



Parliamentarians' Group for Children Newsletter

Issue No. 4

Winter Session

Nov-Dec 2015

Dear Friends,

On behalf of the Parliamentarians' Group for children (PGC), it is our pleasure to present the Winter Session (2015) issue of the newsletter. PGC members are taking a lead on pressing issues concerning the holistic development of children in the country.

India is home to the largest population of children, a country's future can be determined by the state of its children. It is the duty of the state to protect children from the vicious cycle of exploitative occupations and ensure they have the best environment possible for their growth and learning. The present daunting problems like nutrition, health and education need to be addressed as soon as possible for our future work force to be able to realize their full potential.

Child work can be categorized into three categories; within the family where children are engaged in domestic household tasks without pay within the family but outside the home- agricultural labourers, domestic maids, migrant labourers etc. and outside the family - commercial shops in restaurants and jobs, prostitution etc. The present legislation in India makes it easier to track down child labour outside the family whereas more comprehensive laws are required to fully penetrate child labour within the family which is something that is being sought to be corrected by the Child Labour (Prohibition & Regulation) Amendment Bill, 2012. This edition of our newsletter analyses the issues concerning child labour in India and the shortcomings in the proposed amendments.

Vandana Chavan, MP
Co-Convenor, PGC

Dushyant Chautala
Co-convenor, PGC

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Recent PGC Initiatives

**Roundtable Meeting on Nourishing India's tribal children,
New Delhi, 21 July 2015**

The Parliamentarians Group for Children (PGC) in partnership with UNICEF India and the CLRA organized a roundtable meeting for parliamentarians on nourishing India's tribal children with a special focus on tribal nutrition. The consultation was chaired by Shri Ninong Ering, Hon'ble Member of Parliament. MPs from across parties spoke, shared their views and gave suggestions to improve the existing situation. The meeting adopted the Declaration on Nourishing India's Tribal Children.

Rajasthan Legislators' Roundtable Meeting on Sanitation and Nutrition, 31 October 2015, at Jaipur.

The Meeting was organised with the support of UNICEF India and the CLRA. It was attended by MPs, MLAs, Nagar Palika representatives, Zila Pramukhs, Panchayat Pradhans, District Collectors and Government officials. The Meeting chaired by Sh. Kailash Chandra Meghwal, Hon'ble Speaker, Rajasthan Legislative Assembly, unanimously adopted the Jaipur Declaration on 'WASH', and announced the PGC Chapter in the State Assembly with its further activities, etc.



Roundtable discussion on the Amendments to the Child Labour (Prohibition and Regulation) Amendment Bill, 2012 New Delhi, 29 July 2015.

Parliamentarians Group for Children (PGC) in partnership with UNICEF India and the CLRA organized a roundtable discussion on the Amendments to the Child Labour (Prohibition and Regulation) Amendment Bill. The meeting, chaired by Tyagi, Hon'ble MP, aimed to provide an understanding of the amendments proposed by the Government. It was attended by MPs across the parties to express their views on the proposed amendments.

Child Labour in India



International Labour Organization (ILO) definition:

The term "child labour" is often defined as work that deprives children of their childhood their potential and their dignity and that is harmful to physical and mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by depriving them of opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work.

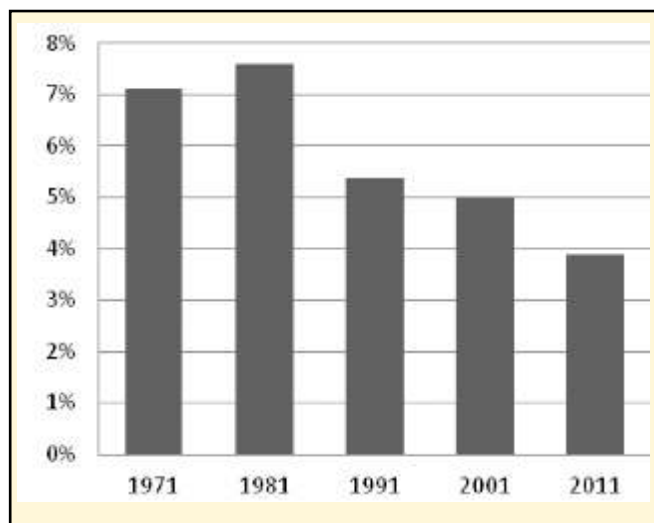
Worst forms of child labour

While child labour takes many different forms, the priority is to eliminate, without delay, the worst forms of child labour as defined by Article 3 of ILO Convention No. 182:

1. All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.
2. The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.
3. The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties.
4. Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Labour that jeopardizes the physical, mental or moral well-being of a child, either because of its nature or because of the conditions in which it is carried out, is known as "hazardous work".

Child workers in India 1971 to 2011 (Census):



Distribution of working children (Census 2011)



Note: The boundaries and the name shown and the designation shown in the map do not imply official acceptance or endorsement by the United Nations.

All India Child Labour population according to 2011 Census

Age Group*	Main workers	Marginal workers (3-6 months)	Total
5-9	1108808	1066910	2175718
10-14	3244439	2808324	6052763
15-19	17703310	9458107	27161417
Total	22056557	13333341	35389898

*In the Census 2011 of India, the age groups 5-9, 10-14 and 15-19 years were taken for determining the Child Labour population.

Some recent trends in child labour

- ❑ Child labour decline is stalling at 5%
- ❑ Increase in child labour in urban areas
- ❑ Child labour is shifting, for example:
 - To home-based manufacturing
 - To small family farms
 - To remote tribal areas (e.g. cotton seed production in Rajasthan and Tamil Nadu)
 - Carpet weaving from Mirzapur to Lucknow
 - Moving eastwards in Uttar Pradesh

Child and Law

Constitutional Provisions

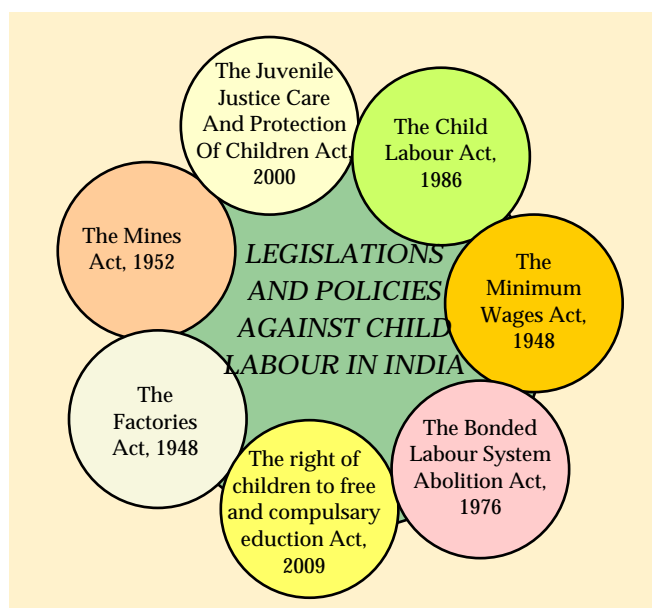
Article 24 : Strictly prohibits children from working in hazardous environment

Article 21A,45 : Gives the right to education to all children below the age of 14 years

Article 39 : declares the duty of the State to provide the children a free atmosphere and facilities to develop in a healthy manner and in conditions of freedom and dignity

Rehabilitation Centres provide

- Non -formal education
- Health Care facilities
- Stipend at Rs 150 per child per month
- Mid Day Meal
- Vocational training



National Child Labour Project (NCLP) Scheme

The Government initiated the National Child Labour Project (NCLP) Scheme in 1988, a central sector scheme for the rehabilitation of working children in the country.

Objectives of the Scheme:

- The Scheme seeks to adopt a sequential approach with a focus on the rehabilitation of children working in hazardous occupations & processes.
- The Scheme conducts a survey of child labour engaged in hazardous occupations & processes.
- The identified children are to be withdrawn from these occupations & processes and placed in special schools in order to enable them to be absorbed into formal schooling system.
- Project Societies at the district level are funded for opening up of special schools/Rehabilitation Centres for the rehabilitation of child labour.

Existing governmental mechanisms to address child labour

- Sarva Shiksha Abhiyaan
- Mid-day meal
- The Integrated Child Protection Scheme (ICPS) for providing shelter to the children withdrawn from work through their scheme of shelter homes.
- BalikaSamridhiYojana for admission of children rescued from work into residential schools under SC/ST/OBC schemes.

Child Labour in India: A Judicial Perspective

Every day, a large number of Indian children are subjected to bonded labour and forced employment, depriving them of their childhood, education and overall mental and physical development. According to the 2011 census released by the Government of India, the number of children working in the 5-14 year age group stood at 43.53 lakhs. While this is an improvement from the 2001 census figure of 1.26 crores, the structural problems that act as an impetus to child labour such as poverty and poor enforcement and regulation, remain.

The Constitution of India has several articles that protect the rights of children, which include Article 24 that prohibits the employment of children under the age of 14 in factories and other hazardous employments, Article 21A that says the state shall provide free and compulsory education to all children of the age of six to fourteen, and Article 39 clauses (e) and (f) that say the State shall safeguard health of children and offer opportunities and education to them.

Parliament has supplemented the safeguard of child rights by passing several legislations to combat the problem, which include among them the Factories Act of 1948 which prohibits the employment of children below the age of 14 years in any factory, the Mines Act of 1952 which prohibits the employment of children below 18 years of age in a mine, and the Child Labour (Prohibition and



Regulation) Act of 1986 (amended in 2012) which prevents children below the age of 14 being employed anywhere, except in non-hazardous family enterprises or the entertainment industry.

Historically, the Judiciary has played a pivotal role in guarding the constitution, and it has played a similarly integral role in enforcing child rights. There have been several important cases where the judiciary has played a proactive role in preventing the employment of children and forced labour.

In the case of *People's Union for Democratic Rights v. Union of India*, the Supreme Court observed that it was

a clear breach of Article 24 of the Constitution to employ children below the age of 14 in construction work. The court proceeded to prohibit any kind of violation of Articles 23 and 24 and further laid emphasis on strict observance of fundamental rights by private individuals and spoke strongly against any form of forced labour. The Supreme Court, in the case of *Bandhua Mukti Morcha v. Union of India & Others*, took into cognizance the employment of children in the carpet manufacturing industry in Mirzapur, Uttar Pradesh. It instructed the District magistrate to conduct raids, and subsequently got 144 children, who were under the forced custody of the owners, released. In the case of *Sheela Barse & Others v. Union of India*, under the direction of the Supreme Court, children who were being exposed to chemical fumes and coal dust from working near furnaces in the glass industry were released from their employment. In the landmark case of *M.C. Mehta v. State of Tamil Nadu*, the Supreme Court gave directions to the government to eliminate child labour, which included the conducting of surveys for

the identification of working children, ensuring the withdrawal of children working in hazardous industries and ensuring their education in appropriate institutions. In cases where a child was withdrawn from work, the Supreme Court directed the Government to ensure that at least one adult member of the child's family receives employment.

Unfortunately, it has been observed that the directions and suggestions of the Judiciary have not been implemented in the most effective manner by the Government machinery. Poverty and structural issues still remain. International conventions such as the ILO Convention 138 and ILO Convention 182 have not yet been ratified. No national minimum age for employment exists.

In light of this, the proactivity shown by the Judiciary in ensuring the rights of children has been commendable, and judgements passed by the courts have reinforced and protected the basic rights of the children.

- Dushyant Chautala
Member of Parliament

Amendments: Growing Concerns of Misuse?

On the 13th of May 2015, the Union Cabinet approved a set of amendments to the Child Labour (Prohibition & Regulation) Amendment Bill, 2012. But when the amendment bill was introduced in Parliament, it was recommended that the same be referred to a Select Committee for further discussion and reconsideration.

This is because while reviewing the proposed amendments, it was observed that while the employment of children below 14 years of age is to be prohibited in all occupations and processes, there exists a proviso in the amendment bill which states that an exception can be made 'where the child helps his family or family enterprises, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacation.' Proviso was inserted without taking into consideration the fact that though free and compulsory education is a right guaranteed to children of the 6-14 year age group, there has only been an increase in enrolment rates and no significant change in the attendance and retention rates, which is still at a less than satisfactory level. This is a challenge that is yet to be overcome. In a situation when children feel compelled to work to support their families, there is a greater likelihood of them dropping out of school, depriving them of their right to education.

Given the broad definition of family in India, this proviso will open up possibilities of exploitation and trafficking of children under the exception of 'family'. The Parliamentary Standing Committee that has examined this bill has made the same point. A child 'helping in the family enterprise after school hours' may not get the opportunity and time for homework, extra-curricular activities, leisure and play, thus denying the child an opportunity for wholesome mental, emotional and physical development.

Further the amendment does not take into account the provisions mentioned in the National Policy for



Children, 2013, which states that 'the state shall protect all children from all forms of violence and abuse, harm, neglect, stigma, discrimination, deprivation, exploitation including economic exploitation.' The State also commits to taking special protection measures to secure their rights and entitlements as mentioned in the policy, including those of children in situations of labour.

Also, the definition of 'child' needs to be consistent with the CRC and the National Policy for Children 2013, which defines a child as a 'human below the age of 18 years' and adolescents in this Act should not be considered as a separate category. Instead the law must have a uniform definition of children, ideally for all laws involving children, which may be divided into two groups for its application (e.g. age group 6-14 years and 15-17 years).

The amendment has also proposed the revision of the list of hazardous industries into three sectors. The existing list as per the Act of 1986 is comprehensive (it includes 16 occupations and 65 processes) and it is recommended that this list of hazardous occupations should be retained unchanged rather than restricting the list to the revised three sectors, which, for

example, do not include engagement of children for paid domestic work. It is also suggested that the law must allow for additions to this list as new forms of work and occupations evolve, where children are employed, for example, to work with toxic waste materials.

UNICEF recommends that the proposed proviso should be removed in light of the fact that many children today are engaged in home-based work. This work is often done under very poor conditions, which lead to their health and development being affected, and sometimes putting their very protection and survival into question. Allowing children to work after school hours will only add to the burden of the child. It will also prove to be difficult to monitor what work is being done legitimately, and what work is being done under the guise of legitimacy, for the loopholes present in the proposed amendment are bound to be exploited.

- Vandhana Kandhari
Child Protection Specialist
UNICEF India

Child Labour Free India: Essential Steps

Is the burden 'to help' too much for young shoulders?

There is rarely a space traversed in the country, where one would be spared from the sight of children at work. This is, despite having a child labour law in implementation for almost 30 years. Census 2011 says there are 1 crore children at work in India, though the figure for child labour stated by government is 4.3 million. The nation stands at the cusp of amending the child labour law, giving legal sanction to children helping families by working in fields and other home based activities to supplement family income, learn and preserve traditional skills. It is slipped in as a provision alongside a major section, which bans all child labour under the age of 14 years. Children do help at home, and it's not wrong for them to. However, such a provision would create a loophole in the law, which would deny many children who are being exploited, the access to legal recourse and would perpetuate child labour in the country.

Though the proposed amendment does state that children must have no disruptions in school, study time and recreation, there are no systems to monitor or ensure the same. The current economic growth regime is increasingly pushing manufacturing and



production units into homes, offers limited protections for workers, and payments based on pieces produced. Also, definitions of family are ambiguous and anyone can be an uncle, niece or nephew. In this context, leaders, and lawmakers would realize that such an amendment would lead to millions of children working long hours, in cramped

dimly lit, unventilated spaces, cutting, rolling, moulding, even inhaling toxic fumes. Would these children be in good health? Would they really have the time for school, examinations or even for rest or play? Is the burden 'to help' too large for their young shoulders?

The country would do much better by its children if it did instead:

- Remove the provision allowing children to help in family enterprise and home based activities from the proposed amendment to the child labour law.
- Consider revision of Article 24 of the Constitution of India, and review the identification of only those children under 14 as child labourers, as well as the revision of the Right to Free and Compulsory Education Act, to make education free and compulsory until class 10 at the minimum.
- Develop an exhaustive list of hazardous occupations including as many occupations as

possible and institute a system to review and modify the same regularly, to include more occupations as they emerge.

- Include curriculum in all schools on traditional arts, skills, and occupations, give all children in all schools an opportunity to learn and preserve the same, and also include the use of technology, e-commerce, to increase productivity and market access in the curriculum.
- Precede any amendment by: a comprehensive review of the implementation of the current child labour law based on experiences of children, government machinery involved in responding to cases, and practitioners working on the ground; and appropriate investments in infrastructure, human resources, and services for prevention, monitoring, rescue and rehabilitation of exploited children.

- Nicole Rangel,
Child rights activist, Child Line

Child Trafficking– Urgent Need to Curb the Menace

Most [police] don't see trafficking as a crime. They just see it as poor children migrating for a better livelihood
-Aradhana Singh, head of anti-human trafficking unit, Jharkhand state

As per recent statistics on Child Labour, one in every 11 children in India is working. Millions of child workers under the age of 18 migrate internally or across national borders, with or without their parents, either driven away by compulsions, or are trafficked. It should be noted that there is a close nexus between such migration and trafficking, which almost inevitably leads to child labour. According to the National Crime Records Bureau, almost 60,000 children were reported missing in 2011. These children often fall prey to forced labour in industries, agriculture, plantations, mining, etc.

Despite there being various government schemes like Integrated Child Development Service, Integrated Child Protection Scheme, Sarva Shiksha Abhiyaan, Umbrella Scheme for education of ST children, etc., a large number of children end up in exploitative work conditions due to abject poverty. In most cases, poor parents send their children for labour to supplement meagre family income.

It is pertinent to understand that child trafficking for labour is not merely a result of socio-economic conditions in India. Child trafficking for labour has become a profit gaining business for traffickers who lure the vulnerable and marginalized children and their parents to work for high wages. Trafficked

children are mistreated by their employers and are often at high risk of sexual exploitation, loss of liberty, physical and psychological harm, dangerous work, long working hours and other forms of exploitation.

Article 3 (c) of The United Nations (UN) Convention on Human Trafficking (2000) defines 'trafficking' in the case of children. It states that The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons". The Government of India ratified this Protocol in May 2011, and since then it started training programmes for police officers to tackle child trafficking. The Supreme Court of India gave detailed guidelines in *Horilal v. Commissioner of Police, Delhi and Or sin 2002* laying down effective and emergency steps to be taken to deal with cases of missing children. Ministry of Women and Child under the Integrated Child Protection Scheme and Ministry of Home Affairs created a missing children portal and methods the Police can take to tackle such cases. However, such programmes are far from reality. According to Aradhana Singh, head of anti-human trafficking unit, Jharkhand state, the police lack the funds and the will to tackle the problem of missing children. In most cases no FIR is registered and they carry out a

lackadaisical investigation. In addition to that, there is lack of coordination between the agencies dealing with the missing children; for example police, NCRB/SCRB/DCRB and NGOs/CSOs.

There is a causal relationship between cases of missing children and trafficking. It is abhorrent that India does not have any legal framework to deal with such cases unless a complaint is filed for kidnapping or abduction under the IPC. The Government should take an active role in laying down an effective legal framework for inter-district and inter-State cooperation among law enforcement agencies, for early detection, rescue and protection of children.

There should be dissemination of information to communities, panchayati raj institutions, etc. regarding laws against child labour, child migration and trafficking for work. Parliamentarians can via parliamentary mechanisms make a comprehensive law to deal with the growing cases of trafficking of children for labour and guide government policies to cover the human rights of children. Parliamentarians and the enforcement agencies should strive for the protection of children as they are the future of our nation.

- Aishwarya Salvi
ILS Law College, Pune

Role of Parliamentarians

There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace.

–Kofi A. Annan, Former Secretary-General of the United Nations

- Act on cases of child labour in their respective constituencies and ensure appropriate action against wrongdoers.
- Engage with District Administrations in constituencies to ensure all children are enrolled and attending school, especially out-of-school children.
- Monitor Central Government schemes for the prevention of child labour and ensure that resources are properly utilised and implemented in the constituencies.
- Organise campaigns to raise awareness on the importance of prevention of child labour among citizens of their constituencies.
- Demand a larger consultative process with State Governments, NGOs, experts and relevant stakeholders before finalizing provisions of legislation.
- Ensure the enforcement of the provisions of the Child Labour (Prohibition & Regulation) Act, 1986 by the State Governments under Section 2 of the act.
- Cooperate to ensure that uniform laws exist throughout the country, and that their provisions are stringently complied with.
- Increase Government funding for schemes dealing with children's welfare, education and prevention of forced labour.
- Work on the expansion of beneficial schemes such as the National Child Labour Project so that more students are brought into the stream of formal education.
- Work to ensure the ratification of International Conventions on child labour such as ILO Convention 138 and ILO Convention 182.
- Work with committees such as the Central Advisory Board on Child Labour to review the implementation of the existing legislations and suggest measures for welfare of working children.

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Published by: CLRA for PGC, New Delhi with technical support of UNICEF India

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