child labour as *including all children who are out of school* and are already working in the formal or informal sectors, or are vulnerable to being placed in labour, and many organisations across the country adopted this definition in their work.

The interventions adopted by organisations working on child labour have been, and continue to be, multi-pronged. They mobilise communities around the need for addressing child labour, set up education centres or organise bridge courses for children so that they can be mainstreamed into the schooling system. At the same time there are some NGOs like Bandhua Mukti Morcha and Bachpan Bachao Andolan who were rescuing children from the work place through raids and rescue operations, ran a home for rescued children and worked towards their rehabilitation since the 1980s. Along with rescue and rehabilitation, they advocated for changing the law, took legal action against employers. Childline organisations across the country are also engaged in rescuing children.

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<sup>65</sup> Myron Weiner, Neera Burra, Asha Bajpai, 2006: *Born Unfree*, OUP. New Delhi. Pg. xxiii

<sup>66</sup> Ibid

<sup>67</sup> <http://www.concernedforworkingchildren.org/empowering-children/child-work-and-child-labour/our-stance-on-child-labour/>

Almost all organisations working on child labour are also engaged in public awareness campaigns and advocacy. Over the years there have been some major campaigns that have been started. They include the National Campaign against Child Labour (CACL), initiated in 1992, Global March against Child Labour started in 1998 and the Campaign against Child Trafficking started in 2002 which for the first time drew attention to trafficking for labour.

Several International organisations such as the UNDP with support of the Norwegian Embassy, Save the Children, UNICEF, ILO, Terres de Hommes (tdh-Germany), Misereor, Child Rights and You (CRY), Bread For the World, HIVOS, NOVIB and several others have supported different types of initiatives undertaken by NGOs over the years.

The Government of India has also initiated programmes to address child labour, on its own and with support of international agencies such as the ILO.

The National Resource Centre on Child Labour (NRCCL) of the VV Giri National Labour Institute, which is an autonomous institution under the aegis of the Government of India, has been focusing in the areas of Research, Training, Evaluation, Technical Support, Advocacy, Documentation, Publication and Dissemination with the view to contribute to the on-going efforts of prevention and elimination of child labour in the country.<sup>68</sup>

Since there are perhaps thousands of NGOs across the country who may be working directly on the issue of child labour or approaching it through other interventions, it is not possible to either identify or document all of them. Hence the attempt in this chapter is to document some major trends in interventions in India with the example of some of the NGOs and their work.

### **Government Interventions**

**National Child Labour Project (NCLP):** The Ministry of Labour and Employment has been implementing the NCLP through the establishment of National Child Labour Projects (NCLPs) for the rehabilitation of child workers since 1988. Initially, these projects were industry specific and aimed at rehabilitating children working in traditional child labour endemic industries.

The NCLP Project seeks to rehabilitate children withdrawn from work through special schools with focus on children engaged in hazardous occupations. The package of benefits to child labour for their rehabilitation includes education, vocation training, nutrition, health care, recreation and stipends. The other activities include strict enforcement of child labour related laws, raising awareness against the evils of child labour and extension of welfare activities to child labour.

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<sup>68</sup> <http://www.vgnli.org/node/310>



Survey is the starting point for the Child Labour project. The Project Society conducts the survey in the project area to determine the target group. The survey ordinarily provides information on the magnitude of child labour, its classification by occupation, age and its geographical distribution. The scheme allows the project society to rent suitable accommodation for having the special school. Children in the special school are served cooked nutritious meal on a daily basis. A provision of Rs. 5 per child per day has been made for this purpose. The Project Society can converge with other developmental programme and provide better nutrition. Every child in special school has to be paid a stipend of Rs. 100 per month. The amount has to be deposited in the saving account opened in the Post Office/Bank in the name of the child. The accumulated amount can be withdrawn by the beneficiary only at the time of mainstreaming.

Although, NCLP is meant to be implemented in 271 districts, as of December 2012 it was operational in 266 districts in 20 states covering around 3.39 lakh children through 7311 special schools. The Ministry of Labour and Employment is also operating a “Grant-in-Aid Scheme in the districts where NCLP is not feasible.”<sup>70</sup> After the enactment of the right to education act, there has been a major focus on aligning the NCLP scheme with it and the NCLP School are meant to serve as Special Training Centre in accordance with the provisions of Section 4 of the RTE Act and Rule 5 of the Right of Children to Free and Compulsory Education (RTE) Rules, 2010. Children withdrawn/rescued from work are supposed to undergo the special training for being mainstreamed into the regular school in an age appropriate class. Each NCLP centre is supposed to be attached to a neighbourhood school and would serve as a special training centre for age appropriate admission of identified child labour in that school. The school management committee (SMC) of the school is to also monitor the progress of the NCLP centre.<sup>71</sup>

<b>LIST OF DISTRICTS COVERED UNDER NCLP SCHEME<sup>69</sup></b>		
<b>S.No.</b>	<b>Name of States</b>	<b>No. of Districts</b>
<b>1</b>	Andhra Pradesh	23
<b>2</b>	Assam	3
<b>3</b>	Bihar	24
<b>4</b>	Chhattisgarh	8
<b>5</b>	Delhi	1
<b>6</b>	Gujarat	9
<b>7</b>	Haryana	3
<b>8</b>	Jammu & Kashmir	3
<b>9</b>	Jharkhand	9
<b>10</b>	Karnataka	17
<b>11</b>	Madhya Pradesh	22
<b>12</b>	Maharashtra	18
<b>13</b>	Mizoram	1
<b>14</b>	Nagaland	1
<b>15</b>	Orissa	18
<b>16</b>	Punjab	3
<b>17</b>	Rajasthan	23
<b>18</b>	Tamil Nadu	18
<b>19</b>	Uttar Pradesh	47
<b>20</b>	Uttarakhand	1
<b>21</b>	West Bengal	19
<b>TOTAL</b>		<b>271</b>

<sup>69</sup> [http://labour.nic.in/upload/uploadfiles/files/Divisions/childlabour/WorkingGroup12th\\_plan\\_on\\_Child\\_Labour.pdf](http://labour.nic.in/upload/uploadfiles/files/Divisions/childlabour/WorkingGroup12th_plan_on_Child_Labour.pdf)

<sup>70</sup> Minutes of the Central Advisory Board on Child Labour, 21 December 2012.

<sup>71</sup> [labour.gov.in/upload/uploadfiles/files/Divisions/childlabour/Amended%20MoLE%20Task%20Force%20Draft%20report%20\(3\)20912\(1\).pdf](http://labour.gov.in/upload/uploadfiles/files/Divisions/childlabour/Amended%20MoLE%20Task%20Force%20Draft%20report%20(3)20912(1).pdf)

The government now proposes to extend the NLCP to all the 600 districts in the country during the 12<sup>th</sup> Plan to completely eliminate child labour. This includes coverage of each of the districts under the NLCP scheme presently covered under the Grant in Aid scheme for elimination of child labour and for opening residential schools in each district of the country to address issues related to working children of migratory families. The total cost for this would be Rs 10,54,71,52,000 per year and Rs 53,68,25,80,000 for the Plan period.<sup>72</sup>

**Education for All:** Most significantly in 2001 – 02, the Government launched the Sarva Shiksha Abhiyan or the Education for All Programme which is an effort to universalize elementary education. In 2010 the Right to Free and Compulsory Education Act (RTE) was passed. The RTE envisaged providing free and compulsory education to all children, setting a deadline for the implementation of all the provisions of the Act by 31<sup>st</sup> March, 2013. However it has been found that 4.8 per cent of government schools have all the nine facilities provided under this Act. In 11.41 per cent schools, there are eight out of the nine facilities and one third of the schools have only seven facilities provided. Around 30 per cent schools have less than five facilities.<sup>73</sup>

**Integrated Child Protection Scheme:** Introduced in the XIth Five Year Plan, the Integrated Child Protection Scheme (ICPS) is government's flagship programme aiming at building a protective environment for children, especially for those in difficult circumstances. It redefines 'child protection' to address both pre-harm and post-harm situations thereby aiming at reducing children's vulnerability to any kind of harm and protecting those in harmful situations. Strengthening families and child tracking are thus critical components of the scheme as part of preventive measures along with implementation of interventions that address the post-harm protection and rehabilitation needs of vulnerable children.

One of the key approaches of the scheme is to "Integrated service provision", which calls for coordination and convergence with various sectors, 'including health, education, judiciary, police and labour, among others'.<sup>74</sup>

### **Government Committees on Child Labour**

The **Central Advisory Board on Child Labour** was constituted on March 4, 1981 to: (i) Review the implementation of the existing legislation administered by the Central Government; (ii) Suggest legislative measures as well as welfare measures for the welfare of working children; (iii) Review the progress of welfare measures for working children; and (iv) Recommend the industries and areas where there must be a progressive elimination of child labour. The Board was reconstituted last on November 2, 1994. The Union Labour Minister is the Chairman of the Board. The other Members of the Board include representatives from the various sister ministries, Members of Parliament, non-governmental organisations, representatives of major trade unions and employers' organisations.

<sup>72</sup> [http://labour.nic.in/upload/uploadfiles/files/Divisions/childlabour/WorkingGroup12th\\_plan\\_on\\_Child\\_Labour.pdf](http://labour.nic.in/upload/uploadfiles/files/Divisions/childlabour/WorkingGroup12th_plan_on_Child_Labour.pdf)

<sup>73</sup> RTE Forum. Status of Implementation of the Right of Children to Free and Compulsory Education Act, 2009: Year Three (2012-13) <http://www.rtemaharashtra.org/downloads/rteforumdraft.pdf>

<sup>74</sup> Ministry of Women and Child Development, Government of India and NIPCCD, *Integrated Child Protection Scheme: A Centrally Sponsored Scheme of Government - Civil Society Partnership*, pp. 12, 25, 27.

The **Child Labour Technical Advisory Committee** is constituted under Section 5 of the Child Labour (P&R) Act 1986, the Government of India is empowered to constitute a Child Labour Technical Advisory Committee for the purpose of addition of occupation and processes in the Schedule to the Act. The Committee consists of a Chairman and members not exceeding ten. The Committee was reconstituted on February 5, 1996 under the chairmanship of Director General of Indian Council of Medical Research.

**National Institutions:** A number of national institutions such as the V.V. Giri National Labour Institute (VVGNI) and the National Institute of Rural Development (NIRD) and some state level institutes have played an important role in the areas of training and capacity building of government functionaries, factory inspectors, officials of *panchayati raj* institutions, NCLP project directors, and heads of NGOs. These institutions have also made a significant contribution in the areas of research and surveys, awareness raising and sensitization, thus bringing the discussions on this issue to the forefront.

## **International Organisations**

### **UN Agencies**

#### ***International Labour Organisation (ILO)***

ILO technical assistance on child labour is provided to countries within the framework of *Decent Work Country Programme (DWCP)* and ILO Conventions, particularly the two core child labour *Conventions, No. 182 on the Worst Forms of Child Labour (1999)* and its accompanying Recommendation No. 190 and *Convention No. 138 on Minimum Age of Employment (1973)* and its accompanying Recommendation No. 146. In 2012-13, in the ILO Decent Work Country Programme in India, child labour was a priority under the unacceptable forms of work. The DWCP is aligned with the national development plan and the United National Development Framework (UNDAF). Cooperation on child labour has aimed at supporting constituents on child labour policy, enforcement, plans of action, and direct support.

The ILO has implemented different initiatives over the last two decades. All the direct intervention initiatives have now come to an end. IPEC was initiated in 1992. Over the years, IPEC in India moved away from relatively small action programmes, as implemented in the framework of the national programme, to more holistic programmes integrated into national efforts to combat child labour through the NCLPs. Two of the approaches tried included the integrated projects and the state-based projects. The idea behind the integrated approach was not only to address the issue of putting children into non-formal schools, and later into formal schools, but also to tackle other factors that had a bearing on sustaining the movement of rehabilitation, and, more importantly, preventing the accretion of more children into the labour force. The Integrated Area Specific Programme (IASP), which was based on this concept, comprised an integrated set of interventions simultaneously addressing all the interlinked issues that perpetuate child labour at the district level.

As a part of the IPEC initiative, Government of India and the US Department of Labour initiated a US\$ 40 million project in May 2003 aimed at eliminating child labour in 10 hazardous sectors across 21 districts in five States namely, Maharashtra, Madhya Pradesh, Tamil Nadu, Uttar Pradesh and NCT of Delhi. This project, popularly known as INDUS, was implemented by ILO from March 2003 till March 2009. The project planned to withdraw and rehabilitate around 80000 children as well as provide support to 10000 families of former child workers.

A project targeting the Worst Forms of Child Labour for combating child labour and economic exploitation among adolescents in the sericulture industry was implemented in Karnataka and Andhra Pradesh ended in 2009. With funding from the Government of Italy, the Karnataka State-Based Project implemented direct action in Chamarajnagar and Bidar Districts of the State. Activities related to capacity building and awareness raising activities had a wider geographical scope. Technical and financial support was provided to the establishment of the Karnataka State Resource Centre on Child Labour<sup>75</sup>, under the Karnataka State Child Labour Eradication Project Society (KSCLEPS), Department of Labour. The project in Andhra Pradesh was launched in 1999 with funding from the UK Department for International Development – DFID, the first phase of the Andhra project was. It contributed to the elimination of child labour in Andhra Pradesh through state action and involving employers’ and workers’ organisations and strengthening civil society mechanisms. The second phase project, with its office located in Hyderabad, focused on institutionalizing the pilot approaches into governance. A number of models piloted were tested, such as the urban model in Hyderabad city, and the rural model/district approach in Mahabubnagar and Kurnool districts in collaboration with National Child Labour Project (NCLP) and Sarva Shiksha Abhiyan (SSA) – Education for All programmes.

Converging against Child Labour: Support for India's Model project of the ILO with a start date of 2008, was approved by the Government of India in 2009 and was launched in 2010. It ended in June 2013. Field level Pilot Projects were undertaken in two districts each in five states; namely Bihar (Sithamari and Katiyar), Gujarat (Vadodara and Surat), Jharkhand (Sahibganj and Ranchi), Madhya Pradesh (Jabalpur and Ujjain) and Orissa (Cuttack and Kalahandi). The project was designed to demonstrate effective Convergence-based models for the elimination and prevention of child labour including trafficking/migration of children for work, in two districts in each of the five States. Furthermore, it was to create an enabling environment at the district, state and national level by strengthening capacities, creating awareness, promoting networking and enhancing the knowledge base and its management and dissemination for the prevention and elimination of child labour. State Resource Centres on child labour was set up in these states. These centres took up different activities such as training and developing State Action Plans FOR Elimination of Child Labour .

As part of this project three studies were undertaken with the Institute of Human Development on Child Domestic Workers in Delhi and Ranchi, Impact of the Mahatma Gandhi National Rural Employment Guarantee Scheme on child labour and on child labour, migration and trafficking.

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<sup>75</sup> <http://www.karnataka.gov.in/karnatakachildlabour/aboutus.aspx>

Several handbooks and manuals were developed for media, government officials, non government partners, panchayats, trade unions and employers.

## **UNICEF**

UNICEF India's programmatic approach to child protection aims to build a protective environment in which children can live and develop in the full respect of their fundamental rights. In the area of Child Labour, UNICEF implements projects in various states of the country adopted on the basis of an essentially holistic approach, combining strategies aimed not only to the withdrawal of children from work, but also to enhance communities' awareness, ownership and collective action for the protection and promotion of children rights. Existing strategies include: a) Promotion of education as both, key preventive measure and essential component for the rehabilitation of released children; b) Addressing poverty related factors through the promotion of self-help-groups; c) Advocacy and social mobilisation for the elimination of child labour.<sup>76</sup>

For over 10 years the IKEA Foundation has been supporting UNICEF's work in India to end child labour and create a better future for India's children. By the end of 2012 the IKEA Foundation had donated more than €100 million to UNICEF in India with the aim to reach 74 million children, helping them to have a healthy start in life and more opportunities to break the cycle of poverty.<sup>77</sup>

According to UNICEF, this strategy led to an increase of more than 47 per cent in school enrolment and attendance among the villages targeted by the ongoing UNICEF child labour elimination intervention in Uttar Pradesh. Over 120 Alternative Learning Centers (ALC) have been established in order to facilitate mainstreaming of out-of-school children into formal education and through them more than 24,000 children have been able to go back to school. Moreover, over 1000 Self-Help-Groups have been established and they are now playing a crucial role in reducing indebtedness among poor rural families. Women's empowerment is also showing to be instrumental to the well-being of children as a whole. With the support of UNICEF, for example, 50 per cent of targeted villages have adopted three key-friendly practices, namely an immunization coverage of more than 80 per cent, a school enrollment rate of more than 90 per cent and a sensible increase in the age of marriage.<sup>78</sup>

## **International Non-Governmental Organisations**

### ***Terre des Hommes (Germany)***

Terre des Hommes (tdh) Germany has been one of the organisations in the forefront supporting projects and campaigns that were aimed at eradicating child labour since 1990. It currently supports 23 organisations across 10 states.

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<sup>76</sup> Child Labour, UNICEF India, [www.unicef.org/india](http://www.unicef.org/india)

<sup>77</sup> <http://www.ikeafoundation.org/UNICEF-Story-Details?StoryID=4>

<sup>78</sup> Child Labour, UNICEF India, [www.unicef.org/india](http://www.unicef.org/india)

tdh believes that child labour is a structural issue which has to be eradicated through a process of positive social change. It is with this overall approach, that it has been supporting projects for removing children at once or gradually from work situation to school situation and / or other alternatives like vocational training, upgrading of skills and so on. This was done in combination with campaigns, public awareness, motivation of parents, and improvement of economic situation of parents in order to compensate losses of earnings by children. Child labour eradication is a part of the integrated approach of promoting children's rights within the community creating demand for education, improving education system, improving economic situation of the communities through supplementary livelihood measures and / or through government schemes accessed for the community through project interventions. Projects for implementation of legislations like Forest Rights Act or those promoting women's development or agricultural and rural development therefore has the child labour and education component.

tdh's support to Samata and HAQ: Centre for Child Rights to address the questions surrounding mining and children in 2009-10 was perhaps one of a kind initiative. It has led to a focus, for the first time, on the relationship between mining and children.

It supports local organisations to undertake programmes for setting up of short term summer bridge schools to enable child labourers to be mainstreamed into education, undertake school enrolment campaigns, and work towards improvement of quality of education through cooperation with government schools. The bridge school approach initiated by MV Foundation has been adapted in different sectors, particularly in the mining sector in Karnataka. This has been quite successful.

tdh has also supported vocational training institutes for former child labourers by weaning them out of the work situations, training them in skills similar to the ones they were already involved in. Eventually as young adults they got employment in the same sector. This was done in Tirupur textile sector. tdh has supported many partner organisations in the carpet belt together with Misereor and (formerly) Bread for the World. Currently tdh is implementing a project jointly supported by Misereor and tdh on child rights in the mining sector which also includes projects for bringing children from work to education or preventing entry of children into labour through community awareness and promotion of school enrolments.

tdh also supports children's protagonism / activism. It has supported organisations working with children who through promote child participation. Children and children's organisations have been able to bring their peers into school or retain them within school even by negotiating with parents. This has been an important element in some of the projects.

Supporting advocacy for legislative and policy change is an important aspect of tdh's support. It has been a partner and supported of the national Campaign against Child Labour (CACL) and the Campaign against Child Trafficking (CACT) since its very inception.

## ***Save the Children, India***

Save the Children works towards protecting children from abuse, neglect and exploitation, specifically the eradication of hazardous and exploitative forms of child labour. Currently Save is supporting 15 organisations to implement child labour eradication project in 3 states. It is focussing on Child Domestic Work Delhi in Jharkhand, West Bengal and Delhi; children in brick kilns in West Bengal; children in garment making in Delhi. In past Save-India has worked supported work with children engaged in *Beedi* making.

Till t 2012, SAVE was supporting interventions with children in cotton growing areas of Maharashtra and Gujarat but now have withdrawn from these two states. Save the Children and IKEA Foundation have planned to extend their efforts to fight child labour in the cotton industry by expanding their programmes to Punjab, Haryana and Rajasthan.<sup>79</sup>

The interventions include empowering communities through community mobilization around the issue of child labour to break its social and cultural acceptability; promoting skills and capacities of communities and government through building knowledge and skills of the local government on legislation, programmes and schemes for poor families and children etc. It also encourages collaboration with government to strengthen systems and provide technical support in strengthening child protection system especially focusing on ICPS.

The organisations that Save-India supports also provide services for functional literacy for school dropouts, their mainstreaming into regular schools and counselling and referral service for abused children. An important intervention supported by Save-India is for providing vocational training and market oriented skills and placing them in jobs. This is only for those in the age group of 17-20 yrs.

The time scale for the interventions differs. SAVE-India's intervention with child domestic workers has been on since 2004 and will continue until 2016. The interventions on children in agriculture started in 2008 and will continue until 2016. Work with children in brick kilns began in 2008 and plan to continue till 2015, it has been focusing on children in garment making since 2011.

## ***Action Aid***

Action Aid has been working on issues of Child Labour and Bonded Labour since 1996<sup>80</sup>. Child labourers and children on the street continue to form a special focus groups in its work areas. Action Aid with its partners have launched a national campaign on bonded labour in the year 2012– 'Bandhua 1947' which covers 21 districts in the five states of Rajasthan, Madhya Pradesh, Odisha, Andhra Pradesh and Tamil Nadu. Through their campaign, they aim to provide livelihood to many families leading to many children being out of labour. The organisation has also been able to intervene and register cases of violation of JJ Act 2000, Minimum Wages Act, 1948, Bonded Labour Act and CLPRA 1986.

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<sup>79</sup> <http://www.savethechildren.in/85-latest-news/208-save-the-children-and-ikea-foundation-expand-partnership-to-address-child-labor-in-punjab-haryana-and-rajasthan.html>

<sup>80</sup> <http://www.actionaid.org/india/2013/03/breaking-barriers-bondage-part-1>

As part of the organisation's advocacy action, many consultations have been launched and organised to develop policy recommendations regarding definition of child labour, methodology of estimating their numbers and listing the changes required in synchronising the various laws which have a bearing on child labour, most important being the Child Labour Prohibition and Regulation Act 1986 and the RTE. It also focuses on creating access to quality education for the children since they believe it is a critical tool for the empowerment of children. It is aiming to understand through its country-wide stock taking exercise the reasons for the gaps in implementation of the Right to Education (RTE) Act 2009. Through this initiative and its campaigns such as *Chalo Pathshala Chalein Abhiyan* they are linking former child labourers to schools.<sup>81</sup>

### **World Vision<sup>82</sup>**

World Vision India (WV) is a Christian humanitarian organisation working to create lasting change in the lives of children, families and communities living in poverty and injustice. Spread across 174 districts in India, WV believes that all non school going children are child workers in one form or the other.

It has experience of working with different communities for over five decades that indicates that parents are eager to have their children to be educated. However, poor access to schools and poor infrastructure facilities are other factors that contribute to child labour. They also believe that many invisible children particularly girls are involved in domestic labour which is exploitative for which there is no official data.

WVI is committed to eliminating child labour in all its forms in the communities where they work. They have developed a strategy - '*Strategy for Responding to Child Labour*' to respond to child labour. Former child labourers have itself largely defined this strategy. Their aim through this strategy was to eliminate the practise of child labour in 5835 target communities by 2012. This strategy looks at Prevention, Restoration and Advocacy

Under Prevention WV aims at identifying existing 'pockets' of child labour in the communities World Vision works in, building community capacity in preventing the spread through rights awareness and making children aware of their own rights and involving them in creating programmes to address the issue. Under Restoration, WV contributes by helping out-of-school children get into mainstream education as well as age- appropriate vocational skill training which also helps to keep children out of labour. Through advocacy, WV strives for proper implementation of existing laws that address issues of child labour becomes a key issue to advocate for. They believe that the most effective intervention would be to 'give children a voice' to make the general public aware of child labour, both hidden and overt.

### **Indian Non Governmental Organisations**

There are a number of interventions across the country focusing on child labour. They undertake interventions ranging from preventive action such as community mobilization, direct interventions with children by providing with education and ensuring their

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<sup>81</sup> [http://www.actionaid.org/sites/files/actionaid/annual\\_report\\_2012-13.pdf](http://www.actionaid.org/sites/files/actionaid/annual_report_2012-13.pdf)

<sup>82</sup> [http://www.worldvision.in/at\\_the\\_cost](http://www.worldvision.in/at_the_cost)



mainstreaming into schools to rescue of children from labour. There are others that conduct rescues with the support of the police and the government machinery. The organisations have been presented here according to the approach they take in addressing child labour.

### **Community Mobilisation and Education**

**M Venkatarangaiya Foundation (MVF)** began working on child labour in 1991, when it withdrew 30 children from bonded labour. From 1996 it was supported by UNDP and NORAD to address child labour through social mobilization.

MVF follows an 'area based approach' as against a target based approach. In doing so it seeks to address the rights of the entire universe of children-both in school and out of school in the 5-14 age group. It defines all children out of school as child labour as it believes that being out of school is intrinsically hazardous to their growth and well being. MVF also works to ensure that every child in school does so without any disruption until the child reaches class 10, in order to ensure that the child is not pushed into labour again<sup>83</sup>.

MVF's approach has twin responsibility- that of mobilizing and organising the communities for public action, particularly through the creation of child rights protection networks (CRPF) in the villages for putting pressure on the system to deliver services along with working with concerned public institutions to take care of children in formal schools. Over the years, MV Foundation has mobilized over 600000 children out of work and into full time, formal government day schools. The organisation has worked towards making 1500 Gram Panchayats child labour free. When it began in 1990s, MVF pioneered the concept of Residential Bridge Course (RBC) camps to prove to the community, parents and children that challenge the myth that poverty is the cause of child labour. The RBC pedagogy, curriculum have been adopted by many NGOs and Indian Government Policies.

Currently MVF is implementing a programme directly in Ranga Reddy, Nalgonda, Kurnool and Adilabad districts of Andhra Pradesh covering 2500 villages and in the city of Hyderabad. MVF provides technical support to various governments and NGOs on addressing child labour. Over the years it has worked with in Assam, Bihar, Maharashtra, Madhya Pradesh and Tamil Nadu. It has also provided technical support to NGOs and Governments in Nepal, Central America and Africa.<sup>84</sup>

A similar approach is followed by **Centre for Rural Education and Development Action (CREDA)**. Since its inception in 1982, CREDA has focused on child labour related activities. It has undertaken projects for the elimination and rehabilitation of child labour in the Mirzapur-Bhadohi belt in the Varanasi division. These children are the first generation to get an education in the area. CREDA began educational centres, in 1982.<sup>85</sup>

Though the focus of CREDA's work is child education and through it the elimination of child labour, CREDA realised that in order to achieve its objectives, it would have to gain the trust of the community and address the issue of community development. Thus, for CREDA

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<sup>83</sup> <http://www.mvfindia.in/>

<sup>84</sup> *ibid*

<sup>85</sup> <http://www.credaindia.org>

community mobilization is an integral part of its strategy. As a part of its community mobilization, CREDA has encouraged the establishment of vigilance committees as the watchdog body at village level to monitor child labour prevalence and to check that children are enrolled in school (and retained there). Vigilance committees have now been established in all 206 villages. The committees have a minimum of 11 members, but the more common membership base is 15-20. The Committees are informal in that they do not have a legal status and membership is constituted among those committed to the cause. Elected Panchayat members are often active in the vigilance committees, but in their own capacity and not representing the Panchayat as an institution. These vigilance committees have become an important entry point to oversee child rights issues and also to promote education and promoting labour rights in general such as following up of government rates for minimum wages.

CREDA also provides technical and promotional support to grassroot NGOs, CBOs (Community Based Organisations), Panchayats, Government Schools and volunteers. In addition to undertaking studies and researches on child labour, CREDA has developed training modules for child labour school instructors in U.P. It produces and uses communication and awareness materials covering a wide spectrum of areas such as health, self-help, child labour, legal provisions, skilled training and community mobilisation in its project areas. These are also widely used by several social voluntary organisations and government departments.

### **Rescue and Rehabilitation**

**Child Line's 1098** is one of the main rescue services available for rescue of child. It is available in 204 locations and works through 458 partners across the country.<sup>86</sup> Over the years, child line has become the first point of contact for violation of child rights. Hence Child Line has been playing a major role in rescue of child labour. Following rescue, these children are produced before the Child Welfare Committees set up in the Districts under the Juvenile Justice (Care and Protection of Children) Act, 2000 (discussed in detail in the section on law and policy).

**Bandhua Mukti Morcha (BMM)** was formed in 1981 to wage a battle against the pernicious bonded labour system in India. It has been also rescuing children from labour over the years as part of its *baal mukti andolan* (free children campaign) as it believes that child labour is another kind of bonded labour. It believes in the philosophy of total eradication of child labour and removal of the distinction between hazardous and non-hazardous, and has actively advocated for change in the existing law. According to BMM, it has rescued and restored to their parents about a thousand children from the carpet industry alone. Their rehabilitation has been monitored. Over the years, BMM has been engaged in a campaign for the provision of non-formal and full time education for children, along with supply of nutrition to the children, some food security to their poor families. As a result of BMM's efforts leaders of leading political parties have expressed their concern about child labour and made a mention of it in their election manifestos in Parliamentary elections.<sup>87</sup>

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<sup>86</sup> <http://www.childlineindia.org.in/pdf/Annual-Report-11-12.pdf>

<sup>87</sup> <http://www.swamiagnivesh.com/bonded.htm>

**Bachpan Bachao Andolan (BBA)** started in 1980, and works towards preventing child labour, bonded labour and trafficking through different measures. It works in the areas of rescue, repatriation and rehabilitation of children in work. Over the years, it has rescued more than 76,000 child/bonded labourers from brick kilns, stone quarries, domestic labour, hotels/dhabas, carpet looms, agriculture and allied work etc. BBA campaigns at the local, national and international levels to change attitudes towards child labour as well as improve government policy and legal provisions. It has worked towards establishing child friendly villages where the community is sensitised to the effects of child labour, and the children receive a quality education and opportunity to participate in local governance structures. It has also used the tools of legal awareness, Public Interest Litigations, close cooperation with the legal fraternity, follow-up of important judgments and orders passed by Courts to ensure implementation of the existing laws and bring law reform. In order to provide legal aid and representation to children in need of care and protection, BBA has established an All India Legal Aid Cell on Child Rights in partnership with the Delhi Legal Services Authority.

**Shakti Vahini** conducts rescue operation of children in forced labour situations in collaboration with various law enforcement agencies. The organisation undertakes a lot of awareness programmes on the issue of child labour and reaches out and works with various stakeholders like the Police, Labour Department, Resident Welfare Associations, Industries Associations, Youth and Students, Lawyers etc. for strengthening the fight against child labour. We oversee the process of restoration of the children to their home state and follow up the cases up to the trial stage of the criminal cases filed. Shakti Vahini has been working in close partnership with the Labour Department and the district administration not only to rescue but also in providing rehabilitation and compensation to rescued trafficked children. They also take up legal cases on behalf of the children.

### **Focus on Street and Working Children**

There are several organisations across the country such **YUVA in Mumbai, Butterflies in Delhi and Sakthi Vidiyal in Madurai, Child hood Enhancement through Training and Action (CHETNA)**, who work with street and working children. Their interventions range from providing support to children, organising them, providing shelter, education and other support.

**Sakthi Vidiyal in Madurai** in Madurai works with both child labour and street and working children. It provides support to the children through both institutional and non-institutional services. It has seven drop in centres where children can come as well as home for children, including street children without parents who need long term care.<sup>88</sup>

**Butterflies** and **CHETNA** both follow a non-institutional approach and work towards empowering street and working children where they are. Butterflies works through 20 contact points and runs 3 shelters in Delhi. CHETNA's interventions with street and working children through 82 contact points in Delhi, NOIDA, Jhansi, Mathura and Agra in Uttar Pradesh and Gwalior in Madhya Pradesh<sup>89</sup>. The focus on child participation is at the core of their initiatives. Both these organisations have helped street and working children organize

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<sup>88</sup> <http://www.newdawnindia.org/> and <http://www.vidiyalchildren.org/>

<sup>89</sup> <http://www.chetna-india.org>

themselves (Butterflies has facilitated three children's forums Bal Sabha, Bal Samiti, Delhi Child Rights Club<sup>90</sup> and CHETNA has facilitated the formation of Badte Kadam a forum for street and working children).

Other organisations such as **SATHI** work with children on railway platforms and trains who also work to earn a living. They provide support to children, help repatriate them home and provide short-term or long term shelter. Its operations are spread across the major junctions of India viz. Kanpur, Mughalsarai, Gorakhpur, Allahabad, Ahmadabad, Pune, New Delhi, Hyderabad, Tirupati, Yeshwantpur, Bangalore and Hubli. **CHETNA**, Delhi also focuses on working children on platforms and in trains in the cities where it has interventions. There are several other organisations across the country who are focusing on this category of children.

### **Organising Child Labour<sup>91</sup>**

One of the foremost among the organisations that have been working on organising children into unions is **Concerned for Working Children (CWC)** which believes that it is children, not adults, who know best what children need and want. Instead of merely 'helping' children, CWC has decided to work to empower children to organise themselves and identify, and solve, their problems.

Its work began with the formation of Bhima Sangha, a union of working children, in 1990, and expanded with the formation of the International Movement of Working Children in 1996 and the National Movement of Working Children in 1999.

Over the years, Bhima Sangha has intervened effectively in a wide array of problems for its members and other working children. Like any workers' union, it often intervenes in matters relating to work, whether forcing a neighbour to apologise for beating a domestic worker or securing better safety conditions for workers in a cashew nut factory. Today, Bhima Sangha boasts over 12500 members and is recognised worldwide as a leading force within the international community of working children's organisations.

### **Campaigns and Networks**

#### ***Campaign Against Child Labour (CACL)***

The National Campaign against Child Labour was initiated in 1992, and has 18 state units, and many state level NGOs as its members. The focus of the campaign has been to address the question of child labour not as a welfare issue but as a persisting social problem in the context of the existing inequalities and exploitative socio-economic practices in the country, and as a violation of a child's basic human rights.<sup>92</sup> It has consistently campaigned for changes in the child labour law to ban all forms of a labour and right to education.

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<sup>90</sup> <http://www.butterflieschildrights.org>

<sup>91</sup> <http://www.concernedforworkingchildren.org>

<sup>92</sup> <http://cacl.co.in/>

All the member organisations subscribe to the ideology that there must be no distinction between hazardous and non-hazardous child labour. The membership consists of those working directly with children in communities in rural and urban areas and adopting a multi-pronged approach to tackling child labour combining educational initiatives, health initiatives, community mobilization and livelihood programmes as well as those who are engaged in research and advocacy. Following the enactment of the right to education law, most of them also focus on mainstreaming children into the government run schools.

As part of the campaign, there have also been efforts to work together with the government labour departments to remove children from working places and take legal action against employers. Such children have either been restored to the parents or housed in homes as assigned by child welfare committees.

In addition to all this the important aspect was campaign and advocacy on child labour, through campaign against child labour, towards legislative changes which was adapted according to the situations like demanding inclusion of more sectors in hazardous sectors, inclusion of hotel and domestic sectors as in the list of hazardous employment, monitoring of legislation and notifications by the government etc.

### ***Global March Against Child Labour***

BBA is one of the prime movers and international secretariat of the Global March Against Child Labour, which is a worldwide network of trade unions, teachers' and civil society organisations that work together towards the shared development goals of eliminating and preventing all forms of child labour and ensuring access by all children to free, meaningful and good quality public education. It mobilises and supports its constituents to contribute to local, national, regional and global efforts and support for a range of international instruments relating to the protection and promotion of children's rights and engages with the United Nations, international and inter-governmental agencies on the same. It was initiated in January 1998<sup>93</sup>

The initiative “Not Made by Children” is a natural progression of the work done by Global March Against Child Labour in the Garment Manufacturing Sector. Earlier in 2010, various stakeholders like apparel retailers, exporter manufacturers, manufacturers’ organisations, trade unions, child rights NGOs congregated to form a Multi Stakeholder Garment Steer Group on Child Labour to collectively work towards eliminating child labour from the garment supply chains. The Steer Group is facilitated by the Global March Against Child Labour and includes the International Labour Organisation (ILO) in an advisory capacity.

<http://www.globalmarch.org/campaigns/not-made-by-children>

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<sup>93</sup> <http://www.globalmarch.org/aboutus/howwestarted>

## ***Campaign Against Child Trafficking***

The national Campaign against Child Trafficking (CACT) was started in 2002, with HAQ: Centre for Child Rights as its Secretariat. It was part of the International Campaign on Child Trafficking of the *terres des Hommes*. Over the years it spread to 16 states. While the focus of the campaign was child trafficking in all its forms and for all purposes, trafficking for labour was an important focus of the campaign. In fact it was one of the first campaigns in the country to draw attention to trafficking of children for labour, and it continues to focus on this issue.

A Public Hearing on child labour, organized jointly focusing particularly on child labour in the domestic sector and on road side eateries and small hotels (banned in 2006), following a social audit conducted in 12 states by these two campaigns was held in 2010. This highlighted the poor implementation of the law in the country.

### **Conclusion**

Over the years, one of the biggest gains has been increased government-civil society engagement on the child labour issue, resulting in involvement of government agencies and statutory bodies such as the National Commission for Protection of Child Rights in the movement against child labour and as advocates for change in the child labour law. Yet the more we come together, the more we drift apart.

In a 1999 publication documenting Indian and International strategies against child labour, the editor Klaus Voll stated that “The movement against child labour in India, till now primarily led by voluntary agencies, suffers, in my opinion, irrespective of existing networks, from the fact that there is no true cooperation among the various protagonists of this movement and, therefore, the prevailing fragmentation of these forces gets perpetuated. Foreign donors should perhaps exercise gentle pressure on these activists to overcome these partly personality-based divisions, in the higher interest of success of their endeavours.”<sup>94</sup>

While Klaus’s observations hold true to large extent even now, it would not be incorrect to say that the foreign donors have failed in their duty to bridge the personality-based divisions. In fact, in the wake of global economic crisis and the need for every agency to justify its grants and take their agendas forward more aggressively, the divide in the movement against child labour has taken a new turn. In addition to being personality-driven, the need to compete with each other has affected synergy in action. At the same time, there is duplication of efforts in as much as several NGOs have expended their energy on rescue or rehabilitation measures without addressing the situation holistically. Follow-up of rescue and restoration of children to their families has remained weak, strengthening families and linking them with poverty alleviation programmes and such other preventive measures has been poor, demand for child labour continues to be high, the network of traffickers has proved to be better at its job as trafficking of children for labour remains unaddressed in any government programme. Thus children continue to fall within the cracks.

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<sup>94</sup>Klaus Voll (edited) *Against Child Labour. Indian and International Dimensions and Strategies*. 1999. Mosaic Books. New Delhi, India. Pg. xi

## CHAPTER 5

### GLIMPSES OF FIELD REALITIES

This chapter draws on secondary data and also some field visits to get glimpses of child labour in some areas in the country that became notorious in the 1990s due to industry specific situations. Attempts are made to understand the current situation and explore how a better understanding of child labour and work can be made. The most striking observation is that **there has been an invisibilisation of child labour, mostly due to the changing industrial scenario after the 1990 reforms.**

Instead of working on a specific site, the 'factory' the employment scenario has shifted to home based work or has highly ancillarised and decentralised. Labelling by international bodies like Good Weave (formerly Rugmark) too has contributed to a shifting of the child labour from the carpet industry that has been accompanied by a shift in the demand for carpets.

In some industries, like the silk fabric manufacturing units in Karnataka's Ramanagaram, child labour was rampant even a decade ago. Children were employed in shelling the cocoons<sup>95</sup>. But with cheaper imports of Chinese synthetic silk threads, the silk units in Ramanagaram have almost shut down. Cuts on import duties have badly impacted cocoon farmers in Karnataka and Andhra Pradesh.<sup>96</sup>

It is clear that child labour in these industries declined not due to the effectiveness of the government's policies but due to a general decline and in some cases a collapse of the industry itself. But have children stopped working in these areas? Has child labour been eliminated? The answer is an obvious no.

Because of the fallacious division between hazardous and non-hazardous occupations in the law as it exists (and discussed in detail in earlier sections in the report), children continue to be employed in a range of occupations that for now are not in the list/ schedule of prohibited occupations and processes. However, what is even more important is that children continue to be employed even in what has come to be listed as hazardous or prohibited occupations, the most visible among them being the domestic and the hotel industry.

Given the enormity of the problem, it is not possible to cover every occupation and geographical location in which children are employed. What has been attempted in this section therefore is to bring some glimpses of occupations in a few locations that children continue to be employed. Combinations of descriptive as well as anecdotal accounts have been used, along with reference to secondary sources. Data in the field was collected mostly through focus group discussions, key respondent interviews, especially with villagers, including with the children, key officials and personnel of NGOs. Some government officials were also spoken to. The names of the children /respondents have been changed to protect their identity. Also the names of the NGOs have been withheld often on request.

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<sup>95</sup> <http://www.frontline.in/navigation/?type=static&page=flonnet&rdurl=fl1801/18010660.htm>

<sup>96</sup> <http://www.frontline.in/navigation/?type=static&page=flonnet&rdurl=fl2814/stories/20110715281409600.htm>

The chapter is divided into five sections. The first section is on Uttar Pradesh. After a brief look at the carpet and the glass bangle industry, a recently emergent phenomenon, that of migrant waste workers, is examined. The next section examines in detail in Tamil Nadu a new form of tying in girl children by en-cashing on their need to provision dowry to get married. The third section examines the child labour situation in Orissa, Koraput district in particular. Apart from the usual engagement of children in agriculture, small shops and establishments and the like, the cashew industry in Koraput employs many girl children. But what is more alarming is the engagement of tribal children by ultra-left extremists as carriers, camp followers and so on. There is just no literature on this yet and probing around is rather dangerous. The last section explores briefly some of the drivers of child labour especially the supply side factors of education with examples from Rajasthan's Dungarpur district.

### 1. Uttar Pradesh

Going by the official statistics, UP has the highest number of child labourers in India. Numbers apart, it is also home to some of the black holes in the history of child labour in India. These include the children in the carpet industry in the Mirzapur-Bhadohi-Sonebhadra belt and the glass bangle workers in Ferozabad. These sites became infamous in the 1990s with activists, researchers, media and administrators focussing on the plight of the children in these industries.

Employment of children in the carpet making was always prohibited under the Child Labour (Prohibition and Regulation) Act, 1986 as is their employment in the glass industry. Following a lot of attention on their employment in carpet making in the 1990s and the initiatives taken by the government of India, there have been claims that the number of children making carpets has gone down. However, NGOs working in the area argue that the growing international media attention and interventions by government, NGOs and other international agencies in recent years have made child labour go underground in several places.<sup>97</sup> A study by Dr. Davuluri Venkateswarlu, RVSS Ramakrishna and Mohammed Abdul Moid shows that children working in carpet looms tend to fall into one of three main forms of labour: family labour, local hired labour or migrant hired labour. Among the children working on the looms the majority of them belong to the family labour category. Hired labour are both local and migrant. In the hired labour category, local labour is more than the migrant labour. Migration takes place from Bihar and Jharkhand.<sup>98</sup>

What is more, the children are now found in more interior villages where there is less surveillance.<sup>99</sup>

**This is a yet another example of the huge gap in the existing law that adds a proviso to Section 3 of the Child Labour Act: "Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to**

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<sup>97</sup> Dr. Davuluri Venkateswarlu, RVSS Ramakrishna and Mohammed Abdul Moid, 2006:. *Child Labour In Carpet Industry In India: Recent Developments*. Study commissioned by International Labour Rights Fund. <http://www.laborrights.org/sites/default/files/publications-and-resources/child%20labor%20in%20carpet%20industry%20122706.pdf>

<sup>98</sup> Ibid. p 16

<sup>99</sup> Discussions with activists NGOs is corroborated by the study cited above.



any school established by or receiving assistance or recognition from, Government” (emphasis added). Hence, it is not surprising that the largest number of children are found working in what is described as family labour in the above study. What is true of the carpet industry is true of all other prohibited occupations. Unfortunately, this anomaly continues to exist in the proposed amendment bill.<sup>100</sup>

Here are a few more examples from Uttar Pradesh:

### ***The Glass Bangle Industry***

Ferozabad, in Western Uttar Pradesh, about 90 km from Agra, the city of the Taj Mahal, employs nearly half a million men, women and children in the glass bangle making industry. A 1993 study<sup>101</sup> reported that over 50,000 children were generally believed to be engaged in the hazardous glass bangle industry of Ferozabad. Employment of children was confined mostly to unskilled jobs like carrying and sorting in the glass factories. Within the stages of production where several different activities were performed, children do the least skilled of these activities. In other words, children do not have unique or irreplaceable skills and are therefore not necessary for the glass bangles industry.

The process of manufacture of glass bangles is broken down into six separate stages and each stage is done by a separate specialized enterprise. At the first stage, the spring bangles are produced at a glass factory and it involves work at the furnace and handling, colouring, and shaping the molten glass into a spring form or rings. The subsequent processes like straightening, linking up the edges of the glass spirals, joining the edges, hardening them, cutting designs into them and colouring the bangles are done in separate stages by small informal sector enterprises using different tools like kerosene lamps, abrasive wheel, mud oven, and chemical colours for each of the processes. Unlike glass factories, these small informal sector enterprises are not registered and difficult to observe as they are often located inside households and in small alleys. It is in the latter six stages that children are mostly employed.

What has changed in the last 20 years? Glass bangles continue to be manufactured but employing child labour is illegal and hazardous. After the appointment of a Lok Sabha Committee to look into the welfare of the glass bangle workers in Firozabad, in 2012, the child labour has simply gone underground<sup>102</sup>.

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[http://www.prsindia.org/uploads/media/Child%20Labour/Child%20Labour%20\(Prohibition%20and%20Regulation\)%20\(A\)%20Bill,%202012.pdf](http://www.prsindia.org/uploads/media/Child%20Labour/Child%20Labour%20(Prohibition%20and%20Regulation)%20(A)%20Bill,%202012.pdf)

<sup>101</sup> <http://www.rgics.org/test/wp-content/uploads/2012/10/WELFARE-OF-GLASS-AND-BANGLE-WORKERS-OF-FIROZABAD-A-CASE-STUDY..pdf>

<sup>102</sup> Thirty Second Report of the Standing Committee on Labour, 2011-12, Welfare of the Glass and Bangle Workers of Firozabad, Ministry of Labour and Employment, table in Parliament on 30<sup>th</sup> August 2012.

The Lok Sabha Committee reported:

“Children were employed in packing and sorting work. Since child labour is prohibited there is a tendency to outsource the work to village homes. Due to this, children are forced to forego their education and assist their parents. There are few National Child Labour Project (NCLP) schools for education of these children but the location of these schools is not decided on the basis of incidence/concentration of child labour.”

Not surprisingly, the Committee found tremendous exploitation (low returns, poor health and living condition) of the adult workers, including the women, also. It reported that the households engaged in the production of the glass bangles undertake only one specific activity in the chain and do not perform the other tasks. They were constantly at the mercy of the contractors.

**Just as with the carpet industry, what can be seen is that after the Committee report, the contractors now go out to the peri-urban areas and the slums of the city and farm out the work, making the detection of child labour all the more problematic.**

### ***The Waste Workers of Gorakhpur***

The sight of two emaciated children scrounging around garbage pits with a stick, occasionally picking up something—a dirty rag, a discarded shoe – and putting it into a huge polythene bag bigger than themselves is not anything unusual in any Indian city. But in Gorakhpur city, in Eastern UP, they are known as ‘Bangladeshis’ and are often targets of abuse, both verbal and physical, by adults including the police. Round-ups by the police and brutal thrashing in the police station are common but no one protests. Who are they really? Discreetly following two children in Gorakhpur’s Chilmapur ward early one June morning to their home, essentially hovels of plastic sheets put together in the form of rooms, amidst piles of stinking garbage led to the discovery of a horrible saga of exploitation and misery of people, men, women and children alike, who could hold the city to ransom if they struck work for two days consecutively. They keep the city clean but are not recognised for this vital role.

While the employment of children in carpet, glass and lock industry in UP has been documented, these children remain unknown and unrecognised despite their exploitation. ‘Our life and livelihood depends on these dirty rags and the tonnes of waste the city spews out daily’, said Noor Ahmad, a 45 year old waste worker who lives in the Chilmapur ward of the city. He was the father of the two children followed. No one knows the exact number of waste workers in the city. However, the elders in the community estimate the number to be around 300 to 500, with around five to seven members in each household. The waste workers forage the city, collecting and sorting often hazardous waste when the city sleeps. By the time day breaks they are invisible, retreating to their hovels.

In Gorakhpur about 90 per cent of waste workers hail from Assam. Since they are Muslims and speak various dialects of Bangla (but have problems with standard colloquial Bengali) they are often branded as Bangladeshis. The fact is that though they are from areas that are now in Bangladesh, most of them migrated to Assam with the active encouragement of local

politicians in the 1930s and 1940s. They were excluded in Assam by the local communities as well, so much so that many can't speak Assamese properly. They are often targeted by terrorist groups such as the United Liberation Front of Assam (ULFA). This and the recurrent floods have forced these people to migrate to other parts of the country, including Gorakhpur, Lucknow and Varanasi.

A typical day begins at 3.00 am. By 9 am they are back to their shanties. On an average they work for four hours in the morning in collecting rags and waste from different parts of the city. Those who have wide space in front of their houses they collect the rag through trolley. Male members of house are generally engaged in sorting the waste while adolescent girls, women and children are engaged in collecting the waste.

Amina khatoon, 40, of Mahewa ward, has been a waste worker for the last seven years. She says, "We collect scrap from streets, market places, garbage bins and waste dumps, picking up paper, cardboard, plastic, iron scrap, tin containers, and broken glass, in fact almost anything thrown away by households, shops, workshops, or other establishments that can be sold to the dealers who buy these for the recycling industry." She adds, "Sorting of waste is an art. The cost of rags for instance depends upon how efficient the rags are sorted." Usually, the women and children do the picking and the men the sorting. A large number of children, aged 10 to 15 are engaged in this work, both picking and sorting waste. An estimated six out of 10 of the children of the waste workers are in this profession, working long hours without rest. Housing, sanitation and water supply is pathetic.

The workers are perpetually at the mercy of their *malik* (owner) who brings them from Assam and settles them. Said Nilima, 27, of Mahewa, "We live on the mercy of the *Malik*. Throughout the city, the waste workers live on the land given to them by their owners, that is the dealers. We put up plastic shanties, settle down and sort the waste. The mate, who is one of us, keeps a record of the weights of the various sorted products. Every month the *Malik* sends a truck to collect the sorted waste. He decides the prices. Usually, we are given Rs 1.50/ kg for glass materials, Rs 2.50/ kg for cardboard, and Rs 8.00/ kg for plastics." The waste workers know that the dealers sell the waste for much higher prices to the industries. However, when asked what prevents them from collectivizing and selling the products directly or at least bargaining for higher returns, Aliya, 35, said, "We borrow from the *Malik* to buy necessary food items and medicines. Yes, we have to spend a lot on medicines. We, especially the children, keep falling ill due to living in such unhygienic conditions. The *Malik* deducts from the amounts due to us when he makes a payment for the waste we sort. Because he gives us loans, we cannot bargain about the weights or the prices," said Aliya, a 35 year old waste worker from Assam.

The waste workers don't use any precautionary measures in their work, both picking and sorting. This makes them vulnerable to health hazards like skin infections, cuts and bruises and even tuberculosis. Malaria is rampant. Many of the youth engage in substance abuse and gambling. The children don't go to school as they don't understand Hindi. Most of the waste worker settlements have a hand pump for about 50 households that often does not function. The toilets are just holes in the ground with jute sacking curtains. The stench marks them out. But even these toilets are just one in a slum, used mostly by the women. The others perforce defecate in the open.

The monsoons flood the settlement, forcing them to go and stay on the roads that are on higher ground. The sorting is affected then as they don't get enough space. There is no electricity in the settlements.

Yet the children are keen to go to school and learn. They often pick up waste from the rear boundary walls of schools and some have had the courage to peep inside. “Why can’t I get to school,” asks nine-year old Juin. She had quickly gone to her hut to dress up thinking that she would be enrolled in school.

Her mother wishes that someone gave them ration cards at least. When asked whether she had tried to get one she said she had but was turned away on the plea that she was a Bangladeshi. She shows us her ration card, now almost in tatters, from a village in Goalpara district of Assam. The law has provisions for temporary ration cards but who listens to these people? Not the authorities in Gorakhpur.

## 2. Tamil Nadu

Child labourers in Tamil Nadu are usually associated with the fireworks industry in Sivakasi, the hosiery units in Tirupur, Erode and Salem and the silk industry too. In Sivakasi town, 2011, there were some 9500 factories that produced almost 100 per cent of the firecracker output of the country. These units employed nearly 150000 persons, at an average of 15 persons per factory. Most of the units are in the unorganised informal sector<sup>103</sup>.

As early as 2002, the ILO reported that child labour was significant in Tamil Nadu's fireworks, matches or incense sticks industries<sup>104</sup>. The ILO found that these children did not work in the formal economy and corporate establishments that produce for export. The child labourers in manufacturing typically toiled in supply chains producing for the domestic market of fireworks, matches or incense sticks. The ILO report claimed that as the demand for these products had grown, the formal economy and corporate establishments had not expanded to meet the demand, rather home-based production operations have mushroomed. This had increased the potential of child labour. Such hidden operations made research and effective action difficult, suggested the ILO<sup>105</sup>.

Thus the trend of invisibilisation dates back to almost a decade ago. Similarly, in 1996, it was reported that:

"Tirupur, which produces 75 per cent of the total cotton 'hosiery' or knitted garment output of India, employs an estimated 8,000-10,000 to 25,000-35,000 child labourers out of a total work force of 350,000 workers who work in the hosiery industry. The expansion of the hosiery industry in Tirupur, which was caused by an increased

<sup>103</sup> [http://en.wikipedia.org/wiki/Child\\_labour\\_in\\_India](http://en.wikipedia.org/wiki/Child_labour_in_India)

<sup>104</sup> ILO, 2002: *A Future Without Child Labour*, International Labour Conference, 90<sup>th</sup> session, Report IB ([http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_public\\_9221124169\\_en.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_public_9221124169_en.pdf))

105 Ibid.

international demand for knitted garments since 1980, has led to the employment of more child labourers.”<sup>106</sup>

### ***Tamil Nadu's Textile Industries***

The textile and clothing industry is one of the largest and most important in the Indian economy in terms of output, foreign exchange earnings and employment. It is also the second largest employment generating industry, after agriculture, with direct employment of over 35 million people, according to the latest estimates. The value chain in the sector comprises of spinning, weaving, knitting and garment manufacturing. The industry uses different materials such as cotton, jute, wool, silk, and man-made and synthetic fibres.

Tamil Nadu plays an important role for both the Indian textile and clothing industry and for global brands and retailers. Much of country's spinning power-loom and handloom units are located in Tamil Nadu. The cotton spinning sector is the backbone of Tamil Nadu's textile industry. One of the region's oldest and most prestigious manufacturing sectors, it employs thousands of workers, and has been the leading source of the state's revenues, exports, and industrial entrepreneurship. Tamil Nadu accounts for over 65 per cent of the total number of spinning units in India (2816 units at the end of 2008). It is India's primary hub of cotton yarn production. It also has a significant presence in fibre finishing units, including dyeing, printing and other cloth preparation prior to manufacture.<sup>107</sup>

The clothing industry, at the end of the value chain, is spread over India. However, Tirupur in Tamil Nadu is the major production cluster for knitwear garments, accounting for more than 60 per cent of India's knitted garments. In January 2011, the Madras High Court ordered the closure of dyeing and bleaching units in Tirupur's processing clusters, which have been blamed for polluting the Noyyal River. The verdict from the court has affected over 740 wet processing units in the cluster employing 40,000-50,000 workers and an estimated Rs 50 crore per day loss for the industry.

Child labourers have been invisibilised in this industry, as mentioned earlier. But a new form of child labour bondage has emerged over the last decade, which is discussed next.

### ***The Sumangali Thittam in Tamil Nadu's Textile Industry***

The Sumangali Thittam or Sumangali system flourishes on the increasing demand for dowry<sup>108</sup> from girls' parents in Tamil Nadu by essentially bonding them in the cotton and garment mills in the Tirupur industrial belt. These mills engage the girls through a written agreement under section 18 of the Industrial Disputes Act, 1947. If the girls work for three years, they are entitled to Rs 30,000 at the end of the third year. This scheme is variously called the Sumangali Thittam, Mangalya Thittam, Camp Coolie Scheme or Subamangala Scheme. The system was introduced in the mid-1990s.

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<sup>106</sup> <http://www.indianet.nl/chadlab.html#contents>

<sup>107</sup> Solidaridad, 2012: Research Report : Understanding the Characteristics of the Sumangali Scheme in Tamil Nadu Textile Garment Labour Industry and Supply Chain Linkages. Prepared by Solidaridad –South and South-east Asia, May 2012. (<http://issuu.com/solidaridadnetwork/docs/sumangali?e=2724708/3710751>)

<sup>108</sup> A minimum of 10 sovereigns of gold and Rs 50000 in cash is demanded from even the poorest families.

“You cannot meet the Sumangali workers. Yes, there are many children involved, but due to the many raids and inspections and the international hue and cry, you will not find them so easily. The mills have all anciliarised and the units are distributed all over the place, including in Erode and Salem. Also, even if you do find some children here in Tirupur, you will not be able to prove that they are below 16 years,” informs a worker of a local NGO active in the child rights movement.

The exploitative Sumangali scheme caught national and international attention through a series of media and study reports in 2011-12 (Solidaridad 2012: 3) These reports named many global brands and retailers that sourced their products from spinners and garment manufacturers alleged to be exploiting young women workers under the Sumangali Scheme. These brands and retailers included, amongst others, H&M, C&A, Marks and Spencer, Next Plc, S Oliver, Diesel, GAP, Timberland, Tommy Hilfiger, Primark, TESCO, Bestseller, Mothercare, and Asda-Walmart.

The media articles and reports led to a flurry of discussions, meetings and seminars to ‘better understand the system and the extensiveness of the practice. Some of these initiatives were led by the Ethical Trade Initiative, Fair Wear Foundation, Brand Ethics Working Group(BEWG), Business for Social Responsibility and Solidaridad. Locally, the Tirupur Exporter’s Association formed a Tirupur Stakeholder’s Forum comprising stakeholders in the Tirupur Garment Clusters (NGOs, Trade Unions and brands represented by the BEWG to analyse the various reports and take appropriate action. As a part of this ‘understanding’ process, Solidaridad undertook a major study, spread over six months, between September 2011 and February 2012, of the Sumangali scheme (Solidaridad, 2012). The research included a comprehensive desk review, interviews with key industry associations, representative sample of workers, their parents and relatives; and meetings with a number of brands and retailers.

The following are some of the key findings:

- Over 80 per cent of the Sumangali Scheme is identified to be in the spinning mills sector and less than 20 per cent in the garment manufacturing sector. Hence the need for a holistic approach to engage with all spinning mills and other relevant stakeholders.
- Less than 30 per cent of the yarn from spinning mills in Tamil Nadu is used directly in the supply chains for global brands and retailers.
- Direct exports of yarns to countries like China, Bangladesh etc., may be another conduit through which yarn produced under the Sumangali Scheme may enter the supply chains for international brands and retailers. The spinning sector exports about 23 per cent of its production.
- There are direct supply chain linkages between the Indian domestic market and the Sumangali scheme, as a large part of the yarn from Tamil Nadu spinning mills is used in the domestic textile and garments market.
- The characteristics of the Sumangali scheme are not uniform in textile mills and garment manufacturing facilities. It even varies in different places and in different

mills and garment manufacturing units. The labour and employment practices it violates include the following:

- **Employment contract** – no written contract between employers and employees in most cases.
- **Wages and deductions** – workers are employed and retained as apprentices, and are paid mostly stipends rather than regular wages with deductions taken out for amenities. High deductions reduce monthly payment. The monthly payment comes out to be less than stipulated as per minimum wages in the spinning mills sector.
- **Social security benefits** – Provident Fund (PF) and Employee State Insurance (ESI) benefits not provided.
- **Health and safety** – no training provided to workers, hence very low awareness of health and safety issues. Instances of accidents are common.
- **Working hours** – normal shift of up to 12 hours with an additional 4 hours, mostly not treated as overtime. Sometimes the working hours extend up to 15 hours with overtime of 2/3 hours.
- **Non-discrimination** – young women are mostly employed and paid less than the men for the same amount of work.
- **Harassment or abuse** – verbal abuse is very common; physical abuses not so much but there are instances to be found. Sexual abuse is also reported by workers.
- **Child labour** – young women workers are being employed. Many of them look to be under 16 years of age. Their employment is, however, on the basis of health (fitness) certificates, which mention their age to be above 16 years.
- **Forced labour** – the employment is for a number of years (1, 2 or 3) and there are instances of wages not being paid if the stipulated period is not completed. Wages are promised as lump sum at the end of a period, so workers are in a way forced to complete that period to get lump sum wages. There are examples of extension of service for many months to make up for leave taken during the 3-year period. Compulsory overtime, compulsory late night shifts, excessive working hours are other aspects of forced labour.

Having detailed the exploitation and the violation of laws, legislations and rights, the Solidaridad report ends up justifying and in fact accepting the system. It says:

1. The parents are forced by social and economic reasons to send their daughters to work under the Sumangali scheme. The young women have little education and

limited or no opportunities for work. A sum of Rs 25000 -50000 is a large amount for families in such circumstances.

2. Parents from very poor families feel that it makes sense that their young, unskilled daughters work for three years before they are eligible for marriage at 21-22 years of age. The system ensures that at least their daughters have three proper meals a day, one fewer mouth to feed at home, and the promise of a lump sum of money which is very important to them for marriage purposes.
3. For young women, the textile industry provides a way out of the remoteness of village life and limitations imposed by poverty. It also promises lump sum money, which is significant for a young woman not attending school. They do not have the opportunities that are available for girls with a little education in urban areas (for example in the retail sector).
4. Parents are reluctant to allow their daughters to go to places where their security is not ensured. There have been instances of elopement, which scare parents and they want mills and garment units to ensure full security and safety within the premises.
5. These women workers are primarily recruited from interior villages and poorer districts, where there are fewer or no other opportunities for employment. In few cases, companies have their own recruitment staff or use sub-brokers or sub-agents. These brokers and sub-brokers work on a commission basis as well as retainer-ship basis. There are instances where friends and relatives have provided introductions and acted as sub-brokers, getting a commission.
6. The Sumangali scheme has characteristics that violate labour and other legislations; however, it also emerges from the research that mills and garment units provide much needed employment opportunities, which otherwise do not exist. There is no alternative for these women with little education other than the textile industry.

The report indeed presents its findings on a note of hopelessness (cf. point 6). Firstly, there is no justification for employing children. Of the adults, it is not understandable why they cannot be paid fair wages according to decent work principles. The report does not mention that most of these women are Dalits. As a woman NGO worker points out, “ Such reports justify the system ultimately. Dowry is justified as is the son preference.” Indeed, insofar as employment opportunities are concerned, given that the girls come from remote rural areas, they can access or demand employment under NREGA.

### **3. Orissa**

According to the Government of Orissa, there are about half a million children working as labourers<sup>109</sup>. That child labour is not a priority for the government is reflected in the government’s state action plan. This document blazes its policies for elimination of child labour on data collected in 1997. A survey was conducted in 1997 according to which 215222 child labourers were identified. 43 per cent of the labourers were girls and of them 13467 worked in the bidi making industry. According to this report, there were 1.68 lakh child labourers in 2008<sup>110</sup>.

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<sup>109</sup> Government of Orissa, Undated, State Plan of Action for Children, 2009-12, Ministry of Women and Child Development.

<sup>110</sup><sup>110</sup> This was in response to an RTI query filed by an NGO (Ibid, p.60).



Based on such a weak database, the State Action Plan says that most of the children were employed in hazardous sectors like, dhabas, eateries and domestic helps. Often children are engaged as subsidiary workers or as marginal workers where they may be working for lesser hours than the principal workers but they play a significant role in the economic production processes. Sometimes they are engaged within the family trade/enterprise and under such conditions their labour is not perceived as an economic activity and is not incorporated in cash transactions. But the Government set the goal of 'reducing and eliminating entirely the practice of child labour in the State by 2012'<sup>111</sup>.

The Government failed to see child labour in agriculture. Denial of the existence of child labour (by not updating the data base or identifying them or even using the age criteria – that is by saying that those above 14 are not children anymore) is one way of 'reducing and eliminating the practice. Perhaps this is most apparent in Koraput district.

### ***Child Labour in Koraput District***

A comprehensive survey of child labour in the district of Koraput was made in 1997 following the direction of the Supreme Court of India. The survey revealed that the district had 13,558 child labourers both in hazardous (234) and non-hazardous (13,324) occupations, out of which 6,440 were girls (Pradhan, 2006)<sup>112</sup>. Another survey of child labourers in the district was made towards the end of the years 2002, i.e. after five years of implementation of NCLP, which recorded as less as 2,693 child labourers in the district in hazardous (540) and non-hazardous (2,143) occupations, out of which 1,079 are girls (Pradhan 2006).<sup>113</sup>

A major industry in Koraput district is cashew processing. Annually these units process 1000 metric tonnes though the capacity is 20 times more<sup>114</sup>. Many of them employ child labourers, girls, but the whole operation is kept under wraps. Attempts were made to enter some of these units in the Jeypore block after seeing young women and some girls, who did not look to be more than 14, being brought by tempos to work. The guards simply don't allow entry and refuse to give the owner's contact details. A local NGO said that the factories often give advances against which the girls have to work, but some 'good factories' provide transportation. The young women are mostly tribals.

Over the last couple of decades the government as well as several NGOs have promoted cashew plantations to augment farmer's incomes. Many SHGs collect the cashew and sell it to itinerant traders who then supply the nuts to the factories. But there is no study available about the employment of children in the entire supply chain. A NGO worker informed that even if there were children involved, they were 'augmenting household incomes' and in any case education was not a priority amongst the tribals.

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<sup>111</sup> Ibid, p.59-60

<sup>112</sup> Pradhan, 2006 : Perspectives of Child Labour in Koraput, Society for Promoting Rural Education and Development, Koraput

<sup>113</sup> Ibid

<sup>114</sup> <http://www.hindu.com/2009/01/18/stories/2009011852380300.htm>

This attitude, that the tribals don't care for education is perhaps commonplace throughout the country, but often primary school teachers hold the same view. Not only do they not teach properly but practice all kinds of discrimination against the students. So it did not come as a surprise to see several schools in the Kundra Block shut during the school hours (10am to 4pm) on consecutive days. But a teacher of the Bumraguda (name changed) primary school, in the village of the same name, revealed a different story. According to him, the villagers were sending the children to school earlier but gradually stopped. Even the other teachers stopped coming. This area, in one corner of the Block, seems to have a strong Maoist presence. Apparently the Maoists (left extremists) had told the parents of the children not to send them to school and even threatened the other teachers.

That this area is now under the influence of Maoists is well known. The local police do not enter these areas especially after the kidnapping of a Collector and also some bomb attacks. But what is striking is that in Bumraguda, Damurapada and several other villages in the area, young boys are hardly seen. On the other hand, the sight of young girls working in the fields, both as hired labour and on their own family farms is rather common. None of these girls, it was learnt, had ever been to school. But where do the boys go? Several parents said that given the 'trouble' in the area (Maoist as well as police harassment) they send the boys to work in Andhra Pradesh. The boys do whatever work they get, from agricultural work to casual labour in the construction industry. Sometimes the whole family migrates, leaving the younger children behind with their grandparents.

But in two villages some women said that their sons have joined the extremists and often come to the village to entice the others. The mothers said that the children are made to work very hard, performing all the menial chores and cooking too.

The administration seems to be aware of these things, according to the driver of the vehicle who took us to these villages, but is helpless. NGO workers and the school teacher of Bumraguda vouchsafed the driver's statement.

#### **4. Rajasthan's Dungarpur District**

Dungarpur district of Rajasthan hit the headlines about six–seven years ago when it was found that tribal children were taken to nearby districts of Gujarat to work in the BT cotton fields.<sup>115</sup>

Dungarpur district lies in the adivasi belt of southern Rajasthan bordering the state of Gujarat. The three main blocks from where migration is rampant are Bichhiwada, Simalwada and Sagwada. Migration accounts for more than 50 per cent of the incomes of most households here (Burra, op cit). As such, the adivasi belt of South Rajasthan (Dungarpur, Banswara and Udaipur districts) is the traditional catchment area for the supply of manual labour in Gujarat, both in agriculture as well as urban areas. Most migrants are in the age group 16-40 years, but the entire household migrating (leaving the old people behind) is also very common.

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<sup>115</sup> Burra, Neera, 2008: Children Migrating for work from Dungarpur District to Gujarat – A Report ([http://ncpcr.gov.in/Reports/Children\\_Migrating\\_for\\_work\\_from\\_Dungarpur\\_District\\_to\\_Gujarat\\_by\\_Neera\\_Burra.pdf](http://ncpcr.gov.in/Reports/Children_Migrating_for_work_from_Dungarpur_District_to_Gujarat_by_Neera_Burra.pdf))

A study commissioned by the NCPDR reported that in 2007: “They migrate for 2-3 months to work in the BT cotton farms in the districts of Banaskantha and Sabarkantha in the state of Gujarat. The work is extremely hazardous as both adults and children work in pesticide-sprayed fields from dawn to dusk. Migrant workers also live on the farms in sheds.”<sup>116</sup>

A visit to some villages in Bichhiwada and Simalwada blocks with the help of a local NGOs revealed that the picture has changed somewhat since 2007 regarding children going to work in the cotton fields of Gujarat. Perhaps due to the hue and cry after the NCPDR report, this seems to have virtually stopped. In the villages visited, almost every child, boy or girl, is enrolled in the neighbourhood primary school and attendance is more for the mid-day meal. Of course, teaching learning is more of a formality. The girls stay back home to help their mothers with the agricultural chores. Sometimes they accompany their mothers who go to work in others’ fields. In between, the children rush to the school to eat the mid-day meal.

But that does not mean that children do not go to work anymore. According to the NGO, around 40 per cent girls and 26 per cent boys drop out from the schooling system till the secondary level that is before they reach the age of 14 years. The boys drop out mostly for agricultural labour and other casual labour too. The girls are reported to be dropping out for domestic work. Corporal punishment is a factor that often acts as a catalyst for dropping out. For the girls the added fact of sexual molestation is a de-motivating factor for studying. This is apart from the poor quality of teaching learning in the educational system.

The child labourers are not visible in the villages. In fact, most of the children who work migrate to Gujarat (both to the towns and the villages). The migration begins as seasonal work but over time they find something more permanent and stay back; sometimes coming back home once in two years. The work is found in the brick fields, in the small eateries, garages and so on.

Most of the migrant children are boys, aged 11-15 years. Relatively few girls migrate as child labour, except when they go to the brick fields along with their parents.

Many young boys work in the eateries and other shops in Dungarpur town. Girls are not so visible, but they can be seen in the MGNREGA sites. They get in usually at half rates by doing a ‘setting’ (the term used locally for fixing a deal) with the person in charge of the labour site. Girls help mothers in the household work, including collecting fuel, fetching water and looking after younger siblings. Children also work in the fields during season. Grazing, though mostly done by boys, is sometimes done by girls too.

A noteworthy socio-cultural characteristic of this area is the high rate of child marriages. Girls are married off around menarche (10-13years). The boy (the groom) usually is about 2-3 years older. Villagers pointed out that after marriage, given that one is no longer treated as a child anymore, the question of going to school does not arise. The boy has to earn a livelihood to support the family, which means he has to work. The girl, apart from performing the reproductive role, has to supplement the family income by working when necessary for a wage.

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<sup>116</sup> Ibid

## **5. Lessons learnt from the field realities**

The most important lesson that can be learnt from the vignettes from the field across various states is that child labour is a complex issue that has to be contextualised and embedded in temporal and spatial realities. Pre-existing gender relations are an important driver of child labour. To merely say that poverty leads to child labour is just making half the statement because the reverse is also true and perhaps more of an important causality. Education can play an important role in curbing child labour, but it has to be delivered in the first instance. Any efforts directed at elimination of child labour cannot meet the desired goals if children continue to be addressed in isolation. The situation of their families and socio-cultural dimensions of the communities they live in must necessarily be factored in.

## **CHAPTER 6**

### **WAY FORWARD**

It is almost three decades since initiatives for addressing child labour by government and non-government agencies have been going on. There are also reports that the numbers of child labour are reducing as the enrolment of children in schools is going up. At same time there is greater informalisation of labour, and the entry into new and unregulated sectors. Child labour is going 'underground' or the invisibilisation of child labour, with international norms insisting on standards of production, including the absence of child labour in production.

Data on child labour will continue to be a challenge, unless a common definition of child labour that is adopted in law, and then used to collect the data, is arrived at.

Not much seems to have changed in the society's attitude towards child labour. Charity for the poor continues to be the justification for employing children, despite enough evidence to show how child labour perpetuates the cycle of poverty and not the other way round.

On the one hand, there is the exit of investment by international organisations such as UNDP, NORAD and ILO in the elimination of child labour and on the other is the entry of support from international corporates such as IKEA, which is supporting UNICEF and Save the Children-India. Although, there are initiatives on child labour that are underway, there seems to be a lesser focus and support on the issue than one had witnessed in the late 1980s and the 1990s.

On the positive note the government is thinking seriously of amending the law to cover all children up to 18 years (prohibiting all forms of labour upto the age of 14 years and prohibiting employment of children in 15-18 years in hazardous occupations). However, this draft too leaves a huge gap by not banning the employment of children in family based occupations and agriculture, even when it is hazardous.

One of the biggest challenges in addressing child labour is the fact that the issue falls between several ministries and departments. Child is the mandate of the Ministry/ Departments of Women and Child Development and/or Social Welfare (in States); Labour is the mandate of Ministry/Departments of Labour. Education of children rescued from labour should ideally be the responsibility of Ministry of Human Resources/Departments of Education. But ultimately who is responsible for the individual child labourer?

Ever since the IXth Five Year Plan, the Planning Commission of India has been reiterating the need for inter-sectoral coordination and convergence. Over the years it has come to be a jargon that finds place in every policy and planning document, the Result-based Frameworks of different Ministries as well as the documents pertaining to specific programmes and schemes. Yet it has remained a challenge.

Even as governments struggle to bring inter-departmental synergy in their actions, the very fact that child labour elimination programmes continue to rest with the Ministry of Labour

and Employment requires rethinking. The guiding question has to be whether child labour needs to be addressed as a child protection issue or a labour welfare measure. Even if the Labour Ministry were to converge with other relevant Ministries to implement programmes like the NCLP, the child protection lens should necessarily become the predominant approach to deal with the issue holistically.

Recognition of the connection between existence of child labour and the various macro-economic and development policies is still lacking and therefore child labour continues to be dealt with in isolation.

Clearly, there have to be initiatives to address child labour and the new challenges that the changing scenario imposes.

Areas requiring serious and long-term intervention include:

**Research and Documentation** – In the absence of overall data, there is a need to carry out micro-studies such as the one on mining and children undertaken by HAQ and those carried out by IHD. This would help to understand the new dimensions of the problem and the changing patterns better.

**Strengthening families in high-risk areas as a preventive measure** – As the study by IHD on the linkage between MGNREGA and child labour has shown that families increase their investment in education and health of children with even little economic support. This builds the case for investing in strengthening family support in the high-risk areas.

**Recognition of Child Labour as a protection issue** – This requires investing in training and capacity building of the functionaries involved in rescue and rehabilitation of child labour and a clear tie-up between the Labour Ministry and the Ministry of Women and Child Development to ensure that every child is protected and benefitted under the Integrated Child Protection Scheme (ICPS). The linkage between the juvenile justice system and the child labour elimination programme has to be recognized and implemented. The juvenile justice system is meant to provide the necessary mechanism and the infrastructure to deal with children in difficult circumstances, including those who have been rescued. The Labour Ministry does not have the capacity nor the mandate to do this.

**Mobilising communities in both source and destination areas** – MV Foundation's and CREDA's experience has shown that continuous investment in mobilizing communities against child labour can bring long lasting change. However, withdrawal of funding leads to a set-back, especially in the wake of dynamic changes in the child labour pattern. Community mobilization cannot be a one-time effort and hence requires continuous funding support.

**Greater investment in improving the quality of education and student retention** – With right to education becoming a fundamental right, school enrolment has indeed increased.

However, retention in schools, particularly for girls, remains a concern. Poor quality of education, violence in the schools and lack of protection need to be addressed. Education has seen several years of interventions by both government and non-governmental organisations. With one step forward, role of the existing interventions must change to monitoring and strengthening the implementation of the Right to Education law and addressing factors that inhibit children from continuing in the schools.

**Law enforcement and Justice** – As the data presented in this study shows, the weakest area in combating child labour has been enforcement of the existing laws. Besides advocacy initiatives, organisations working against child labour need to be encouraged to monitor law enforcement and take legal action. Experience of BBA and Shakti Vahini has shown that timely legal action can improve the implementation and enforcement of the law and also create a deterrent effect. However, this requires adequate investment to meet the expenses of legal cases as well as interim support to children and their families to help them fight the legal battle in a sustained manner.