

CACL-Karnataka

To Liberate Child Labourers

The Mysore Pledge



A Report
of the State-level
Convention on Liberation
of Child Labourers

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A Report of the State-level Convention on
Liberation of Child Labourers
November 30, 1998

Published by
CACL-K
C/o Rural Literacy & Health Programme
343 Gayathripuram II Stage
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Typeset by Wordmakers

Printed at St. Paul's, Nagasandra, Bangalore.

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The Pledge

I pledge to actively prevent the incidence of child labour within my family, within my community, within my neighbourhood, within my work place.

I pledge that I will attempt to inculcate in my fellow citizens a sense of respect for the rights of the child and assume responsibility towards motivating every child out of school, and their parents, to go back to school so children can have proper childhood.

Introduction

Realising the urgency of the problem of child labour, a chapter of the Campaign Against Child Labour (CACL) was initiated in Karnataka, in 1992, soon after it was formed at the national level. CACL-K, as it is known, did tremendous work in the initial years in firmly placing the agenda of the CACL, namely eradicating child labour, as one of the priority areas for many NGOs and CBOs.

Over the last four years, due to a heightened awareness through the media, and through concerted efforts put in by the NGOs and the State Secretariat, today it is a network of over 300 activists and organizations having taken deep roots in about 19 districts of the State.

Child Labour has been existing in this country for centuries. It is a violation of child rights and robs the precious childhood. Child labourers are forced to lead the life of adults.

In Karnataka, it is estimated that there nearly 35-40 lakh children who can be called child labourers. Everywhere we go, be it restaurants, motorcycle mechanics, petrol bunks, agricultural fields, we see several children below the age of 14 doing full day's work or more, only to earn a pittance.

CACL-K has been able to highlight the plight of child workers during the time of the construction of the National Games village and sports stadia in 1995-96. When Meghdas, one of the child workers, died at one of the construction sites, several NGOs and child rights activists took up the issue and was able to evoke a mass response. In the same year a Public Interest Litigation was filed in the Karnataka High Court, returned a very favourable verdict pushing the agenda of the eradication of child labour. Through public hearings, conventions and rallies of child labourers, a network of solidarity has been built up. Through posters and stickers, street plays and skits, the message of the plight of child labourers has been brought home to almost all

districts in Karnataka. In the past five years, the main focus has been to mobilise public support and to create awareness among the people of our State.

As part of this strategy, CACL-K has been able to involve several departments of the State Government whose support the Campaign needs in fulfilling the agenda. The present State Convention, jointly organised by CACL-K, the Department of Labour, the District Administration, Jilla Panchayat and the UNICEF on the 30th of November, 1998, is an outcome of that strategic alliance.

The following pages give some glimpses of the Campaign in general and of the Convention, in particular.

Joy Maliekal
Convener
Campaign Against Child Labour—Karnataka

Profile of the Campaign

Campaign Against Child Labour (CACL) is a national network with more than 1000 NGOs and has its central secretariat in Bombay, coordinated by YUVA. Campaign Against Child Labour - Karnataka (CACL-K), the State chapter, hosted by Rural Literacy and Health Programme (RLHP), Mysore, is part of the national network of CACL, and has broad-based membership consisting of NGOs, CBOs, social activists, Human Rights activists, Trade Union representatives, journalists, people's organizations and Government officials. CACL-K provides space and opportunity for its members to take initiatives according to their ability. The spirit of solidarity and democratic participation ensures that the issue of Child Labour becomes the prime objective of this collaborative network.

The network, begun in Karnataka in 1992, with a membership of just six organisations, has now grown into a strong movement of 300 NGOs/organisations, and 700 activists. CACL-K has been instrumental in mobilising wider spectrum of socially concerned individuals and groups to involve themselves in the programmes to address the child labour issue.

Objectives

- ❖ Mobilisation of public opinion for the eradication of Child Labour through media based awareness programmes and sensitization programmes.
- ❖ Intervening in specific cases of violations of child rights and abuse of children.
- ❖ Ensuring diversity and broadening of member group and linking with other issues, movements, struggles towards more equitable and just development.
- ❖ Popularising the UN Convention to the Rights of the Child, 1989, and ILO conventions on Child Labour.

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- ❖ Promoting research and documentation, facilitating direct involvement and search for alternatives in specific sections of child labour.

Campaign Against Child Labour - Karnataka (CACL-K) is committed to the eradication of child labour in Karnataka through media awareness. It also involves groups from various sectors involved in its campaign against child labour and believes in networking and alliance-building with other like-minded groups. It intervenes in specific cases of violation of child rights and abuse of children, and provides advocacy and legal services so as to restore justice and child rights.

Child Labour - A Concern for All

CACL believes that no single isolated cause can be responsible for prevalence of Child Labour. It is inherent in the complex web of poverty, unemployment and low wages, and costs by inequitable distribution of resources. In some areas, there has been atrocious domination of the particular community, and exploitation like bonded labour. The large number of Child Labourers in fact belong to the Scheduled caste and tribes.

The non-availability of access to schools, the irrelevant school curriculum, and the cost incurred for education lead to children being pushed out from the school into the labour forces.

Children are employed because they constitute cheap labour. They can be easily exploited, and moreover, they are not able to organise themselves against exploitation in the way the adults can.

In India we have a number of legislations pertaining to Child Labour such as, the CLPR Act (Child Labour Prohibition and Regulation Act, 1986). The Supreme Court judgement of 1996 and the High Court judgement of 1997 etc. are helpful for eradication of Child Labour. But the poor implementation of these laws and judgements only perpetuates child labour. Public indifference and apathy is another reason for the perpetuation of child labour. Child labour is thus the effect of illiteracy, ignorance, poor standards of living, low levels of family and community life and wrong cultural attitudes. The issue of Child Labour is therefore inextricably linked with overall needful social and political change and implementation of revised Minimum Wages Act, Land Reform Act, etc.

CACL believes that children cannot be made to wait longer, the need to tackle the problem immediately is indeed very urgent and pressing.

Various Constitutional provisions call for protection of all children against hazard-

ous and non-hazardous employers, exploitation and against moral and material abandonment, guaranteeing all children, up to the age of 14 years, compulsory education. In light of this CACL-K believes that all children below 14 years should get compulsory, free and quality education.

To effectively eradicate child labour we have to take up some strategies of prevention as well as eradication. There is no one single strategy for eradication of child labour, but multiple strategies can address the issue of eradication of child labour. The strategies must be addressed in various levels – micro and macro.

For this, the Government should have official policies towards abolishing child labour. The local civic bodies should take responsibility for the prevention and eradication of child labour. Serious action for the eradication and prevention of child labour should be taken at the State level.

The first and the most necessary alternative is the implementation of free, quality, and compulsory education for children under the age of 14 years. In this the duty to educate must rest with the Government.

Every child must have an access to education; this education should be relevant to the child's language, sociocultural conditions, history of the region, etc.

Education must be of high quality in terms of teachers, infrastructure and educational aids.

Education must be provided with support systems such as free texts books, uniforms, scholarships and providing free grains.

First, there should be immediate action from the Government. Without having to wait for improvement to occur in the systems, all of us together should involve in enrolling the children in schools and providing all possibilities for education.

Second, we have to use successful approaches and experiments which are already a part of child labour eradication strategy.

Third, the so-called hazardous and non-hazardous difference should be removed; children who are engaged in any kind of job become hazardous to their own growth. Their rights to development, education, medical care, recreation, physical and mental growth will be totally unfulfilled if they work in their tender age.

We also propose temporary immediate rehabilitation centres for children who are taken out from the working situation and integrate them into the formal school.

Residential and non-residential special education centres could be set up to offer education and upgradation of required and relevant skills for the working children who

are taken out of their working situation. It is also necessary to teach children skills of literacy and numeracy along with technical skills in correspondence to their interests.

Children, along with their education curriculum, could also be instructed in agricultural skill and traditional crafts, according to the need of the area. Another possible programme is motivating people in this country to offer sponsorship to children who are currently working and need to be released and settled in an alternative healthy condition for a continuous period of at least five years. This can be achieved with the support of NGOs together with the Government departments.

Children's Participation

We often take for granted that children are not capable of taking any decision, and so, their participation in decision-making is ignored or neglected. But it is important that children participate in issues concerning them, if interventions are to be meaningful and effective. Their participation will certainly help them grow up as informed, self-reliant and active individuals.

We believe that child labour can be eradicated totally if everyone who supports the cause takes serious steps towards the eradication of child labour. We cannot look at this as a welfare or a sympathy issue which may not help to eradicate child labour. Also, higher-level actions are important for the eradication and prevention of child labour. We look forward to the Government and the public to take up this issue as very serious and support the movement for total eradication.

Child Labourers in Karnataka

Sl.No.	Districts	No of Child Labourers
1.	Bangalore [urban]	3,87,134
2.	Bangalore [rural]	1,33,855
3.	Mysore	2,53,201
4.	Mandya	1,31,560
5.	Raichur	1,84,791
6.	Shimoga	1,30,000
7.	Tumkur	1,84,466
8.	Uttara Karnataka	97,621
9.	Kolar	1,77,351
10.	Kodagu	39,076
11.	Hasan	1,25,575
12.	Gulbarga	2,06,574
13.	Dakshina Kannada	2,15,541
14.	Dharwad	2,80,252
15.	Chitradurga	1,74,435
16.	Chikkamagalur	81,382
17.	Belgaum	2,86,688
18.	Bijapur	2,34,239
19.	Bidar	1,00,463
20.	Bellary	1,51,207
Total		35,71,411

Note: This study was done just prior to the reorganisation of the districts in Karnataka in 1997, for submission to the High Court of Karnataka as part of the PIL, filed by CACL-K.

The Mysore Convention

The first ever State-level Convention on Liberation of Child Labourers held on November 30, 1998, was jointly convened by:

- ✱ Campaign Against Child Labour-Karnataka
- ✱ Labour Department, Karnataka Government
- ✱ UNICEF
- ✱ Jilla Panchayat
- ✱ District Administration

The venue of the Convention was the sprawling campus of the Town Hall, Mysore.

A busy Registration Counter





A live convention site

A volunteer and her young wards



Participants

Over 900 child workers from 19 districts in Karnataka, accompanied by their parents or NGOs, registered in the first two hours of the day. Teachers from schools and colleges in Mysore and neighbouring districts, officers of the District Administration, members and officials of the Jilla Panchayat, officers of the Labour, Education, Women and Child Welfare Departments of the State Government, police officers, Municipal corporators, trade union activists, representatives of various establishments such as hotels, restaurants, agarbathi manufacturers, parents and NGO activists formed the rest of the 1500-strong gathering.

It was a unique event in more ways than one. It was the first time that NGO activism and Governmental machinery joined hands on this issue. It was not a convention of theoreticians and intellectuals. The main actors were the children who toiled and it was their testimony and boldness that formed the main inputs. It was a convention that was horizontally representative of the realities of Karnataka.

Formal Inauguration

The Convention was formally inaugurated by Mr. Lukose Vallatharai, IAS, Labour Commissioner, Karnataka at 10.30 a.m. by beating the folk drum, and leading the audience to chant slogans against child labour.

In the two-hour inaugural session, several persons spoke against child labour,



Mr. Lukose Vallatharai inaugurates the Convention



some with hesitancy while others were vociferous in their condemnation. Among those who spoke were: list out

It was the 'deposition' or witness of several child workers that swayed the day. Without exception all children narrated their tales of horror of having to work at a young age, how some of them are hunted by the police, or how badly treated they are by their employers and how, at the end of it all, they are paid a pittance. All of them averred that if given an opportunity they would go to schools.

Some employers who said that by employing young workers they were doing a favour saw validity in the deposition of the children and, in their speeches, acknowledged the magnitude of the problem and pledged to work for the eradication of this curse on our young, though hesitantly.

Police officials who spoke were sympathetic to the issue and admitted being sensitised to the problems facing children on the streets. Administrative officials, corporators and Zilla Panchayat members who spoke condemned the wide prevalence of child labour and called for unified action to eradicate it from our country.

Special Officer in charge of the Child Cell gave a vivid picture of the issue and sought the cooperation of all concerned, while the Labour Commissioner was emphatic in the commitment of his department, he also advocated a strong case for

primary education. The Commissioner also answered several queries regarding various provisions of the CLPR Act, and clarified several questions that came in the wake of the recent Supreme and High Court judgments.

Several speakers opined that domestic child workers should also be considered facing grave threats to their life, especially in the wake of the death of two of them in the state recently.

What constitutes hazardous and non-hazardous was one point that was debated hotly. While the existing legislation makes a definition and lists about a dozen or so industries to be hazardous, it was felt that that was insufficient. The reference should be to what is hazardous to the child and not the inherent hazardous nature of the industry. Even jobs which are not inherently hazardous become hazardous to children, if they are made to do the job for long periods and if they are denied their rights to development, education, medical care, recreation, leisure and play.

What is often ignored is the psychological trauma that working children face. To see them as "one of our own" was the challenge posed by the conveners of this Convention. To treat the child workers as "children of a lesser god" is a travesty of humanity and human values.

A child worker 'testifies'



Workshops & Discussions

Immediately after the inaugural session, the delegates broke into three groups to discuss the following issues:

1. Role of the Government in eradication of child labourers.
2. Role of the Education Department.
3. Understanding the present situation.
4. How NGOs, trade unions and the Government can work together for eradication of child labourers.



A group discussion in progress

While a good number of delegates was deliberating in groups, the children were participating in some outdoor games of fun and frolic and some creative expressions. They sang, they painted, they danced, and they shared stories — it was their day out donned in the T-shirts gifted by the Labour Department. They were all treated to a sumptuous lunch, after which they were treated to a one-hour magic show.



They came from 19 districts to join hands ...

... and sing





Also to give expression to their creative inner being . . .

. . . and share a meal



Building Awareness

As part of the awareness-building strategy, the conveners mounted an exhibition of posters containing facts and figures on the issue of child labour in India as a whole and in Karnataka in particular. The exhibition also highlighted the various atrocities meted out by the employers of child labourers and focused on the cases of Jyothi and another who died recently. Apart from these facts and figures, it gave also an overview of the numerous legislations we have in India in either preventing or eradicating child labour, while at the same time emphasising the role of education.

The awareness-building exercise was not limited to the premises of the Town Hall. A team of 12 young volunteers went around the city on their bicycles from 10.30 a.m. until lunch time covering nearly 30 kilometres and almost all the important thoroughfares with banners and distributing pamphlets calling on the citizens to participate in the campaign to eradicate child labour. A street play troupe performed in several corners of the city bringing the message of child labour eradication.

Distinguished Visitors, Sri Siddaramiah and Sri Nanaiah, studying the posters





Another view of the exhibition

Cycle jatha volunteers preparing to pedal out



Public Function

The high point of the Convention was the public meeting arranged to commence at 4 p.m. Though a little late the function started with the arrival of the Deputy Chief Minister, Mr. Siddharamiah and the Law Minister, Mr. M.C. Nanaiah. Several other distinguished guests were invited to the dais, among them Mr. Charles Geiger, Councillor for Development of the Swiss Agency for Development and Cooperation (SDC); Chairperson of the Women and Child Development Commission Ms. Shanta Halgi; Mysore MLA, Mr. Ramdas; Labour Commissioner, Mr. Lukose Vallatharai and Mysore DC, Mr. Srinivasachar.

The gathering heard the testimony of two child workers who were eager to return to school but prevented by their circumstances. In a symbolic act, Mr. Nanaiah announced the "liberation" of these two child workers, and with them, several others, thus expressing the willingness of the Government to fight for the eradication of child labour, he presented these two children with school kits.

Mr. Nanaiah expressed his skepticism on the efforts put in by the Government in eradicating child labour and opined that several socio-economic factors have to be considered before one say that child labour can be effectively tackled. He was not sure of how this will be done and called on the gathering to consider poverty alleviation programmes as one of the measures.



Ministers Siddharamiah and Nanaiah listening to the child workers



Mr. Nanaiah hands over the School Kit to the "liberated" children

Mr. Geiger who spoke immediately after the Law Minister, in an oblique response, narrated how Switzerland which confronted the situation of child labour nearly 150 years ago, has successfully eradicated it by implementing compulsory primary education and strictly enforcing the labour legislation. He went to pledge the support of Swiss development agencies such as his (SDC) in the State's fight against child labour and said that eradication of child labour should be one of the top priority areas for any developing nation.

Mr. Siddaramiah who was the last speaker of the evening was very forthcoming with his very frank and outright views on child labour. He categorically stated that employers of child labourers will be punished and said that what was lacking was the political will on the part of the ruling parties.

Quoting the report on children working in silk reeling units in Magadi taluk of rural Bangalore district, the Dy. CM said that it was a shame that little children were being forced to toil hard in these units, in the process warning employers there that the power supply to these units will be cut off if they fail to comply with the law of the land.

Mr. Siddaramiah also felt that it was impossible to eradicate child labour by legal measures alone. "NGOs, government officers and even the rich should join hands to

eliminate child labour from our society," he said citing the lack of fear and respect for law as the contributing factor.

He went on to say that instead of indulging in mudslinging, everybody, including the politicians, should take the government's failure to eradicate child labour. Urging the people to join hands with the government in eradicating child labour, Mr. Siddaramiah said, "We will not achieve tangible results until we concentrate on related issues like population growth, illiteracy and unemployment among the masses."

A 5-point memorandum was submitted to the Dy. CM and the Law Minister urging them to take serious cognizance of the child labour issue and, specifically, asking to ensure that:

1. Implement and follow-up the directives issued by the Supreme Court and the Karnataka High Court, and if need be take up this issue in the Parliament.
2. To follow up on the 83rd Amendment to the constitution and to ensure that free and compulsory education is made a fundamental right to all up to the age of 14.
3. Show the political will to extend primary educational facilities to the villagers with a view to abolish child labour.



The distinguished dais

-
4. Ensure that children will not be employed as domestic servants.
 5. Organise "Makkala Shayawani" in all parts of the State as was done in Bangalore.

The Convention concluded at about 8 p.m. with the Pledge-taking ceremony by all present. Mr. Siddaramiah read out the pledge which was repeated by the audience which included several government and police officials.

This, no doubt, is a first step in eradicating child labour, and it is the hope of CACL that once the question of child labour is internalised by the vast majority of the people, there will be a welcome change for the better, as much as some of the parents of child labourers who saw no other alternatives, until pointed out to them.



Pinning their hopes on State intervention

Appendices

- Memorandum submitted to the Government of Karnataka on the occasion of the State-level Convention
- Supreme Court on Child Labour
- Karnataka High Court on Child Labour
- Extracts from the Surprise Inspection of Silk Twisting Factories at Magadi by the Labour Commissioner
- The Constitution (Eighty-third Amendment) Bill, 1997 and its Financial Memorandum
- Salient points discussed in the Parliamentary Standing Committee presentation on October 4, 1997
- Relevant Sections of the Karnataka Compulsory Primary Education Rules, 1996

**Memorandum submitted to the Government of Karnataka
on the occasion of State level Convention on
Liberation of Child Labourers and Launching the State-wide
pledge-taking against child labour**

To: The State Government represented by

1. Shri. Siddharamaiah
Deputy Chief Minister
2. Shri. H.C. Mahadevappa
Minister for Health & Family Welfare
3. Shri. M.C. Nanaiah
Minister for Law and Parliamentary Affairs
4. Shri. Lukose Vallatharai, IAS
Commissioner of Labour

Dear Sirs,

We are glad and we do appreciate the government's efforts through its Department of Labour, for launching a state-wide pledge-taking against child labour. No doubt pledge-taking will have a positive impact on the moral strength of all concerned, to work towards a child labour free Karnataka in the near future. CACL-K takes this opportunity also to promise our support and solidarity in repeating this function in every district head quarters.

However, at this point in time, we would like to bring your kind attention to the following points for your serious consideration and urgent governmental action.

1. We have land mark judgements on the issue of child labour both from the Supreme Court as well as the High Court of Karnataka. But the fact, is that these directives cannot be effectively implemented without amending the Child Labour (Prohibition and Regulation Act. 1986), giving the legislation more teeth. There is a nation-wide demand from CACL and all concerned for amending the same, CACL has already sent/published our recommendation. We request you to mobilise the Members of Parliament from our state to raise the matter in the parliament and also make proper changes in the state government rules of the Act.

2. The 83rd Constitution Amendment Bill is still pending before the parliament, by which free and compulsory primary education would have become part of the fundamental rights. We call upon our M.Ps to lobby for the passing of this bill.

3. The state government has to strictly implement the Karnataka Compulsory Education Act. While doing so, we call for the deletion of sub section h and l from the rules. We demand that the local self-governments - Panchayats and Municipal corporation and Zilla parishats should be penalised if they don't achieve a certain rate of literacy and a simultaneous reduction in the number of child labourers. The compulsory Education Rule shall be amended for including the above provision. We don't rule out provisions for incentives, for better performance.

4. We welcome the government order banning child labour, employed by government employees. Similarly, we call for inclusion of the same provision in the Employees standing order rules, it becomes a punishable offence if children are employed as domestic workers by industrial employees.

5. Child help-line (Makkala Sahaya Vani) has to be introduced in all districts head quarters in Karnataka. CACL will extend all support for setting up and the effective operation of child help lines.

6. CACL has taken up advocacy on the following cases.

1. Alleged suicide of Jyothi the domestic girl worker in Mysore. Kindly note that the employer couple are government servants.
2. Alleged suicide of Jyothi, another domestic girl worker in Jayanagar, Bangalore.
3. Muni Ratnamma, 12 years - employed in silk reeling unit at Magadi, suffered burn injuries while working.
4. The latest case is that of Jyothi in Hubli who suffered the worst kind of torture by her employer couple. One of them is a Central Government employee.

All these cases are still pending without any concrete action. We urge you to speed up the procedure so that the quality are arrested and punished.

We conclude this memorandum, stating that we all have to come out of the attitudes such as child labour is a necessary evil and it is impossible to eradicate 'child labour only in the so called hazardous industries need to be banned', etc. Child Labour is not an isolated issue. Eradication of child labour is directly linked with development, better standard of living, more adult employment, literacy etc.

Treat children as 'Citizens of Today'.

Joy Maliekal
for CACL-Karnataka

Supreme Court Judgement on Child Labour

WRIT PETITION NO. 465 OF 1986

M.C. Mehta Vs. State of Tamil Nadu and others

AN APPRAISAL

History of the Petition

On December 10, 1996 a three-member bench of the Supreme Court, comprising Shri. Kuldip Singh, Shri B.L. Hansaria and Shri S.B. Majmudar, gave its verdict on the petition of M.C. Mehta versus the State of Tamil Nadu and others. The Writ Petition No. 465 of 1986 sought to invoke the Court's power under Article 32 of the Constitution in the matter of the gross violation of Article 24 by the employment of children in the match factories of Sivakasi.

The petition was first disposed off on October 31, 1990 wherein direction were given to improve the quality of life of children employed in keeping with Article 39 (f) and Article 45 of the Constitution.

Following the publication of an "unfortunate accident" in Sivakasi, suo moto cognizance was taken of the petition and directions given regarding payment of compensation. An Advocates Committee, consisting of Shri. R.K. Jain, Ms. Indira Jaisingh and Shri. K.C. Dua, was appointed to prepare a comprehensive report relating to various aspects of the matter. Its recommendations, including regulation of work hours to six, provision of recreation, socialisation and educational facilities, abolition of piece-rate wages, an insurance scheme and welfare fund, were noted by the Court which recorded its appreciation of the Committee's work. Other reports referred to by the Court are subsequently detailed.

The Scope of the Petition

The magnitude of child labour is dwelt upon taking into account the estimates of Neera Burra's study published under "Born to Work", the 1981 census figures in the absence of the 1991 census, National Sample Surveys dating from 1972-73 and non-governmental sources. In light of these estimates, the Court saw fit to "travel beyond the confines of Sivakasi", to which the petition was related, "to deal with a wider spectrum and broader perspective". Addressing child labour therefore as a "national problem", the Court sought to proffer a solution.

Addressing the Problem

In arriving at a solution, the Court explores the legal terrain to accomplish the eradication of child labour. The constitutional mandate is detailed, namely Articles 24, 39(e) and (f), 42, 45 and 47¹. The elevation of Article 45 (on the State's duty to provide free and compulsory education to children up to the age of fourteen) to the status of a fundamental right in Unni Krishnan, 1993-1 SCC 645, is noted by the court. International commitments, including the Convention on the Rights of the Child as well as the role of the International Labour Organisation and its conventions are touched upon. Subsequently, Statutory Provisions prohibiting child labour are listed.

The Court avers that providing an alternative source of income to the family is a prerequisite to eradicate child labour. It directs the State to provide employment to the adult in the family in lieu of the child working in a factory or a mine or other hazardous work. Employers of children must pay Rs. 20,000/- as per the provisions of the Child Labour (Prohibition and Regulation) Act, 1986. The fine is to be deposited in a Child Labour Rehabilitation-cum-Welfare Fund. The State's contribution is fixed at Rs. 5,000/- for each child employed in a factory or mine or other hazardous employment in the absence of a job provision for the adult of the family. Such child labour is to be identified by a survey to be completed within six months. The industries identified for priority action under the National Child Labour Policy are to be tackled initially.

In the absence of alternative employment, the adult parent/guardian will be paid the income earned on the Corpus Fund, the suggested amount being fixed at Rs. 25,000/- for each child every month, which payment will cease if the child is not being sent for education. In the case of non-hazardous employment, the employer will bear the cost of education.

The district is determined as the unit of collection. Its executive head is to oversee the work of the Inspectors who must enforce free and compulsory education under the mandate of Article 45 as well as monitor the working hours of children in non-hazardous employ.

Punitive action, monetary and penal, against offending employers as per the provisions of the Child Labour (Prohibition and Regulation) Act, 1986 is recommended by the Court.

The Secretary to the Ministry of Labour is to apprise the Court of compliance with its directions after the period of a year. The petitioner is free to approach the Court for further or other orders in light of the compliance report.

Highlights

The judgement has served to give a fresh impetus to eradicate child labour and created a climate that frowns upon its practice by the clear statement that "the abolition of child labour is definitely a matter of great public concern and significance." The Court's directions vis-a-vis the establishment of a Corpus Fund and alternative employment are path-breaking. The Court insists on punitive action against offending employers as per the provisions of the Child Labour (Prohibition and Regulation) Act, 1986: "Every offending employer must be asked to pay compensation for every child employed in contravention of the provision of the Act, a sum of Rs.20,000/-" and "penal provisions would be used where employment of child labour, prohibited by the Act would be found." The State's responsibility towards assuring the rights of children is underlined by the Court's directions to it to provide adults with employment in lieu of the child or contribute Rs.50,000/- to the Corpus.

However, the judgement falls short of the expectations raised due to the framework in which it is couched.

Limitations

The Court having categorically stated the constitutional mandate against child labour - "employment of a child below the age of 14 is a constitutional indication in so far as work in any factory or mine or hazardous work" (Article 24) and "all children should be given education till the age of 14" (Article 45) - reverts to the child labour (Prohibition and Regulation) Act, 1986, which does not follow the definition of a child laid down by the Constitution. This belies the expectation

that the Court having considered the constitutional mandate would have gone beyond the Child Labour (Prohibition and Regulation) Act, 1986. The court could have asked for a review of the Act, demanding the record of its implementation and taken cognizance of the Task Force recommendations on it.

The enforcement of the Court's directions rests with an institutional machinery that has not jailed a single offending employer even ten years after the Child Labour (Prohibition and Regulation) Act, 1986. The Court places faith in an implementation mechanism that has not succeeded in enforcing free and compulsory education even fifty years after Independence.

The judgement inheres in the 'poverty as cause' argument which it notes is supported by a 1981 Report of the Ministry of Labour. The Court records that "poverty is the basic reason which compels parents of a child, despite their unwillingness, to get it employed." Leading from this, the Court concludes that education by itself cannot eradicate child labour. It is of the view that "till an alternative income is assured to the family, the question of abolition of child labour would really remain a will-o'-the wisp."

The Court has granted wide latitude to the State in implementing its directions, by reiterating the conditional clause of Article 41, which speaks about the right to work "within the limits of the economic capacity and development of the State." The State is hence exempted "at this stage" from "assuring alternative employment in every case as it "would strain the resources of the State". The Court thereby contradicts its own conclusion, reached after examining other developing nations which have done better in removing children from the labour force and establishing compulsory, universal, primary school education, that "[what] has caused the problem of child labour to persist here is really not dearth of resources, but lac of real zeal. Let this not continue."

The Advocates Committee had recommended that the State match the contribution of employers to the Welfare Fund of Sivakasi. The Court does not make such a suggestion for the Corpus Fund. In view of the massive subsidies to industries, in the form of tax exemption and the like, this is a glaring omission and gives the lie to the excuse of a resource crunch.

The Court's delineation of the areas of action are founded on the National Child Labour Policy and the Child Labour (Prohibition and Regulation) Act 1986. The Court therefore adheres to their differentiation between hazardous and non-hazardous employment. The differentiation derives from the lexicon of industrial occupations and has reference to adult employment. To apply it to child labour is to ignore the de facto violation of their basic rights and restrict action to 3% to 5% of the child labour force. Moreover, while an occupation can be described along a continuum, regardless of its nature, it entails exploitation where children are involved. Hence every child labourer is a priority and the non-hazardous/hazardous nature of employment cannot be applied as a criterion. The Action Plan for the Elimination of Child Labour through a Multi-Sectoral Approach for Sivakasi, 1994 with its sex-pronged strategy (Household Economy and Area Development, Industry, Enforcement and Legal Framework, Education, Communication and Social Mobilisation, Management and Administration) has been overlooked.

The parent/guardian of the child would be paid the income earned on the Corpus, which would be a sum of Rs.25,000 for each child every month. In actual terms, even at 12% interest rate, the monthly income would amount to Rs.300/- on the Corpus of Rs.25,000, hardly sufficient to subsist the food, education and other needs of the child.

The onus of getting the child educated is placed on the parent/guardian, failing which alter-

native employment or payment from the Child Labour Rehabilitation-cum-Welfare fund will cease. The punitive action does not consider the fallout on the child and neglects the role of the relevance of the education system in retaining the child in school. The Corpus Fund and alternative employment are operative only in the case of children in hazardous employ, leaving open the question of other child labourers.

Conclusion

The verdict has squarely recognised child labour as a "national problem" and its directions for the rehabilitation of child labour are laudatory. However, having traversed the constitutional vista to tackle child labour, the Court chose to confine itself largely to the Child Labour (Prohibition and Regulation) Act, in 1986, in its directions to the State. In the ultimate analysis, this has led the judgement to fall short of its promise to provide a "wider spectrum and broader perspective" on the problem of child labour.

High Court of Karnataka on Child Labour

WRIT PETITION NO. 465 OF 1986

M.C. Mehta Vs. State of Tamil Nadu and others

SALIENT FEATURES

No Child below 10 years of age will work in Karnataka

The High Court of Karnataka issued a landmark judgement in a case against the Government of Karnataka regarding the issue of child labour. The Campaign Against Child Labour (CACL) notes the following points as significant for the eradication of child labour, both in Karnataka and India as a whole.

- ◆ There is to be a total ban on employment of children below 10 years of age in any sector or processes.
- ◆ The court has directed the state to ensure that all children must be in a school during school hours.
- ◆ The court has interpreted the process of sericulture/silk reeling as hazardous. The court has also widened the scope of the term 'hazardous' to include conditions beyond physical conditions.
- ◆ The court has directed the labour Commissioner to collect information from the CACL about the hundreds of sericulture units in Magadi Taluk of Bangalore Rural District and to conduct a thorough investigation in the area to plan for further action.
- ◆ The court has ordered that homeless children should not be left on the streets, railway platforms and pavements. The state must ensure that adequate facilities are provided throughout Karnataka for all homeless children. These facilities should be arranged in collaboration with NGOs.
- ◆ The court has directed that these measures are to be taken by the Government of Karnataka on a war footing.

Based on the above judgement, the CACL sees that there is a very clear onus of responsibility on the Department of Labour to implement laws related to child labour. Any violation of the above directions should be interpreted as contempt of court. The Government must take the issue seriously and take all necessary steps toward the eradication of child labour.

