

Report of Regional Consultation on Child Labour

Campaign against child labour

28th August 2017, Varanasi, Uttar Pradesh

Background

Census 2011 indicates that there are over 8.2 million child laborers in the country. In our country there are many factors which directly or indirectly affect the growth and development of children. Poverty, unemployment, caste and gender discrimination, low level of education, inaccessibility to social security measures are the main causes of child labour.

The recent Child Labour (Prohibition and Regulation) Amendment Act, 2016 (CLPRA), by the Government has made the situation worse for these children who work as domestic workers, in hotels and eateries, as rag pickers, helpers in shops, labour at construction sites in urban areas and engaged in agriculture and allied occupations like cattle rearing, mining related activities, family based enterprises, in the rural areas.

Campaign against Child Labour is a national campaign and for last 25 years it has been actively involved in advocating for the rights of children and working towards all kind of child labours. It strongly put forward its position that no child below 18 years of age should work in any field. Time – to time it organizes meetings and consultations to create awareness and build alliances with other stakeholders in different regions of the country.

In continuation, the member of state committees of Uttar Pradesh, Orissa, Uttarakhand, Delhi and Haryana with the support of SAMATA organized a regional consultation on child labour to discuss the current status of child labour in north and east India, new CLPRA amendment 2016 and CACL's position on it and the proposed alternate bill 2017. There were around 30 participants from child rights organizations, child line, CWC who participated in this regional consultation. Following sessions were held to discuss issues related to child labour in the country.

Overview of Status of Child Labour in Northern and Eastern States in India

Ranjit Prakash, Sr. Consultant Child Labour, Former National Head Social Protection Program and Child Labour and Bonded Labour with ILO

In this session Ranjit Prakash shared the status of child labour in India. Referring to the data from govt sources like Census 2011 and NSSO 66th Round he shared that there are 259.6 Million Children (5 to 14 Yrs) who are working either as full time child labourers or marginal child laborers. He said that if we consider these figures (which are always debatable and shows low figures than the actual ones), then also the situation is not good. He presented a comparative data from the states and analyzed them. According to his presentation,

the status of child labour in different states is as follows:-

- In Punjab, Chandigarh, Uttarakhand, Haryana, Bihar, Mizoram, West Bengal, Odisha, Gujarat, Maharashtra, Karnataka, and Tamil Nadu, share of total children 50.7 % and the total share of child workers was 45.5 %.
- Jammu & Kashmir, Rajasthan, Uttar Pradesh, and Madhya Pradesh, amongst others- 51.5 % of child workers, while the total share of child population remained 44.9 %.
- In comparison, states like Himachal Pradesh, Sikkim, and Nagaland had more than or equal to 6 % of child workers. In these states, the share of total child workers was 2.0 % and the total child population was 0.7 %.
- Uttar Pradesh had 4.1 % incidence and 2.1 million was the magnitude of child workers, whereas, Bihar had 3.9 % incidence and 1.1 million magnitude of child labour. However, Himachal Pradesh (10.1 %) and Nagaland emerged as states with highest incidence of child labour, both in rural and urban areas. They were followed by two North-Eastern states, Sikkim (8 %) and Meghalaya (6 %), in incidence of child labour.

The challenges are:-

- 11% or 27.8 million children are still out of school;
- Literacy and schooling is still lower among girls than among boys and lower in rural areas than in urban areas;
- Age-group of 5-9 years- significant lower literacy & lower schooling rates, particularly for girl children (immediate attention required).
- Age-group of 10-14 years- a large proportion of children are literate but currently not attending schools (indication of large dropped-out children and engaged in work).

He emphasized that all persons, organisations, should collaborate and come together to address this problem and assured that he is keen to join hands with the campaign and would be happy to share his knowledge whenever required.

Child Labour(Prohibition and Regulation) Act Amendment 2016 and CACL's Position on it

Mr. P. Joseph Victor Raj, National Convener, CACL

Child Labour (Prohibition and Regulation) Amendment Act (CLPRAA), 2016

In July 2016, the Parliament passed the Child Labour (Prohibition and Regulation) Amendment Bill, 2016. Rajya Sabha passed it on 19th July and Lok Sabha on 26th July 2016, which got the President's assent on 29th July 2016. Government of India published it in the Gazette as the Child Labour (Prohibition and Regulation) Amendment Act, 2016 (CLPRAA, 2016) and the Act came into force on 01 September 2016. The CLPRAA, 2016 amends the Child Labour (Prohibition and Regulation) Act, 1986, which prohibited employment of children below 14 years in 83 hazardous

occupations and processes, and apparently bans employment of children below 14 in *all occupations and enterprises*.

Key Aspects of the CLPRAA, 2016

The Amendment, reportedly, was to align Indian Child Labour law with (i) ILO's Minimum Age Convention and Worst Forms of Child Labour, (ii) United Nation's Convention on the Rights of the Child and (iii) with amendment to India's Constitution (Article 21A and Article 45) making education a fundamental right to all children.

Section 3(1) of the Act prohibits employment of children below 14 in *all occupations and enterprises*. However, Section 3(2) makes two exclusions; the prohibition is not applicable where the child,—

“(a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;

(b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed:

Provided that no such work under this clause shall effect the school education of the child.”

The CPLRAA, 2016 inserts a new Section 3A which says, “No adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule”

The Amendment brings in substantial changes to the 1986 Act.

It introduces term ‘adolescent’ into the Child Labour (Prohibition and Regulation) Act and defines it as a person who has ‘completed his fourteenth year of age but has not completed his eighteenth year;’ and prohibits (Section 3A) employment of adolescents in certain hazardous occupations and processes. Here it does three things, one, takes away the distinction between hazardous occupations and processes (Schedules A & B of 1986 Act) and substitute it with one Schedule; two, the substituted Schedule just lists three items (1) mines, (2) inflammable substances or explosives and (3) hazardous process instead of instead of 18 occupations and 65 processes in 1986 Act; three, the substituted Schedule explains that ‘hazardous processes’ has the meaning assigned to it in clause (cb) of the Factories Act, 1948.

This change to the Act is in contradiction with the Juvenile Justice (Care and Protection of Children) Act, 2015, which defines child as a person who has not completed eighteen years of age. As opposed to an adolescent, a ‘child’, according to the amendment, ‘means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more’. The amended Act says that child labour has been prohibited in *all occupations and enterprises, except those run by his or her own family, provided that education does not hampered*. The exceptions make the prohibition meaningless.

The amendment offers explanations to three critical terms, which are part of the exclusions: it says, (a) “family” in relation to a child, means his mother, father, brother, sister and father’s sister and brother and mother’s sister and brother; (b) “family enterprise” means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons; (c) “artist” means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2).”

CACL’s position

CACL considers that these steps are retrograde and will encourage and legalise child labour instead of its purported objective of prohibition of child labour from all occupations and processes. It legalises family and family-based occupations, removes the restrictions on hours of work in such occupations and excludes such occupations from the original schedule of hazardous occupations / processes.

The 1986 Act had in the Schedules several occupations and processes that would have been managed by families or as family enterprises. Among such establishments where child labour was prohibited included agarbati making, gem cutting, fabrication, foundry, automobile workshops and repairs, slate pencil making, lock making, soldering, electronics, polishing, potteries, welding, zari making, processing, dhabas, plastic making, handlooms, etc.. The Amendment, despite its stated objective, in effect allows child labour in all such and more establishments rationalising that these are run by families.

The CLPRAA, 2016 reduces the list of hazardous occupations in the schedule to mines, explosives and those in the schedule of the Factory Act. Many children employed in various hazardous occupations will therefore go un-recognised as child labourers. Moreover, many of the family based enterprises are hazardous, but will escape official scrutiny.

The CLPRAA, 2016 allows child labour in such establishments under the presumption that children can work and study. This presumption is a grand generalisation of exceptions and legalising those generalisations. The right to education is a fundamental right under Article 21A of the Constitution through the 86th Constitutional Amendment of 2002. The Section 3 of the amended Act does not even specify the hours of work. It simply states that children can help after school hours or during vacations. The amendment contradicts the UN Convention on the Rights of the Child as it neglects to define the number of hours children can work.

Allowing children to work will affect the retention rate of children in schools and increase drop outs of children from the marginalized sections. It will also prevent children from getting time for doing home work and for play and leisure which too are rights recognized by UNCRC, ratified by India. The Act provides loopholes to put children to work even during school hours as there is no way that it can be monitored.

The amendment has expanded the definition of family to include not only parents and siblings but also the siblings of either parent, in effect, expanding the possible enterprises where children can work and increasing the chances of children being exploited. Given the context of weakening labour inspection machinery, it may be difficult to determine whether an enterprise is owned by a family or some person has employed the whole family to run the enterprise.

The amendment extends the freedom to engage children as artists and in audio-visual industry including advertisement, at a time when there are no ground rules evolved to protect children engaged in such activities. CACL considers this a serious lapse in the context of increasing commercialisation of audio-visual industry.

In India, generally, traditional family occupations are caste-based occupations and enterprises. Legally allowing children to be engaged in family or family-based occupations, will entrench caste based social structure and caste based occupations in the country. It will bind children especially the poor children belonging to low caste to traditional caste-based occupations for generations or such children will be denied the freedom of choice in the pursuance education, as well as in the acquisition of knowledge and in the diversification of skills.

More than half of India's child workers labour in agriculture and over a quarter in manufacturing—embroidering clothes, weaving carpets, making match sticks or brick kilns, restaurants, in domestic work. In India, overwhelmingly, child labourers are those from vulnerable Dalit, Adivasi and Muslim backgrounds. CACL is extremely concerned that they will be the worst affected by the CLPRAA, 2016. Children from the vulnerable communities will be forced work in many employments, in hazardous conditions, for long hours abdicating their right to schooling and education. Further, it will extoll the virtue of caste-based occupations, deny the freedom of choice to those of those who engaged in such occupations and indirectly communicate that education is the privilege of a chosen few. The employment of girl children, already invisible will become more insidious and exploitative.

CACL acknowledges that the 2016 Act makes child labour a *cognizable offence*. Employing children below 14 years will attract a jail term between 6 months to two years (earlier 3 months to 1 year) or a penalty between Rs.20,000 to Rs.50,000 or both for the first time. Repeat offenders will attract imprisonment between 1 year to 3 years (6 months to 2 years). In case, the offender is a parent, it provides a relaxed penal provision and proposes a fine of Rs.10,000 for repeat offence committed by parent.

CACL feels that such steps do not have much meaning after legalising child labour in family and family-based occupations, reduction in the instances of prosecutions against perpetrators of child labour and the policy induced lethargy in the labour administration machinery.

Campaign Against Child Labour (CACL) proposes **Child Labour System (Abolition, Prevention and Rehabilitation) Bill, 2017** for complete eradication of child labour up to 18 years of age in

line with UNCRC and National Policy for Children, 2013. This will enable us to attain the Sustainable Development Targets 4.1 (By 2030, ensure that all girls and boys complete free, equitable and quality primary and **secondary education** leading to relevant and effective learning outcomes) and 8.7 (Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 **end child labour in all its forms**)

Alternate Bill on Child Labour

Advocate Ms. Selvi

The Child Labour System (Abolition, Prevention and Rehabilitation) Bill 2017

While introducing the bill, Selvi said that three things were kept in mind while drafting the bill were participation, transparency and accountability. The bill emphasized the definition of 'child' as anyone below 18yrs and CACL underlines it again since it has been ratified at UN.

The bill proposes to abolish child labour system in all its forms and ensure physical, mental, spiritual, moral and social development of every child up to the age of 18 years and also to provide for the right of the child to the highest attainable standard of health, education, safety, security, protection from economic exploitation, sexual abuse and to rest and leisure.

After this salient features of the bill were shared through a powerpoint presentation (the copy of the draft bill is attached as annexure). The floor was then opened for comments and suggestions which were as follows:-

- A child in home based work is a grey area and the data related to number of children who are in this field is not present with us.
- Children into sex work (children of sex workers who are potential child laborers) should be included.
- The Bill should not use the term "sex work" but should use the word "prostitute"
- Children in reality shows should also be included.
- The Monitoring Committees should include psychologists as Members
- "Street children" to be included as child labourers
- There needs to be connect with the Childline phone number, Child Welfare Committee and the Child Labour Abolition Officer (It could be included in the Rules to the Act)
- Children selling balloons to be included as child labourer...the idea is to incorporate "No where children"
- The National Child Labour Project Society (NCLP) could be merged with the District Level Monitoring Committee.
- Sessions Judge to be the Children's Court; penalties prescribed under the Bill are found to be less than the stipulated penalty for a Sessions Judge.

Possibilities of collaboration/joint activities with RTE forum-

Ambarish Rai, National Convener, RTE Forum

Many people were and are part of struggle before and after 2002 RTE act. There was national/international pressure and thus came slogan *education for all*. But govt. very cleverly kept the age 6-14 years and excluded other age groups. Presently pre-primary is with ICDS and few private schools also run it and the huge gap in learning is clearly evident. This creates inequality from the very beginning of life. Education is the best medium to build a civilized society. Universalization of education has become an agenda after the formation and acceptance of SDGs in Europe and many other countries but in our country no initiative has been taken so far.

Common schooling and neighborhood schools were recommended by Kothari Commission but RTE Act didn't include it. Kendriya Vidyalayas are modals for us. If govt can run them efficiently it can run other govt. schools too. RTE forum is demanding it in 20 states through its state units. One of the main demands of RTE forum is to extend the scope of act and include all children till 18 years. In this way the forum see collaboration with CACL. If all children upto 18 years of age will be in school then there will be a decrease in child labour. There is one more agenda that the present govt. is going to push and that is to end the no detention policy. If it will happen then there will be an increase in dropout rate of children which means that children in child labor will increase.

Teacher training is another area of concern. 98% institutes are running by private sector while the results show that the best institutes are still run by government. Teacher recruitment test is passed by 7%. Teachers are involved in many other activities like Pulse Polio Campaigns. One reason of increasing child labour is that the quality of education, infrastructure, and behavior of teachers is not good hence parents don't want to send their children to school. Allahabad high court decision was quoted by Mr. Roy and he shared that it was a good decision that all the bureaucrats and ministers should send their children to govt. schools and then only the situation will improve. 8 crore children in our country have never one to school. Out of school children data given by govt. is debatable.

CLPRA amendment is horrible which says that children can work after school hours. Provisions of this act are violation of RTE act. Internationally it has been criticized. No doubt the punishment has become stricter but at the same time it will reinforce the caste system which is so dangerous for our society. This amendment will increase child labour because the dropout rate will increase and especially the girl children will be in more crises as their domestic work will increase. Ironically if all the children who are in child labour return to schools there are not even enough schools to cater them.

Child labour alternate bill needs to be strongly campaigned. State chapters of RTE forum and CACL should collaborate and joint strategies should be made. He said that we also want to discuss the alternate bill in RTE forum. There have been instances where alternate bills have been able to negotiate the existing acts. He ended his statement by saying that we need to review our campaigns and give them a new direction. The child and the family should be in the centre and poverty and unemployment need to be addressed effectively.

Future Planning for strengthening CACL in states

State Conveners

The National Convener of CACL said that in last 25 years there have been 5 conveners and the election for next convener is due in 2019. In few states RTE and CACL conveners are same. This is also 25th year of Ratification of UNCRC by India. CACL should plan activities to celebrate it.

Uttarakhand- One state consultation will be organized in which alternate bill will be discussed.

Orissa- 64 child labourers were rescued in one district in Orissa. Each year around 700-800 child laborers are being rescued. The organization runs a childline so they get govt. support. A press meet is planned. Village level child tracking survey should be done. RTE forum is doing it in few states. CACL is visible in Orissa and there are 352 members.

Delhi- CACL has become active since last few months. National Consultation was organized in Delhi in which children from many states participated. Child labour issue has been taken by trade unions in past and efforts should be made to involve them again. One meeting with them will be planned in the state. The state team is also planning to create a dialogue with children and their parents.

Haryana- Faridabad, Panipat and Gurgaon are three main centres with regard to child labour and govt. also acknowledge it but district administration and govt. don't provide any kind of support. A committee should be made and support should be provided so that state CACL should start functioning.

Uttar Pradesh- A state consultation will be planned in which state elections will also be held.

The consultation ended with vote of thanks by Bhanuja Sharanlal, member, organizing committee of regional consultation.

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