



Give me back my childhood



PUBLIC HEARING
Depositions and Verdict

Help the
Girl Child
Escape
to School

CAMPAIGN AGAINST CHILD LABOUR



"Give Me Back My Childhood"
Nayi Subah (New Dawn) –
The National Event on Girl Child Labour

**PUBLIC HEARING
Depositions & Verdict**



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Depositions and Verdict of the Public Hearing on Girl Child Labour
organised by the Campaign Against Child Labour at
Nai Subah – The National Event on Girl Child Labour, Mysore
on March 6, 2003



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Give Me Back My Childhood
Nai Subah
The National Event on Girl Child Labour
PUBLIC HEARING
Depositions & Verdict

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on Public Hearing*

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Prabir Basu, West Bengal

Vinod Kumar, Jharkhand

Geeta Menon, Bangalore

Shanti Fonseca, Goa

Suresh Rao, Ahmedabad

Mathews Philip, Bangalore (co-opted)



Introduction

“If I could, I would play and study like all other children of my age.”

“I want to read and write and become a police officer.”

“I have a desire to study, but am unable to do it.”

These are just three of the statements that you will find elsewhere in this book containing the deposition of about 35 children. It reflects the aspiration of a generation of young girl child labourers whose childhood has been lost to them from a very early age.

CACL organised the third Public Hearing and National Convention at Mysore from March 5 to 7, 2003 with the declared purpose of highlighting the issue of girl child labourers. The issues related to girl child labour are critical and central to any child rights restoration. The plight of the girl child labourer, especially in the hidden sectors, is our major concern. Girl children mostly work in home-based sectors and therefore are not visible.

CACL has consistently maintained the position that any form of labour involving a child is hazardous. The laws pertaining to child labour are inadequate and offenders go scot free because of the loopholes contained in many of them. CACL considers the provisions of the Child Labour (Prohibition and Regulation) Act, 1986, inadequate because it makes an artificial distinction between hazardous and non-hazardous and legally permits child labour in so-called non-hazardous sectors. In the words of the members of the Jury,

We must . . . point out that the distinction of hazardous and non-hazardous work is fallacious in the context of the child, especially the girl child. The fact that she is a girl makes her vulnerable to sexual harassment, trafficking, to HIV-AIDS (as in the case of girls often migrants working in *dhabas* [wayside restaurants] frequented by truck drivers), sexual stereotyping and health hazards arising out of inhuman working conditions and malnutrition. The law

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is insensitive to the above dimension where hazard is defined from the point of occupation and not the child.

CACL will continue to campaign for the necessary amendments to this Act so that a concrete beginning can be made legally for the eradication of child labour.

This third public hearing was one more step in that journey of the campaign. It was an integral part of the Convention on Girl Child Labour and was initiated by the Executive Committee at one of its meetings and then delegated to a Sub-Committee chaired by Ossie Fernandez of HRF, Chennai. This Sub-Committee was also vested with all powers to prepare a format for the case studies that were to come from various State chapters, to identify eminent personalities to constitute the Jury and also to select the children to depose.

The process was strengthened with the State chapters taking the initiative in identifying those children that would represent the state. Some states also had initiated district level processes. Eventually, the Sub-Committee on Public Hearing received nearly 200 case studies from which it filtered 39 cases for deposing, taking into careful consideration the representativeness of sectors and States.

Background materials were prepared, relevant among them being attached to this report, to strengthen the arguments. Copies of case studies were distributed, not just to the Jury, but also to the public.

I also want to take this opportunity to thank all those who served that Committee, especially Ossie Fernandez, who prepared the entire documentation prior to the hearing, to Alpa Vora, Geeta Menon and Mathews Philip, for having assisted in the hearing and helped the Jury work out their Verdict.

Joy Maliekal
Convener, CACL

Members of the Jury

Sri. L.C. Jain (Bangalore)

Former Member of the Planning Commission of India

Smt. Indira Jaisingh (New Delhi)

Advocate, Supreme Court

Smt. Mythili Shivaraman (Chennai)

National Vice-President, All India Democratic Women's Association

Smt. Githa Hariharan (New Delhi)

Writer and Professor, Jawaharlal Nehru University, New Delhi

Smt. Vasundhara Doraswamy (Mysore)

noted danseuse

Smt. Jaya Shrivastava (New Delhi)

Child Rights Activist and Director of Ankur, New Delhi

Sri. Dileep Rangnekar (Bangalore)

CEO, Azim Premji Foundation

States and Sectors representing Before the Jury

1. Andhra Pradesh	Cotton seeds, Beedi
2. Bihar	Carpet, Stone Quarrying
3. Chattisgarh	Road construction, Domestic
4. Goa	Domestic, Raggicking
5. Gujarat	Gem-cutting, Plastic rope-making
6. Jharkhand	Agriculture – minor forest produce, Quarrying, Coal-mining
7. Karnataka	Domestic, Agarbhathi, Raggicking, Silk
8. Madhya Pradesh	Road construction, Domestic, Raggicking
9. Maharashtra	Cattle-grazing, Waste-picking, Agriculture
10. Orissa	Beedi, Minor forest produce, Bricks, Dhabas
11. Tamil Nadu	Silk, Textiles – hosiery, Powerloom and handloom, Match, Gem-cutting
12. Uttar Pradesh	Agriculture, Beedies, Dhaba
13. West Bengal	Silk, Raggicking, Beedi

Depositions

(Given below are some of the depositions representative of the various sectors and States. Although only 39 depositions have been made before the jury, CACL has documented over 100 cases involving girl child labour.)

1. Shanti, aged 12, Crossing Cotton Flowers (Andhra Pradesh)

"I hail from Yemmiganoor in Kurnool District of Andhra Pradesh, daughter of H. Chittenna and Batakamma. I am 12 years old and have studied up to Standard 4. I had to discontinue my studies and start work because my parents borrowed some money from their employers to meet some medical expenses. They had no way of repaying that but to pledge my labour to one Vasi Reddy Kumar.

"Crossing cotton flowers is my work. There are 40 other children working for the same owner. We have an hour's break in the afternoon for lunch and all of us suffer from constant headache and other minor problems, because of the nature of our work."

2. Dheeratau Swaroopa, aged 12, working in a brick kiln (Andhra Pradesh)

"I am Dheeratau Swaroopa, aged 12 years, daughter of Yadagiri and Lakshmi, residing in Kanchal Thandol village of Nalgonda district in Andhra Pradesh.

"I have studied up to Class 6 in a bridge school (under the NCLP) and I want to study further. But my parents are not interested in sending me to school. They want me to work. My parents are in debt because they borrowed money to dig a well for drinking water in our house.

"I work in the brick kilns most of the time and when they are closed I graze cattle. In the kiln I carry bricks and also fetch coal. I work for 10 hours a day. There are 5 other children who work with me. The contractors of the kilns often use foul language and scold us for no reason at all.

"I have a desire to study, but am unable to do it."

3. Pyari Kumari, aged 11, engaged in breaking stones (Bihar)

"I am Pyari Kumari. I am 11 years old and my father's name is Sahdeo Rajvanshi, residing in Thakur Sthan, Rajgir in Nalanda district of Bihar. My employers are Pirit Rajvanshi and Muneshwar Rajvanshi, also residing in the same area.

"I have not gone to school at all. I started work when I was seven and have been working for the past 4 years, in neighbouring Karaga. There are about 100 children who work along with their parents in the quarry that I work. Our job is to break the big stones into small ones for construction work. All of us work for about 10 hours a day.

"My parents have not borrowed any money from our employers, but, yes, from a local money lender. We are repaying that loan with 5 per cent interest every month.

"At work, all kinds of accidents are common. Head injuries, leg injuries and sometimes even death because of the flying stones. Bronchitis, asthma, TB and other diseases are prevalent among many workers. I am lucky not to have any of them so far. Yes, I have had several cuts and bruises in the past 4 years."

4. Gulshan Khatun, aged 12, involved in making flutes (Bihar)

"I am Gulshan Khatun, daughter of Md. Rahman Miyan, residing in Hathua, Gopalganj in Bihar. I have studied up to Std. 2 and dropped out because of poverty.

"I am engaged in making flutes for the past 5 years. I work for 10 hours a day. My employers are Md. Asgar and Md. Salim. My parents took a loan from them at a high interest and we are bonded to them till the loan amount is repaid.

"Working conditions are very poor. I suffer from headache, backache and the colour of my skin has changed because of continuously sitting near the fire.

"If access to opportunities are given, I would like to study and become a famous person."

5. Rose, aged 13, Domestic worker (Goa)

"I am Rose, aged 13 years and 6 months, residing under the care of Child Rights Cell of the All India Trade Union Congress, at Panaji, Goa. I was orphaned at a very young age and some people, under the guise of taking care of orphans, took me and forced me to do domestic work. I have been doing that for 4 years now.

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"I used to work for one Joe and Nancy at Mapusa. Working conditions were okay but I used to feel like a prisoner and never enjoyed any facilities or privileges.

"In March-April 2002 I was trapped in a criminal case by my employers. I was physically tortured by them to confess to an alleged theft. I have not stolen anything. I tried to run away when I could not bear physical torture, but my employers had filed a case in the Mapusa police station. I was taken to the police station and was beaten up by police men. I was also made to sign a confession statement and the case is going on. Right now I am on bail and I am waiting for all that to be over, to start a new life.

"I have studied up to Class 3 and am interested in pursuing my studies. If given an opportunity I would like to be a Catree or Preacher and would like to speak about the goodness of God. I enjoy singing."

6. Sonal Danabhai Baraia, aged 12, engaged in plastic rope making (Gujarat)

"I am Sonal, daughter of Danabhai Baraia and Bebien Baraia of Khatarwadi, Bhavnagar in Gujarat. I am 12 years old. I am the eldest of five girls. I have no brothers.

"I studied up to Std. 6 in the Municipal School near our house. I discontinued because of the financial problems faced by my parents owing to his illness. My father became ill a few years ago and could not go to work. My mother is a housewife. To support the family, I have been working for the past two years.

"I work in a plastic rope weaving unit. I also have a lot of household chores to do such as fetching water, cleaning vessels, sweeping, etc.

"At work, my job involves spinning the wheel, winding ropes, holding the hub which is at the other end of the spinning wheel, filling the bobbin, walk with the bobbin to the hub, etc. I walk about 10 to 15 kilometres a day with the bobbin. The distance between two ends is about 100 metres and I cover that over a hundred times a day.

"I have to report for work by 7 a.m. and finish only by 7 p.m. There is a break for half an hour for breakfast at 10 a.m. and another half hour for lunch at 1 p.m. In the evening, after all this work, I have to go to my owner's house to keep back the bobbins and other things. This takes an hour and I never return home before 8 in the evening.

"Payment is settled weekly at the rate of Rs. 35 a day. I keep about Rs. 15 to 20

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for my personal use from this and give the rest to my parents. Money is required at home for my father's medicines and other household expenses. Advances are not usually given by the employer and if small advances are taken, they are settled at the end of the week when wages are paid. No interest is charged on this.

"There are several occupational hazards in this. For example, when I hold the heavy bobbin, the iron rod hurts my hand and they start bleeding. We have to work under the hot sun on marsh land. Due to the constant handling of plastic, the skin on my hands gets peeled off. I also suffer from backache and headache.

"The boys and men working in the unit abuse us both physically and verbally. They use foul language, pass comments or wink at us, or whistle at us or touch us while running with the bobbins, sometimes even asking dirty questions.

"Sundays are holidays for the rope making unit. But I have to go out to the market and sell eatables to earn some extra income for my family. There are times when the employer himself do not get any contracts and then we are also out of work. There are no holidays. During Diwali we get a small gift. I do not absent myself from work for fear of being replaced. So the best 'leave' I take is two days at a time.

"I have dreams. But they will remain dreams. I want to be a singer. I want to study and become a teacher or doctor. I also like to play with my friends. But I do not get the time."

7. Jaga Hakiben, aged 12, working in the salt pan and as domestic help (Gujarat)

"My name is Jaga Hakiben and I come from Gujarat. I am 12 years old and I have been working in a salt pan for the past 4 years. I have studied up to Std. 3 and discontinued after my family moved to the Rann to work in the salt pan. My parents are poor and I cannot afford to go to school.

"There are about 8 or 10 children working there. We have no basic facilities such as toilets or drinking water.

"I do not like to work in the salt pan. I hope to study and become a teacher."

8. Munira Shabbirbhai, aged 14, making holes in agates (Gujarat)

"My name is Munira Shabbirbhai and I am 14 years old. I come from a Muslim family in Shakerpur, near Baroda in Gujarat. I have not been to a formal school. Being a Muslim I was sent to the Madrassa where I attended classes for 7 years. I stopped going there because of the family conditions and had to earn to keep the family away from poverty.

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“My job is to make holes in agate stones that are used for making necklaces. Work is done in open spaces so that plenty of light is available. I have to bring the stone to a small drilling machine with my bare hands. Sometimes the needle of that machine makes a hole in my hand. It is a delicate job. I cannot leave this job because my father has taken a loan from my employer. I have been working for the last 3 years and I work up to 8 hours a day.”

9. Suna Kumari, aged 10, working in a brick kiln (Jharkhand)

“I am Suna Kumari, daughter of Suresh Ram residing in Sonesarai village of Basaura panchayat in Palamu District of Jharkhand. I have been working for the past two years.

“I could study only up to Std. 1 and dropped out of school because of no timely meals. Now I am working in the brick kiln owned by one Sudarshan Ram. My parents took some money from him to buy food and other household necessities. I am like a bonded labourer, because I cannot work elsewhere till the owner says that our debts have been cleared.

“In the brick kiln where I work there are nearly 25 children in the same condition. While working I have been injured several times. We start our work at sunrise and end at sunset. We have no rest time and there is no lunch break even. The place does not even have drinking water, proper ventilation or toilet facilities.”

10. Punam Kumari, aged 12, involved in leaf plate making (Jharkhand)

“My name is Punam Kumari and I am 12 years old. I come from the village of Amwateekar in Latehar district of Jharkhand. I work for 5 to 6 hours a day making leaf plates. There are other children who are working with me.

11. Rekha Kumari, aged 11, engaged in breaking stones (Jharkhand)

“My name is Rekha and I am 11 years old. I come from Akhauri Patra in Lesliganj, Palamu and am the daughter of Birju Bhuvan. My owner is Heera Lal residing in Dela village in Lesliganj.

“I have been forced to work for the past one year because my father borrowed some money for food and clothes some time back and was not able to pay back. I cannot work for any other person till we pay back the loan my father has taken. Along with me, all the dalit children in the village are also engaged in breaking stones. It is a back-breaking job and we are expected to work from morning till evening

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without any rest or lunch break. Drinking water and toilet facilities are not available at the work site.”

12. Premila Kumar, aged 11, engaged in carpet-weaving (Jharkhand)

“My name is Premila Kumari and I am 11 years old. I come from Pohari kala village in Latehar district of Jharkhand. I have studied up to Std. 2 in the nearby primary school. My father and brother told me that there was no use in studying and asked me to do the work at home. So I was not sent to school after that.

“For the past 5 years I have been working in a carpet-weaving unit. I work for 7 hours a day. Work is misery for we have no facilities there like toilets, drinking water, proper lighting or ventilation. There is no lunch break or even toilet break.”

13. Prema, aged 12, Domestic Labourer/Silk Reeling (Karnataka)

“I am Prema, and I am 12 years old. I reside in Sarjapur, near Bangalore. My father died some years ago and my mother is mentally retarded. I have studied up to Class 4. I had to work because of the economic hardship at home. I used to work as a domestic servant.

“Now I work for one Ramappa in reeling silk. My day starts at 4.30 in the morning and ends at 3 p.m. I stand during the entire work day, and suffer from joint pains and body ache. There are three other children who work in the same unit.”

14. Amulu, aged 12, ragpicking and begging (Karnataka)

“I am Amulu, 12 years old, residing at 4th Block Jayanagar in Bangalore. My parents are Sardar and Fathima. They did not send me to school since we were very poor. I have 2 sisters and a younger brother. All of us are involved in ragpicking and begging on the streets of Bangalore. I have been doing this for the past 5 years. We are a group of 21 boys and 10 girls. I am also involved in sex work.

“Once, in Jayanagar, where we hang out, a group of us, including me, was physically abused by the police. They accused us of stealing puppies and mobile phones. We were taken to the police station and beaten up. But because of the intervention of social workers, no case has been pressed. Now I am in the shelter at APSA.

“Due to substance abuse, I have started vomiting blood. I would like to start life all over again and become a self-employed person.”

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15. Kousar, aged 13, Household Work and Agarbathi (Karnataka)

"My name is Kousar. I am 13 years old and my parents are Chandrapasha and Bibi Jan, residing in Shareef Nagar, Yeshwantpur, Bangalore. We are six sisters. Because of the large family and economic hardships I had to stop studying after Class 6.

"I prepare agarbathis at home and also do domestic work such as washing vessels and clothes and sweeping the house at my employer's residence. My elder sister is also working there. Our work starts at 7 a.m. and ends at 6.30 p.m.

"As I prepare agarbathis, I suffer from skin allergy. I also have joint pains and asthma, because most of the time my hands are in water."

16. Bharti, aged 14, former ragpicker, now domestic servant (Madhya Pradesh)

"My name is Bharti and I am 14 years old. My father's name is Manohar Lall and my mother's name is Sati Bai, and we live in Ganganagar village, Sultanbad area of Bhopal in Madhya Pradesh.

"I have never been to school and took to the streets at a very early age, picking rags. Now I don't do that. For the past 5 years I have been working as a domestic servant. Life is okay for I get to eat every day. I also get some clothes occasionally. My dream is to go to school and be like other children."

17. Ranjana Shankar Jhadav, aged 12, Domestic Worker (Maharashtra)

"My name is Ranjana and I am the daughter of Shankar Soma Jhadav, residing at Ambatander taluk in Aurangabad, Maharashtra and I am 12 years old.

"I have studied up to Class 6 and had to work since then because of conditions at home. My parents took a loan to purchase a goat and they are still repaying that loan amount with my help.

"I work for one Vittal Hire Chawan as domestic help. I also work in his sugar cane factory and in the fields. I have been doing this for the past five years.

"I like to continue my studies."

18. Elizabeth, aged 12, working in plastic rope making unit (Maharashtra)

"I am Elizabeth, 12 years old, from Aurangabad, Maharashtra. I have studied up to Class 5 and dropped out because of the financial situation that my family was in. I have to work because my father is not well and there is no source of income except mine. I have been working for three years.

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"I work for 7 hours a day in a plastic rope-making unit. Fortunately, my employer has been kind. We have a lunch break and are provided with drinking water and facilities such as toilets, etc.

"If I have an opportunity, I would like to continue my studies and learn dancing."

19. Sharika Sonavan, aged 12, Domestic servant (Maharashtra)

"I am Sharika Sonavana, aged 12 years and the daughter of Kalpana and Suresh Sononi, residing at Gangagath, Panchavati in Nashik district of Maharashtra.

"I have completed my 7th standard in the local Government School and dropped out because of the pressing financial needs in the family. My father used to be underpaid all the time and his income was not sufficient to run the family. Hence I was forced to work as a domestic worker. I have been working for the past 2 years. My job is to wash the clothes and clean the utensils, sweep and mop the floor and do other household chores. Due to constant exposure of my hands in various detergents, the skin on my hands keep peeling off.

"I would like to complete my education and work towards eradication of child labour by employing only adults."

20. Maya Jetu Auike, aged 14, working in a country liquor making unit (Maharashtra)

"I am Maya Jetu, 14 years old and residing in Nagpur, Maharashtra. I have not been to a school before. Recently, I joined the non-formal education classes conducted by Adhar Bal and Mahila Vikas Kendra, Nagpur.

"I work in a country liquor making unit in Nagpur. My job is to assist in arranging the pots and firewood while making liquor. I fill water in the pots and keep adding wood into the fire to keep it alive. I also fill the liquor in the bottles.

"I have been working for the past 18 months, ever since my father died. My mother and I have to earn our own livelihood. There are two other children working with me.

"I feel if adults are paid proper wages, children do not have to work. I would like to study further and complete my schooling."

21. Sabina Khatun, aged 12, engaged in rolling beedies (Orissa)

"My name is Sabina Khatun, and I am 12 years old. My father's name is Abudi and my mother's name is Hasina. We live in Ganipur village in Baleswar district of

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Orissa. I have studied only up to Class 1 and did not go further due to my mother's illness following her pregnancy and delivery. So I had help at home with the chores.

"I work for a contractor, making beedies. I have been working for the past three years to help my parents earn a little more to pay off the loan that my father took at the time of my mother's illness. I get paid less in lieu of interest. So we have to work that much more and pay back that original loan amount only. I am also free to work for others. But my four sisters also work from home. We take a short break for lunch. I am suffering from skin allergy, headache and backache.

"I would like to play games and excel, if I had the opportunity."

22. Rasmita Patel, aged 15, engaged in collection of minor forest produce (Orissa)

"My name is Rasmita Patel, 15 years old, and daughter of Annapurna and Akshay Patel from Tilebani village in Deogarh district of Orissa.

"I have studied up to Standard 5. I stopped going to school because of poverty and my parents too compelled me to work with them to supplement their income. As a family – my parents, my brothers and sisters – we go into the forest for hours to collect the produce. It is a tiring job for we have to walk miles and miles every day. We are often harassed by forest guards.

"My parents often take loans from the middlemen against future produce to meet medical expenses as we suffer from insect bites very often. Malaria is a real threat and very often we have been affected.

"If I could, I would play and study like all other children of my age."

23. C. Nirmala, aged 16, engaged in cattle grazing and rearing (Tamil Nadu)

"I am Nirmala, 16 years old and I am the daughter of Chinnadurai and Senjammal of Gumudipoondy Block in Tiruvallur district of Tamil Nadu. I have two younger sisters and one younger brother. I have never been to a school.

"Three years ago, I used to work in a Rice Mill owned by a Chettiar in Ramnathapuram, where my grandmother lives. I worked there for only 6 months before the accident that caused the severance of my left hand. My skirt got caught in the machine's belt. While trying to release my skirt, my left hand got caught in the machine and got chopped off. My face was also injured by the belt pin of the machine. The owner of the mill took me to the hospital without informing my

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parents and admitted me saying that I was an orphan. It was only much later that my parents were informed. For almost three months I was in a state of shock and often became unconscious. I was brought home after being in the hospital for three months, and it took one year for the injuries to be healed properly.

“The owner of the Mill gave us just Rs. 1000 initially. My parents have borrowed nearly Rs. 15,000 for my treatment. Only half that amount has been repaid so far. Now, as a family we are looking after the *manthoppu* (mango orchard) of a rich landlord in Ramapuram. I rear and graze his cattle. I get paid about Rs. 300 per month and in the season, if the crop is good, about Rs. 1000.

“As per our custom, I was engaged to be married to my uncle. But because of this accident and loss of my left hand, he broke off the engagement.

“Even today I do not feel that I am completely cured. I am suffering from bouts of vomiting, headaches and giddiness, especially if I hear any upsetting news. I am taking tablets regularly to overcome this.

“No. There has never been a police complaint. My parents are illiterate and they do not know how to file a complaint either. The Mill was on the Hyderabad Highway. Now it is closed and no one knows where the owner has disappeared.”

25. R. Chitra, aged 17, working in a cashewnut processing unit (Tamil Nadu)

“My name is Chitra and I am 17 years old. My parents, Ramaiyan and Chandra are landless agricultural coolies in Perambalur of Tamil Nadu. In the seasons, my father earns about Rs. 300 a month and my mother Rs. 150. I have an older brother who has completed his B.Com and a younger sister who has never been to school.

“I have studied up to Class 8 in the Jayangondan Panchayat Union Middle School. I discontinued my studies because of the family situation. My parents incurred a lot of expenses to send my brother to college. Today he is unemployed and roams around in the village. My parents did not want me to be in the same situation and asked me to go and work.

“For the past one and a half years I have been working in the Sun Mundiri (cashew nut) Factory in Kavarapalayam near Jaygondan. Work in the factory starts at 6 a.m. and ends at 5 p.m. with a half hour lunch break. I am employed in the section that removes the shell of the nut. It is a messy job with lots of shellac dirtying one's hands. For every kilogram of cashew nut that I process I get Rs. 4. I am able to process about 7 kilograms of nuts a day. We are paid once a week.

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“Because of the shellac, the skin on my hands have become discoloured and the skin get peeled off too often. Although they give soap to wash our hands after work, the foul smell lingers on. At work, we are watched very carefully. If one of the children eats a nut, that child is paraded through all the processing rooms announcing that the child has stolen one nut. This is one form of ridicule to prevent us from eating any cashew nut, even if we are hungry.”

25. S. Bhuvaneshwari, aged 12, working in a silk-weaving - handloom - unit (Tamil Nadu)

“I am Bhuvaneshwari, and I am 12 years old. My father, Selvan, died two years ago. My mother, Rani, is working in a silk weaving unit and earns Rs. 500 per month.

“I was studying in Standard 6 when I lost my father two years ago. To meet my father’s funeral expenses, my mother took an advance in my name and asked me to work with her employer to repay that. I worked for 8 months for one owner and then joined school for another year and completed Std. 7.

“Apart from working in the weaving unit, I also had to do the household work at my owner’s house like washing clothes, vessels, fetching water, etc. I used to work for 12 hours a day, from 7 a.m. to 7 p.m. I was paid Rs. 200 per month. I would get a half day leave for every Amavasi festival day. But during the Pongal season I have to work from 5 a.m. to 9 p.m.

“I have had three ‘owners’ so far. In 2001, I joined one Kumaran by taking a loan of Rs. 500. Then I took a loan of Rs. 1000 from one Murugan and paid of Kumaran. Later I joined Arumugan by receiving an advance of Rs. 2000 and paid off Murugan. Now I am waiting to join another ‘owner’. So, for the past 10 days I have been at home. My last owner had 5 looms and there are three other children working there.”

26. M. Revathi, aged 15, sells fish (Tamil Nadu)

“I am Revathi, 15 years old, and I am the daughter of Mani and Elusammal. I lost my father when I was three months old. One day he did not come back from the sea and we fear he has been drowned. About one year ago, my mother too expired. She was suffering from cancer. We are 6 children and all except me and one elder sister are married and settled. I come from a small fishing village in Nagai district, on the east coast of Tamil Nadu.

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"I have studied up to Class 5 and discontinued because of the family situation.

"I have been selling fish for the past 5 years. For the past two years there is no one to help me in purchasing the catch from the wholesale market. So I get up early in the morning, go to the market to buy the headload for the day and sell retail to homes. I also have to clean the fish for those who buy from me. I walk up to 50 kilometres a day to sell my basket. On an average I earn Rs. 50 a day.

"Eve teasing is a pastime of the village youth and I am not spared either. The conductors in the bus also ill-treat me because I smell of fish all the time.

"My sister and I earn our living this way and we are staying in a quarter provided by the Government for which we have to pay Rs. 10,000 in instalments."

27. P. Malliga, aged 12, employed in gem cutting (Tamil Nadu)

"I am Malliga, 12 years old, from Aalikadu, Trichy district, Tamil Nadu. My father's name is Palanisamy and my mother is a second wife to my father. We are nine in the family, including my grandparents. What my parents earn as agricultural workers is not sufficient to support this large family. I have 2 older brothers, one younger brother and a younger sister. All my brothers go to school and I have to work mostly to support their education, although I have studied up to Std. 3 at the local Government Primary School.

"I am employed in artificial gem cutting work. My work place is situated in the neighbouring village and work starts at 7 a.m. We end by 4 p.m. We have all facilities there but there is no time to eat. Our employer is a very cruel man for if we are not precise with the cutting he abuses us. I am suffering his abuses for the meagre wage I receive at the end of the week so that my brothers can go to school.

"I get Rs. 50 as weekly wage which is not sufficient for my food alone. My father receives this money and I never get to see it. Even after working so hard my family still suffers. I worry a lot about my family but never tell anything to my mother. Sometimes I cry a lot because of the pain in the eyes and hands due to work.

"I long to study when I see other children going to school."

28. M. Sangareswari, aged 14, works in a fireworks manufacturing unit (Tamil Nadu)

"I am Sangareswari, aged 14 years, daughter of Muthu and Sundari, residing in Vatchakarapatti village in Virudhunagar district of Tamil Nadu. My parents are

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occasional wage earners, having no special skills. I have a brother. My brother work in plastics shop and I in a fireworks making unit in the nearby village.

"I have studied up to Standard 8 and discontinued because of poverty. For the past two years I have been working in this factory.

"The fireworks unit is situated in the nearby village which is about 2 kilometres away from my village. I walk these 2 kms. every morning and evening. Work starts at 8 a.m and finishes at 6 p.m. and we are paid on a per piece rate system. All of us together bring home about Rs. 1500 to 2000 per month.

"This is a dangerous work, because of the chemicals we handle. Even after washing, the chemicals stick on to our hands. Earlier, the management used to buy us soaps. Now they stopped that. We also don't buy soap to wash our hands because it is expensive. We know we are slowly consuming all those chemicals through the food that we handle. We have constant stomach ache and cough. There have been occasional fire accidents in the past."

29. Rinku, aged 14, working in a dhaba (Uttar Pradesh)

"My name is Rinku and I am 14 years old. I come from Badosar village in Gazipur district of Uttar Pradesh. I work in a dhaba. My father also works in this dhaba. My parents are illiterate and do not earn much. I was sent to school and studied up to Standard 2. But I had to discontinue because my parents could not support me.

"My father took a loan of Rs. 3500 from the owner of the dhaba and the only way to repay that was to ask me to work there. I have been working at this dhaba for the past 3 years. Still now the loan is not fully repaid and I do not know how much interest he has to pay for the loan.

"I cut vegetables, clean utensils, sweep the restaurant and also serve the customers. I work from early morning till late in the evening. There are 15 other children working in the same dhaba. About 10 of them are girls.

"The owner is not a very kind person for he beats us up if we break anything or do not work diligently. The truck drivers who frequent the dhaba use foul language and even beat us. In March last year the police raided the dhaba and rescued 30 children. Some of them were from Nepal. The problem of child labour will not be there if the authorities can implement the law effectively. Usually the owners and the police work hand in glove.

"I want to read and write and become a police officer."

30. Rita, aged 16, agricultural worker (Uttar Pradesh)

"I am Rita. I am 16 years old and I come from Uttar Pradesh. My father's name is Ramsharan and we live in Lallupur in Gazipur district. I have studied up to Standard 5. I could not continue my studies as there were no schools in our neighbourhood. There was also pressure from the family to seek employment.

"I have been working as an agricultural coolie for the past 5 years. I work in the fields harvesting crops, spraying pesticides and digging for potatoes. Along with this I also have to graze cattle. I work for 12 to 14 hours a day. There are about 50 other children in this kind of work in our village.

"Although my parents have taken a loan, I am not bonded. I am free to go and work for any other landlord. But all of them are the same. One day, one of the girls spilt pesticides on to her hand accidentally. Due to the burn injuries her hand had to be amputated later.

"I would like to continue my studies and become a social worker."

31. Savitri, aged 17, working in a dhaba (Uttar Pradesh)

"I am Savitri and I am 17 years old. My father's name is Ram Avadh and we live in Khempur, Gagi, in Uttar Pradesh.

"I have studied only up to Std. 1 and dropped out because of poverty. My parents also did not want me to go school and they force me to work. I have been working for the past 7 years, that is, since I turned 10.

"My parents took a loan of Rs. 5000 from the owner of the dhaba. I am not sure what the interest rate is. Until we pay back the loan we cannot leave the dhaba. At the dhaba, I clean utensils, cut vegetables, clean the place and also serve the customers. Most customers are truck drivers and they are abusive most of the time. I am also expected to serve liquor to them. If I refuse to serve them or scold them for using foul language the owner of the dhaba will shout at me.

"There are 20 children who work with me at the dhaba, of whom 14 are girls of varying ages. We get shouted at and beaten up if the cleaning is not to the liking of the owner or if we break a plate.

"If I get the opportunity I would like to go to school and complete my studies."

32. Punam, aged 15, engaged in rolling beedies (Uttar Pradesh)

"I am Punam, daughter of Dev Saran, residing in Sultafa village of Gazipur district in Uttar Pradesh. I am 15 years old and have been working for a long time.

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"I started working because of the pressure from my mother and the beatings of my father. My father is a drunkard and he keeps borrowing money from our employer. I do not know how much and I also do not see how I can escape this situation, as long as my father keeps drinking and borrowing money.

"My work involves cutting the tobacco leaves, rolling them and heating the leaves. Sometimes when heating them, we burn our fingers.

"I want to be a nurse and serve other people. That is my dream."

33. Anjura Khatun, aged 16, spinning yarn from silk cocoon (West Bengal)

"My name is Anjura Khatun and I am 16 years old. I hail from Kasimnagar village of Murshidabad district in West Bengal. My father is Yakub Shek and my mother is Hazera Bibi. My mother and I work from home on the cocoons supplied to us by a local agent and produce silk yarn.

"I have studied up to Class 5 and had to discontinue in order to support and supplement the family income. I have been working for the last 8 years. I am working mainly to save some money for my dowry, as I am the only girl child for my parents. These days the dowry for a girl like me ranges between Rs. 7,000 and 30,000.

"The local agent of the employer supplies us with 700 gms. of cocoon every week from which we make yarn. We have to keep the yarn in water for some time, then spin them into yarn manually with the help of a simple device called *takli*, dry the yarn and pack it using the *charkha*. My mother and I can only use 700 gms. of cocoon a week because of the labour intensity of the work. We get Rs. 12 per 100 gms. In a week we make Rs. 84.

"I work for 5 to 10 hours a day and 20 days a month. Income is meagre because of the low wages and the tricks played by agents who bring the cocoons from the silk manufacturer. I also take care of the household chores and look after my two younger brothers."

34. Sujata Mondal, aged 11, de-scaling prawns (West Bengal)

"My name is Sujata Mondal and I am 11 years old. My father's name is Gouranga and my mother's name is Maya and we stay in Kolkatta.

"I work in different fish processing units in Koley Market in Sealdah. Fish comes from various parts of the State to be processed here for export. There is no one

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employer as such. It all depends on the catch. An exporter enters into an agreement with a processing contractor to process the fish. There are a number of contractors and they have agents who organise the girls for processing. The contractors and their agents themselves earn a meagre commission. I work under my mother, who is also an agent for a contractor. Sometimes I go and work for others.

“My job is de-scaling prawns. The prawns are given to us in a box filled with ice. We de-scale them using our bare fingers and put them in a bowl. Each bowl will take up to 5 kilograms. Our wages are Rs. 6 for each 5 kilogram of de-scaled prawns and we can de-scale about 9 to 10 kilograms per hour. I work for about 8 hours a day depending on the availability of work. Should there be a good season, we work up to 14 hours a day. We work in a room that is about 20 feet by 20 feet, and the floor is always wet because of the ice. Depending on the volume of work, sometimes up to 100 children are crammed into this room.

“There is no rest time or specific lunch break. We are at liberty to take breaks whenever. But then, we will not be able to earn as much since we work on piece rates.

“Talking of facilities, there is one toilet for every work room. But it is too small and dingy. It smells of fish all the time. As for drinking water, we have to walk to the municipal tap at the end of the road. One year ago, the roof of one of the toilets came down and one of the girls was injured seriously. The agent was able to convince the exporter to pay for her treatment. About 6 months ago, another girl was injured when an ice box fell on her. So there is a lot of risk at work. As for me, I am suffering from chronic cough and cold because of the icy conditions that I work in. My hands and fingers are full of scars and cut marks.

“I have never been to a school, and I am not sure what my future is.”

35. Mona Saha, aged 14, engaged in rag picking and domestic help (West Bengal)

“My name is Mona Saha, aged 14 years, and I come from Kolkatta. My parents are Kakan Saha and Maya Saha. Both of them are unemployed and they depend on the money I bring home. I studied up to Class 4 and discontinued because of extreme poverty, unemployed parents and a large number of family members.

“I am engaged in part-time domestic work and also go out to the streets to pick rags. I have been doing this for the past 6 years. I work for about 7 to 8 hours. Ten other children also join me in picking rags. Our work is dangerous. While crossing

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roads we have to be careful for there have occurred fatal accidents. Cuts and injuries from sharp objects found in the waste is a daily occurrence. Dog bites too are a common feature. There are no fixed working hours nor is there is specific time for lunch, because we do not get food regularly.

"If I could, I would like to join the Police department."

Verdict - Guilty

Verdict – Guilty

The evidence of the children leads us to only one conclusion that all those who have been at the helm of affairs in the past 55 years since independence are guilty of disobeying with impunity the Directive Principles of State Policy laid down by the Constitution –which are “ fundamental” to the governance of the country.

In particular, they have failed miserably to create an overall enabling environment, in which the masses could enjoy the right to livelihood, right to work and universal elementary education which was to be accomplished by 1960 as per the deadline set by the Constitution. That enabling environment would have put every single child – girl and boy – in school at least upto the age of 14 years. Further, it would have enabled parents to have sources of livelihood, to work and income. The absence of all these has robbed and is continuing to rob the children of their childhood and subjecting them to incredible cruelty.

This has happened inspite of Article 39 (e) which specifically directed the State to ensure “That the health and strength of workers men and women and the tender age of children are not abused and that citizens are not forced by economic necessities to enter avocations unsuited to their age and strength.

The “protectors” of the Constitution are also guilty of increasing the vulnerability of children in labour by premature and thoughtless opening of the economy to the forces of globalization especially in sectors like fish processing, cotton pollination, floriculture where the girl child phenomenon is predominant.

Clearly our representatives, Presidents, Prime Ministers, Chief Ministers, Ministers, are guilty of dereliction of duty to promote and protect the Constitution of which they were (and are) duty bound by the oath they take prior to entering office. Their guilt is compounded as the price for their dereliction of duty is being paid by millions and millions of children of tender age whose unbearable testimony we heard the whole day on March 6th 2003, at Mysore.

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At the public hearing the jury interacted with 39 girls between age 8-16 years, from 13 states of India including Andhra Pradesh, Bihar, Chattisgarh, Goa, Gujarat, Jharkand, Karnataka, Maharastra, Madhya Pradesh, Orissa, Tamil Nadu, Uttar Pradesh, West Bengal. They came from a range of occupation: agriculture including cattle grazing, collection of forest produce, domestic work, home based occupation, including agarbathi, rope and beedi making, urban based occupation including dhaba and waste picking, in quarries, bricks kiln construction site and with various industries, sericulture, fisher, gem cutting and fire works.

The magnitude of child workers in India can be gauged by the fact that of the 85 million out of school children (5 to 14 years old) 60% are girls, (1991 Census).

The girls testimonies, which ever sector they may be from, beedi or domestic work, from Tamil Nadu or Uttar Pradesh point out that they all work under duress. We must also point out that the distinction of hazardous and non-hazardous work is fallacious in the context of the child, especially the girl child. The fact that she is a girl makes her vulnerable to sexual harassment, trafficking, to HIV-AIDS, (as in the case of girls often migrants working in dhabas frequented by truck drivers), sexual stereotyping and health hazards arising out of inhuman working conditions and malnutrition. The law is insensitive to the above dimension where hazard is defined from the point of occupation and not the child. There is an urgent need to demolish the distinction and acknowledge that all work that keeps the child away from her basic right including education is hazardous.

Just see the agony of the children and their aspirations in their own words in this report.

Members of the jury:

L.C.Jain

Mythili Shivaraman

Indira Jaisingh

Jaya Shrivastava

Dilip Ranjrekar

Vasundhara Doraswamy

Githa Hariharan

Annexures

1. The Child Labour (Prohibition and Regulation) Act, 1986 – Important Sections
2. Some Urgent Amendments Required to the Child Labour (Prohibition and Regulation) Act 1986
3. The Constitution of India and Child Labour
4. Definitions of 'Child', 'Adolescent', and 'Young Person' under various Legislations

The Child Labour (Prohibition and Regulation) Act, 1986 (61 of 1986)

Important Sections

PART I

Sec. 2 Definitions

“**Child**” means a person who has not completed his fourteenth year of age;

“**Establishment**” includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment;

“**family**”, in relation to an occupier, means the individual, the wife or husband, as the case may be, of such individual, and their children, brother or sister of such individual.

“**Occupier**” in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop.

“**Workshop**” means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of section 67 of the Factories Act, 1948 (63 of 1948) for the time being, apply.

PART II

Prohibition of Employment of Children in Certain Occupations and Processes.

Sec. 3: Prohibition of employment of children in certain occupations and processes (listed in schedule – part A & B) – Exemption: prohibition shall not apply to any work with the aid of the family or to any school established by or receiving assistance or recognition from Government.

Sec. 5 : **Child Labour Technical Advisory Committee** (from time to time recommend which other processes and occupations should be prohibited.)

PART III

Regulation of Conditions of Work of Children (does not place a limitation on the age of the child to be employed)

Sec. 6 : Application of part

Sec. 7 : (Hours and period of work):

No child shall be required or permitted to work in any establishment in excess of such number of hours.

No child shall be permitted or required to work between 7 p.m. and 8 a.m.

No child shall be required or permitted to work overtime.

Sec. 8 : Weekly holidays

Sec. 9 : Notice to Inspector.

Sec. 10 : Disputes as to age.

This is important because age can be settled only by an appropriately certified doctor.

In the absence of a certificate the age of the child has to be proved by a medical practitioner.

Sec. 11 : Maintenance of register – to be maintained by the occupier.

Sec. 12 Display of notice containing abstracts of sections 3 and 14.

Sec. 13 : Health and safety

PART IV

Miscellaneous

Sec. 14 : Penalties

Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable 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 ten thousand rupees but which may extend to twenty thousand rupees or with both.

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Sec. 16 : Procedure relating to offences (1)

Any person, police officer or Inspector may file a complaint of the commission of an offence.

THE SCHEDULE (See Section 3)

PART A : Occupations – Any occupation connected with :

- (1) Transport of passengers, goods or mails by railway;
- (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 one platform to another or into 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 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 licences.)
- (7) (Abattoirs / Slaughter Houses)
- (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.

PART B: Processes

- (1) Bidi-making
- (2) Carpet weaving including preparatory and incidental process thereof.
- (3) Cement manufacture, including bagging of cement.
- (4) Cloth printing, dyeing and weaving including preparatory and incidental processes thereto.

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- (5) Manufacture of matches, explosives and fireworks.
- (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 process using toxic metal and substances such as lead, Mercury, Manganese, Chromium, Cadmium, Benzene, Pesticides and Asbestos.
- (15) Hazardous processes as defined in Section 2 (cb) and dangerous operation " as notified 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 work, dent beating and painting.
- (21) Brick Kilns and Roof tiles units.
- (22) Cotton ginning and processing and production of hosiery goods.
- (23) Detergent manufacturing
- (24) Fabrication workshops (ferrous and non-ferrous)
- (25) Gem Cutting and polishing
- (26) Handling of chromite and manganese ores.

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- (27) Jute textile manufacture and coir making.
- (28) Lime kilns and manufacture of lime
- (29) Lock-making.
- (30) Manufacturing process having exposure to lead such as primary and secondary smelting, welding and cutting of lead-painted metal construction, welding of galvanized or zinc silicate, polyvinyl chloride, mixing (by hand) of crystal glass, sanding or scrapping of lead paint, burning of lead in enamelling workshop, lead mining, plumbing, cable making, wire patenting, lead casting, type founding in printing shops. Store type setting, assembling of cars, shot making and lead glass blowing.
- (31) Manufacture of cement pipes, cement products and other related work.
- (32) Manufacturing of glass were including bangles, fluorescent tubes, bulbs and other similar glass products.
- (33) Manufacture of dyes and dye stuff.
- (34) Manufacturing or handling of pesticides and insecticides.
- (35) Manufacturing or processing and handling of corrosive and toxic substances, metal cleaning, and photo engraving, and soldering processes in electronic industry.
- (36) Manufacturing of burning coal and coal briquettes.
- (37) Manufacturing of sports goods involving exposure to synthetic materials, chemicals and leather.
- (38) Moulding and processing of fibreglass and plastic.
- (39) Oil expelling and refinery.
- (40) Paper making.
- (41) Potteries and ceramic industry.
- (42) Polishing, moulding, cutting, welding and manufacture of brass goods in all forms.
- (43) Processes in agriculture where tractors, threshing and harvesting machines are used and chaff cutting.
- (44) Saw mill – all processes.

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- (45) Sericulture Processing.
- (46) Skinning, dyeing and processes for manufacturing of leather and leather products.
- (47) Stone breaking and stone crushing.
- (48) Tobacco processing including manufacturing of tobacco, tobacco paste and handling of tobacco in any form.
- (49) Tyre making, repairing, re-treading and graphic beneficiation.
- (50) Utensils making, polishing and mental buffing.
- (51) 'Zari' making (all processes).
- (52) Electro-plating and Manufacturing of Pencils

Some Urgent Amendments Required to the Child Labour (Prohibition and Regulation) Act 1986.

The Preamble to the Child Labour Act should detail the rights of children enshrined in the UN Convention including the right to education and protection against economic exploitation and other Constitutional guarantees for the promotion of a statute prohibiting employment of all children below 16 years (at the least).

All forms of child labour are hazardous. Definition of hazardous should not be industry-based but child-based. *The Child Labour Act should, in principle, not make a distinction between hazardous child labour and non-hazardous labour. All labour of children that exploits poverty, that is exploitative, and that denies children's education and enjoyment of all their rights and diminishes adult employment is hazardous. We need a law that will progressively represent this reality.*

A child must be defined as "every human being below the age of 18 years" in all Legislation. Our basic demand remains that all children upto 18 years should not be in any form of employment.

Immediately, we need a law that prohibits all child labour in all forms up to the age of 18 years and a law to guarantee free, quality, compulsory education for all children up to Std XII. For this, there is sufficient sanction in the Constitutional provisions, Supreme Court judgments and the UNCRC. *The UNCRC defines a child as one below 18 years which the Government of India has ratified without reservations.*

There should be no exemption to employment of Children upto 18 years in the prohibited sector even in case of agriculture, household based labour and employment carried on with the aid of the family.

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At the date of the enforcement of this new Act (with amendments) there must be an empowering rehabilitation programme for children currently in employment. This must differentiate between children who can go back to school and those who are of an older age, need alternative skills-training education. This needs more detailing. Measures for rehabilitation/reintegration of child labourers into the education mainstream, skills formation, etc., should form part of the Act. There must be a mandatory commitment from the State regarding such matters and also to enact a provision guaranteeing that the time when the law is passed. All children who have been in employment for a specified period of time (working and are below 16 years) should be adequately compensated by the State to enable them to take steps for their lives after being removed from employment.

The Act must envisage sections that have a preventive strategy. As a first step it should have provisions to ensure that all children upto Std. XII have a right to free, quality, compulsory education. The Act should ensure a single system of education which is totally State-funded. Thus, a separate provision needs to be incorporated guaranteeing the right to education for all children upto Std. XII. Any employer employing children must be liable also for the denial of this right to children.

The onus of proof regarding proof of age of the child should be shifted on the occupier – similar to the provision in Factories Act. It should be mandatory for all occupiers to have a birth certificate obtained either from the school, the local government or the Registrar of Births and Deaths. The law for prohibition itself has become difficult to implement because of three reasons – one, requiring an appropriate medical practitioner to give an age certificate, two, exempting children who are working with the aid of the family and three, dependence on the factory inspectors and labour inspectors alone to initiate prosecution proceedings. All these three sections need to be amended urgently.

In this context we propose that the need for a medical authority to certify age should be stopped as this certificate can be obtained from a school, local government institution or Registrar, Births and Deaths.

Penalties must be made more stringent. Mandatory imprisonment of seven years for all occupiers convicted of employing a child below 16 years (18 years in prohibited sector). In addition to this (not or) Rupees 1,00,000/- fine to be paid by the occupier. On first conviction itself the establishment / workshop in which prohibited processes and occupations are being carried out should be sealed and

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properties confiscated by the state and amount placed in the court for the benefit of the child labourer and family. For the second conviction it shall be another seven years rigorous imprisonment and an additional fine of Rs.50,000/-.

Besides this the employer convicted for employment of children below 16 / 18 years should mandatorily pay a compensation of Rs.2 lakhs to the child / child's family who was in employment. The employers shall mandatorily employ one of the parents or the next of kin (adult).

All Inspectors and senior officers of the Department of Labour, Labour Commissioners office, Factory Inspectorate must be made liable for non-enforcement, including prosecution, penalties and attachment of properties for compensation if found guilty. This applies to all other officers of other departments who are designated as Inspectors. The doctrine of immunity and good faith will not apply.

The process of witnesses to be simplified to be in the best interests of the child and to achieve quick convictions of the employers. What is crucial is to understand that the process of evidence must be reviewed in the light of the fact that this involves children also. We need to redefine the process of adjudication to make it simple, to allow for the participation and opinion of children, for the role of counsellors and social workers to assist them in a court process etc. This processes must be in the best interests of the child and enable the quick prosecution and gaining conviction of erring employers. This takes us to the issue of either sensitisation of the magistrates or having special magistrates for protection of child rights. The same magistrate dealing with hundreds of adults cases will not be in the best position to be sensitive to the special needs of children.

Piece rate system should be abolished.

The definition of occupier must be more clearly defined to ensure that the principle employer is liable.

This Act shall immediately come into force in all districts / taluks of all states and for all occupations and processes and establishments (all employers of child labour) including agriculture & allied sectors, with the aid of the family only and all small scale sectors. It shall not be left to the state government to notify as and when required.

Constitution of a Statutory (Independent) Central Advisory / Monitoring Board with powers and functions similar to the NHRC & NCW but involving a wide

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cross section of citizens forums and social organisations.

Constitution of a Statutory (Independent) State Advisory / Monitoring Board with similar powers and functions of the NHRC and NCW but involving a wide cross section of citizens forums and social organisations.

Local Government institutions should be empowered under this law to take steps for the ensuring of quality education in schools and eradication of child labour.

Village Panchayat Presidents can be entrusted with powers of a factory inspector / labour inspector.

The Factories Act and all other labour laws related to prohibition of child labour should be amended to ensure that at the least no child below 16 years is permitted to work. This implies that the definition of young persons (17-18 years) detailed in the Factories Act and wherever necessary in other labour legislation should be reviewed.

With regard to more effective enforcement the following amendments are suggested.

Setting up of a Joint-Task force with statutory powers at district level consisting of eminent Citizens, representatives of teachers associations, ngo's, social workers and trade unions, science forums, representatives of local government officials of the labour department, education department, district administration and others to monitor the effective enforcement of the Act and stopping the employment of children.

Panchayats / municipalities should be empowered to ensure enforcement powers for the elimination of child labour under the Child Labour Act.

Mobile investigation and prosecution teams made up of Factory Inspectors, officials of other departments and members of public organisations and ngo's should be constituted. Mobile courts with powers to award penalties to the occupier and collect spot fines should be constituted. This is important on a daily basis to enforce the Supreme Court directives. Also trade union leaders, representatives of teachers associations and ngo's should be conferred some of the powers of the factory / labour / inspector. Trade Unions, Teachers Associations and ngo's to be empowered to carry out inspections and call for records.

A report by ngo's and / or trade unions to the labour inspector on the specific prevalence of Child Labour in a specific area / sector unit should be legally binding on the factory Inspector to initiate prosecution proceedings against the violator.

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Other dimensions of enforcement with powers of seizure of vehicles bussing children (including tempos, vans etc.) seizure of plants and machinery, cancellation of licence for functioning etc., should be incorporated into the Act. On conviction the establishment / prohibited occupation and process should be sealed, sold and the proceeds given to the victims family.

Once a conviction is given for employment of children below 16 years it should be made mandatory for the occupier within a limited time period to prove that he is not employing any child labour. Failing which it should be presumed that the occupier / employer continues to employ child labour.

The Role of the Magistrate

In the court of Chief Judicial Magistrate, Kamarajar District at Srivilliputhur, Tamil Nadu, in the Presence of Thiru.P.Anbazhagan, Chief Judicial Magistrate, eight cases were filed by the Inspector of Factories I Division Sivakasi under Sec 67 of the Factories Act and under Sec 14 (1) read with sec 15 of the Child Labour (Prohibition and Regulation) Act. Ironically in all the eight cases the judgements for which was delivered between March and June 1994 the Judge did not find even one accused (Match factory owners/occupier) guilty of the above charge for the simple reason that the Inspector did not take the concerned Medical Authority with him for inspection or to fix the childs age mentioned on behalf of the prosecution. The age was fixed as per the statement of the child or that the Inspector informed the Judge that he "has no special competency and qualification to fix the age of a person".

In all the eight cases the prosecution could not get conviction because the entire process depended on a Medical Authority. Yet it is doubtful whether these judgements will stand up to judicial scrutiny as it is not required by law that the Factory Inspector has to take the medical authority with him during inspection.

As argued earlier the age certificate cannot depend on the whims and fancies of one doctor. It is the most arbitrary process and must be struck down. We have detailed alternative processes regarding age certificate procurement elsewhere in this critique. However what is crucial is to understand that the process of evidence must be reviewed in the light of the fact that this involves children also. We need to redefine the process of adjudication to make it simple, to allow for the participation and opinion of children, for the role of counsellors and social workers to assist them in a court process etc. This processes must be in the best interests of the child and enable the quick prosecution and gaining conviction of erring

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employers. This takes us to the issue of either sensitisation of the magistrates or having special magistrates for protection of child rights. The same magistrate dealing with hundreds of adults cases will not be in the best position to be sensitive to the special needs of children.

Two Recent Supreme Court Judgements that impact on Child Labour Eradication

The Supreme Courts in its decision reported in 1993 (1 SCC page 645

Unnikrishnan J.P. and Others Vs State of Andhra Pradesh and Others) in para 172 of the judgement has enshrined the right to free and compulsory education for all children until they complete the age of 14 years as a fundamental right under Article 21 fulfilling Constitutional policy envisaged in Articles 45, 46 & 41 of the directive principles. In another recent decision dated 10.12.96 (reported in 1969 (9) Scale page 42 – M.C. Mehta Vs. State of Tamil Nadu and Others) the Supreme Court has inter alia reiterated its earlier decision for free and compulsory education up to the age of 14 years and also directed that the concerned employer who employs a child in contravention of the provision of Child Labour(Prohibition and Regulation) Act, 1986 shall pay as compensation a sum of Rs.20,000/- per child which would be deposited in a Fund known as “Child Labour Rehabilitation – cum- Welfare Fund”. Similarly, the Supreme Court has also directed that in those cases where it would not be possible to provide job to an adult family member in lieu of child, the appropriate Government would, as its contribution, deposit in the aforesaid Fund a sum of Rs.5,000/- for each child employed in any prohibited processes or occupations or in a factory or mine or in any other hazardous employment. The Fund so generated shall form a corpus whose income shall be used only for the concerned child especially education and training. Earlier, in another decision dated 18.12.96 (in WP(C) 4677 of 1985 – M.C. Mehtra Vs. Union of India and Others) regarding child labour in NCT of Delhi, the Supreme Court has inter alia directed the employer concerned, who are found to have employed child labour, to pay compensation as assessed by the Labour Commissioner, Delhi and in default of payment thereof, the same would be recovered as arrears of land revenue.

Thus 1986 Child Labour Act does two things. One, it sets up a machinery for defining the prohibited employments (defined in terms of hazardous). Second it empowers the Union Government to bring into force provisions that regulate conditions of work of children in non-hazardous employments and empowers State Govts. to make rules for further regulation.

The Constitution of India and Child Labour

The following are important constitutional provisions which when read together clearly prohibits employment of children.

Fundamental Rights

Article 14 – Equality before law:

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15 (3) – Prohibition of Discrimination:

Nothing in this article shall prevent the State from making any special provision for women and children.

Article 21 – Protection of life and personal liberty:

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 23 – Prohibition of traffic in human beings and forced labour:

Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Article 24 – Prohibition of employment of children in factories, etc.:

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Directive Principles

Article 39 (e) : That the health and strength of workers, men and women, and the

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tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 39 (f) : That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41 : Right to work, to education and to public assistance in certain cases – State shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 45: Provision for free and compulsory education for children – The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of fourteen years.

Article 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections – The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Article 47: Duty of the State to raise the level of nutrition and the standard of living and improve public health – The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Interpreting Constitutional Rights for Children

The Supreme Court has held that when it comes to upholding or guaranteeing fundamental rights is that rights are not to be seen in isolation of each other but as a bundle of rights to fulfil the mandate outlined in the Preamble of our Constitution. The Supreme Court has time and again held that paramount among rights is the right to life and that right to life includes the right to livelihood; and the right to live in dignity and security. Denial of survival and development, freedom of expression causing harm of neglect and exploitation of children in any

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form is a violation of the right to live with dignity and the right of protection against exploitation. Employment of children thus violates the essence of *Article 21*.

The Constitution expressly prohibits employment of children below fourteen years. Children below 14 years as per *Article 24* cannot be employed in any factory or mine or any other hazardous work. This is a fundamental right of every child. "Any other hazardous work " means, that any work done by children that is hazardous is prohibited by the Constitution of India. The Constitution does not attempt to outline what is hazardous. What is hazardous for an able bodied adult cannot be the barometer for deciding what work is hazardous for the child. It is for this reason that Article 24 did not stop with factories and mines but said "or engaged in any other hazardous employment." According to the Constitution of India therefore, all forms of work by children below 14 years is hazardous. Further as mandated by *Article 45* and developed in Unnikrishnan J P vs. State of Andhra Pradesh (4.2.1993) Supreme Court case children shall be provided education upto 14 years as it is now their fundamental right to be in school. This is now supplemented by the 93rd Constitutional Amendment that guarantees free and compulsory education as a fundamental right for all children between 6 to 14 years. Added to this for the first time the Constitution (by an amendment to Article 45) of the Directive Principles recognises the need to provide for Early Childhood Care and Education for all children 0-6 years. Though many of the other Articles in the Constitution related to children's special rights and abolition of child labour are part of the Directive Principles, they are fundamental in the governance of our country and as required by *Article 37* it is the duty of all the organisations of the State to keep the same in mind when called upon to decide matters of great public importance. Together with this is a well developed corpus of jurisprudence wherein courts have amplified the essence of fundamental rights by breathing into them the humanism from the directive principles.

Since children have a fundamental right under Article 45 to education and to develop in a healthy manner and to be protected against exploitation under Article 39 (f), it is conclusive that children should be in schools and not in the workplace. If the child is denied primary elementary education because of the need to work, it is a hazard. Article 45 and the Supreme Court judgement requires that every child is not merely expected, but is under a duty, to be educated. Similarly any work of a child that results in exploitation and material abandonment is a hazard. The industrial definitions of hazardous in the Factories Act and other labour laws

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cannot be the basis of deciding what is hazardous for a child. There is no possibility of exploitation not being hazardous and it is against this hazard which the Constitution speaks of in Article 24 and related articles. Article 24 must be read and understood along with Article 14, 15 (3), 21, 23, 45, 39 (e) and 39 (f) and the 93rd Constitutional Amendment.

Non-discrimination (among children) is one of the most important guarantees provided by Article 14. Wherein the state is bound not to deny to any person equality before the law or equal protection of laws. Since millions of children were being discriminated against and exploited, the Constitution makers thought it relevant to back up Article 14 with Article 24 (prohibiting employment) and Article 15 (3) where the state is empowered to make any special law for children. Central to these articles on fundamental rights is Article 21 whereby no person (read also children) shall be deprived of his life or personal liberty. And any form of employment of children amounts to forced labour or bonded labour, and bonded labour is a violation of Article 21 and Article 23.

The Constitution contains other provisions, guaranteeing that a child must be given an opportunity and facility to develop in a healthy manner. *Article 39 (e)* mandates that the tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 39(f) goes further still to ensure childhood and all-round development of children. It states that "Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment". Thus several Articles must be read and understood along with Article 14, 15(3), 21, 23, 24, 45, 39 (e) and 39 (f).

Further Article 51(A)(a) of the Indian Constitution makes it the duty of every citizen of India to abide by the Constitution and respect its ideals and institutions. Reading the above guarantees of the Constitution together we get a complete picture of the duties of the state towards India's children and the need for State action for Prevention and Eradication of Child Labour.

Thus for instance any employment of children defeats the notion of the child's holistic development articulated in the Constitution and hence is unconstitutional. Because children are in employment an equal number of adults are unemployed. Article 41 enjoins upon the state to make effective provision for securing the right

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to work for all persons. Article 41 read with Article 21 and 47 means that the state and private sector must only employ adults. Article 47 enjoins upon the state to "regard" the raising of the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties. These two Articles are very essential for fulfilling the Constitutional mandate of right to life with dignity, security and in freedom. Strictly speaking Article 41 means that every adult should be guaranteed the right of work.

Thus Articles 41 and 47 is also meant to strengthen Article 24,45, 39(e),39(f). If all adults have the right to work 80 million or more child labourers would be in schools and not in the workplace. For the full realisation of the holistic development of the child it is important to also guarantee Article 39 (a) and 39 (b) which speaks of the right to adequate means of livelihood and that the ownership and control of the material resources of the community are so distributed as best to subsets the common good. This is crucial for equality, non-discrimination and the right to life. All these provisions were meant very clearly to guarantee an egalitarian and just social order, which would in turn be the basis of the development of children in a holistic manner. Further a large percentage of child labourers are from SC, ST, OBC communities and minorities. Article 46 seeks the promotion of educational and economic interests of SC/ST and weaker sections and their protection from all forms of exploitation. Thus Article 46 read with all the above provisions means that children from these oppressed communities should not be in employment but be guaranteed education, health care, nutrition, adequate shelter and protection from economic exploitation.

Further Article 51 (A) (a) of the Indian Constitution makes it the duty of every citizen of India to abide by the Constitution and respect its deals and institutions. Article 13 (2) codifies that the State shall not make any laws, which take away or abridge the fundamental rights guaranteed by the Constitution. It clarifies that "law" includes among other things any notification having the force of law. Reading the above guarantees of the Constitution together we get a complete picture of the duties of the State towards India's children. Any employment of children defeats the notion of the child's holistic development articulated in the Constitution and hence is unconstitutional. Nevertheless, numerous legislation, especially and Child Labour (Prohibition and Regulation) Act, 1986, Factories Act 1948, The Beedi and Cigar Workers (Condition of Employment) Act 1966, State Law for Handloom and Powerloom Workers, The Shops and Establishments Act

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1948, The Beedi and Cigar Workers (Condition of Employment) Act 1966, State Law for Handloom and Powerloom Workers, The Shops and Establishments Act 1961 etc. are in violation of Article 14, 21, 23 and 24 of the Constitution. This legislation removes the protection given by these Articles to children against employment in all hazardous work and against exploitation and injustice by not prescribing a minimum age and prohibiting employment of children only in certified occupations and processes.

Article 51 (c) enjoins the State to foster respect for international law and treaty obligations. The United Nations Convention on the Rights of the Child goes much further than the Constitution in defining a "child" as anyone upto the age of eighteen and categorically forbids the employment and exploitation of children. India ratified the Convention in 1992. Having subscribed to its objectives and purposes and its principle of the best interests of the child as primary, India nevertheless expressed a reservation. The reservation placed was on, "prescribing minimum wages for each and every area of employment" which impinge on other rights which were unconditionally accepted such as the right to education and right to an adequate standard of living. India must endorse the Convention in its entirety. The Child Labour (Prohibition and Regulation) Act, 1986 must be radically altered to fulfil the Constitutional obligation and the commitments guaranteed in the United Nations Convention on the Rights of the Child and the Conventions of the International Labour Organisation ratified by India.

Definition of 'Child', 'Adolescent' and 'Young Person' under Various Acts

The Children (Pledging of Labour) Act, 1933:

'Child' means a person who has not completed his *fifteenth* year.

The Factories Act, 1948:

'Child' means a person who has not completed his *fifteenth* year of age.

'Adolescent' means a person who has completed his *fifteenth* year of age but has not completed his eighteenth year.

'Young Person' means a person who is either a child or an adult.

Minimum Wages Act, 1948:

'Child' means a person who has not completed his *fourteenth* year of age.

'Adolescent' means a person who has completed his *fourteenth* year of age but has not completed his eighteenth year.

Plantation Labour Act, 1951:

'Child' means a person who has not completed his *fourteenth* year of age.

'Adolescent' means a person who has completed his *fourteenth* year of age but has not completed his eighteenth year.

The Motor Transport Workers Act, 1961:

'Child' means a person who has not completed his *fourteenth* year of age.

'Adolescent' means a person who has completed his *fourteenth* year of age but has not completed his eighteenth year.

The Beedi and Cigar Workers (Conditions of Employment) Act, 1966:

'Child' means a person who has not completed his *fourteenth* year of age.

'Young Person' means a person who has completed *fourteen* years of age but has not completed eighteen years of age.

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The Mines (Amendment) Act, 1983:

'Young Person' means a person who has completed his *fourteenth* year of age but has not completed his eighteenth year.

The Merchant Shipping (Amendment) Act, 1984:

'Child' means a person who has not completed his *fourteenth* year of age.

'Adolescent' means a person who has completed his *fourteenth* year of age but has not completed his eighteenth year.

The Child Labour (Prohibition and Regulation Act, 1986:

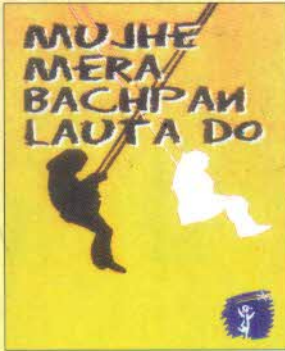
'Child' means a person who has not completed his *fourteenth* year of age.

The Constitution of India:

Article 24: No child below the age of fourteen years of age shall be employed in any factory or mine or engaged in any other hazardous employment.

We are guilty of many errors and faults,
But our worst crime is abandoning children,
Neglecting the fountain of life.
Many of the things we need can wait,
The child cannot.
Right now is the time,
Her bones are being formed,
Her blood is made, and
Her senses are being developed.
To her we cannot answer 'tomorrow'.
Her name is TODAY.

Adapted from Gabriel Mistral, Chilean poet



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