

Child Labour and Employment Relations Legislation in India

Ashraf U. Kazi*

Abstract

The global trend towards the removal of child labour began in the nineteenth century and continues into the twenty-first century, yet estimates of children working in India range up to 100 million. Though the Indian government prohibits employment of children in factories, there is no law to prohibit employment of children in family households, cottage industries and family owned agricultural fields or family businesses, and large numbers of children miss school to look after cattle, collect firewood or work in fields, restaurants or quarries. The framers of the Constitution of India were aware of their responsibility towards children and a number of provisions were made to protect children. This article focuses on legislation since 1938, prohibiting the labour of children aged below fifteen years. Defects in the legislation and weak enforcement machinery have meant that children working in family-owned industries and agricultural fields continue to escape attention. The small earning of a child have been seen as a means of survival for a large number of families in India. The article is primarily a historical piece, tracing this regulatory failure through five decades of independence and freedom in which lives of children, born free but bonded for life in the largest democracy in the world. This paper will provide the basis for assessing the degree of change for children, as India becomes one of the world's fastest growing economies.

* College Head & Co-ordinator in Corporations Law, IT Law, Department of Business Law And Taxation, Monash University, Churchill, Victoria, Australia 3842. Dr. (Mrs). Ashraf U. Kazi teaches company law, information technology law, contract Law, business Law and law of business organisations and taught labour and industrial law in the Post-Graduate Department of Law, Bangalore University, India for ten years.

Introduction

Globalisation, the present process of becoming global (Albrow and King 1990), has provided a new dimension to the existence of child labour. In the new world economy, profits from child labour have become embedded in large scale international trade (Smith and Borocz 1995). In the twenty first century, the bounties of the cyber age make little difference to a child working long hours for wages under the supervision of an unreasonable employer.

Columbia University economist Professor Jagdish Bhagwati has highlighted the booming economy of India, and has argued that economic 'take-off' will raise general living standards more rapidly, if labour markets are deregulated (Bhagwati 2004a). According to Bhagwati, the annual growth rate of 8% in India will create a 'trickle down' or 'push up' effect, and that it is attributable to the economic reforms introduced in 1991 (Bhagwati 2004a). Bhagwati acknowledges that globalization has been the cause of several social evils, but argues that it could often lead to greater general prosperity in an underdeveloped nation such as India, resulting ultimately in reduced child labour, increase literacy and even enhancement in the economic standing of women (Bhagwati 2004b). India is the third largest economy in the world and it has a large intellectual and educated class, which is able to export its services (Bhagwati 2004a). Though this new class of intellectuals have contributed towards India's economic transition, the fruits of economic prosperity have not reached the poorer sections of the society and have had little impact on the labour of children belonging to the lowest and the poorer sections of society. Despite the economic prosperity and the efforts of the government to child labour, even in the year 2006 the issue remains of great concern. Child labour is not an issue that can wait for the benefits of growth to 'trickle down'. With each passing year that a child's protection and care is delayed, a new stage in the child's development is compromised. The treatment meted out to a child in its early stage of development and the type of education it receives, reflect directly on an adult. Behind the treatment of children lie forces which have a direct bearing on their future as responsible citizens, shaping the destiny of a nation

It is very important to note that child labour has continued since time immemorial and is rampant even in the year 2006. Economic transition has done little for the children who belong to the poorer sections of Indian society. A decade ago, child labour in India constituted a fourth of the child labourers in the world (Suvarchala 1992: 144). In the year 2005, 10,000 children still worked in the silk industry in Tamil Nadu for small

wages of \$3 to \$4 a month (Foster 2005). Thousands of children were recently found stitching footballs in several villages in the state of Uttar Pradesh, while the World Soccer Cup was being witnessed by people all over the world (Bachpan 2006). This article provides a historical overview of child labour and attempts to regulate it in India. It argues the case, neither for deregulation nor for abolition, but for more effective regulatory controls, accompanying an increased focus on poverty reduction measures, particularly education.

Narratives of the impacts on children of 19th century British industrialisation are embedded in western consciousness - images of children worked for unlimited hours and homeless children living and sleeping in factories. It will be argued that in Britain, child labour was eliminated as a result of prohibitive legislation, supplementing the effects of economic growth. In India, the Constitution and six decades of prohibitive legislation have not extinguished child labour, but labour market deregulation on its own will be no more effective. In the present context of growth, the time is overdue to address the causes and effects of child labour, through the effective distribution of the benefits of growth and through more resolute enforcement of regulatory legislation.

Definition of a Child and Child Labour

The definition of a child varies from country to country. Even within India, enactments vary in their definition of a child. In 1938 legislation and subsequent laws, 'child' means a person under the age of 15 years [1]. According to the Children's Charter, 'child' is a person under the age of 18 years. Under the *Andhra Pradesh (Andhra Area) Children Act, 1920* [2] 'a child means a person under 14 years'. The *Bombay Children Act, 1948* [3] defines a 'child' as a boy or girl who has not attained the age of 16 years. 'Child labour' is defined as the participation in gainful activity by children between the ages of five to fourteen years (Sivaswamy 1991: 40).

The Constitution of India and the Child

Little was done about child welfare in India before the adoption of the Constitution [4] in 1950. Special provisions for children were introduced by Article 15(3) of the Constitution and Article 24 prohibits the use of children in hazardous employment. Article 39(e) provides that the health and strength of workers, men and women and the tender age of children

were not to be abused and that citizens were not to be forced by economic necessity to enter vocations which were unsuited to their age or strength [5]. Article 39(f) provides that children shall be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth may be protected against exploitation and against moral and material abandonment. In order to develop educational values in the society, Article 45 makes provisions for free and compulsory education for all children up to the age of fourteen years [6].

Obviously, all the above provisions were made by the Constitution, half a century ago, in the interests of the health, prosperity and well being of children. The Constitution also aimed at prevention of abuse, protection against exploitation and abolition of employment of children in hazardous and dangerous employment. Our task will be to assess how these intentions were translated into law and practice.

Child Labour

A generation ago, every third household in India was said to have a child worker (Jain 1981: 342). Children were employed both in organised and unorganised sectors of the economy. The most inhuman conditions were in match factories, firework factories and private mines. Children, barely five years of age, worked in these factories for sixteen hours a day, starting as early as three in the morning (Jain 1981). Children largely formed the workforces of the carpet industry. By the end of the 1980s, the fireworks industry in Sivakasi in Tamil Nadu still had as many as forty thousand children employed (The Lawyers 1988). Children are found working in garages, in factories making beedi and agarbathi (incense sticks), hospitals and hotels, and as casual labourers.

In 2005, in Tamil Nadu, children below the age of 14 were still weaving silk saris, working 10 hours a day 7 days a week and earning \$3 to \$4 (U.S) a month. It has been estimated that there are 10,000 children working in the districts of Kancheepuram and Thiruvannamalai in this state. Most of these looms are located at homes and most of them employ at least one child. These loom owners had several looms and many children worked on these looms. However, when the government started conducting random checks and began imposing fines, the loom owners transferred and leased their looms to individual homes to avoid fines (Raman 2005). Children employed by families or at home do not fall within the definition of child labourers. A Tamil Nadu government official estimated in March 2002 that 50,000 children were working in the silk industry (Dateline 2002). A

survey of 324 households conducted in November 2000 by the National Labour Institute estimated the presence of 106,000 child workers in the Sari units of Varanasi district (Human Rights 2002). There have been recently reported instances of child labour in the state of Chhattisgarh, where children aged five worked for the Police department. Utter poverty and the death of the family bread winner has forced a number of families to send their children younger than 14 years old to work 8 hours a day in the police department. This residue of the British policy of passing on the jobs within the family to compensate for the loss of income on the death of an employee, has resulted in instances of child labour (Foster 2005).

Child Labour: Causes and Conditions of Employment

Whilst children have been working in household production and family trade since time immemorial, the formal concept of 'child labour' emerged when children stepped out of the house and joined the workforce of factories, mines and quarries. Child labour is necessary to strengthen the economic stability of very low income families. Where a family has a number of children, then the expenditure on consumption by children may far exceed the income of the family. Under these circumstances, a family is left with no option but child labour for the welfare of the child and the family. Yet children are underpaid, underfed, overworked, exposed to long hours and prone to diseases and ill-health, even death (Nardinelli 1990).

There has been little relationship between the wage rate of adults and children, and long hours have precluded access to education or any other skills. Poverty, economic compulsion, illiteracy, hunger, discord in the family, lack of social security benefits, and an inability to defer future earnings, are some of the causes on the supply side. On the demand side, employees prefer child labour because it is cheap and unorganised without any intervention and backing of trade unions (Nardinelli 1990: 15-33). Even in the case of accidents, weak law enforcement means that employers are able to avoid paying compensation, or pay a small amount.

According to UNICEF [7] children workers are preferred to adults, because children are hired at a lower rate for the same work. Because of their smaller bodies, food consumption is also less and the dexterity of their small fingers acts as a boon in the carpet weaving industry (The Lawyers 1988). In 1986, eight hundred children were released due to the intervention of the Supreme Court of India from Palamau in Bihar, where they were employed for up to twenty hours a day in the carpet weaving industry. These children were treated as slaves and they were branded,

beaten and tortured (The Lawyers 1988). In 1986, thousands of workers were held as 'bonded labourers'. The plight of around forty families was highlighted in Palani hills, near Kodaikanal in the state of Tamil Nadu. Children belonging to these families had no access to schools, preferring to supplement the family income by working for starvation wages (Illustrated Weekly 1986). In 1998, a number of children aged between eight and fourteen years were found spinning sharp silk cocoon thread by hand for more than nine hours a day in a silk reeling unit near Magadi in the State of Karnataka. These children were chained and beaten by the employers. The Labour Department of the Government of Karnataka conducted a raid and freed two hundred children from these employers (Deccan Herald 2000). It is important to emphasise that in the twenty first century, hundreds of children still work in carpet industries. Even in the year 2006, child labour in quarries presents a picture of utter exploitation.

Concerns about Child Labour

Three areas of concern have been identified (Anker 2000: 261-279) regarding child labour. They are the protection of children, development of children and economic and labour market impacts of child labour. Children are vulnerable and need special protection because hazardous and other worst forms of work may have an everlasting bad effect on the child's health. Long hours of work get in the way of development of a child, impairing their capacity to learn. Yet children form a major source of income for a number of poor families. The very survival of many poor families is dependent on the income of these children (Anker 2000).

The British Tradition – Legislation or Economic Growth?

A study of child labour in Britain is of significance because India was a British colony until 15 August 1947. Child labour was prevalent even in British India. Most of the legislation in India today is based upon English legislation, which is generally seen as contributing to the decline of child labour. Before the first *Factory Act 1833* [8], it is thought that 0.49 per cent of textile factory workers were children aged under nine, ranging from 0.3 in cotton factories to 2.77 per cent in silk. For children under ten, the percentage was higher, at 2.08 per cent, again ranging from a low of 0.86 per cent in cotton to 7.72 per cent in the silk industry (Nardinelli 1990). As inspectors began to enforce the *Act*, the overall number of

children employed in textile factories fell from 15.9 percent of the textile labour force to 7.9 percent. (Nardinelli 1990). There was an effective prevention of the employment of children under nine years of age in all textile mills powered by steam or water. Further, the Act limited the number of working hours to nine hours per day or forty-eight hours per week, for children aged nine to twelve. The *Factory Act 1844* [9] went further by establishing the half-time system, providing that children in textile mills should work half a day and attend school for half a day. Between 1835 and 1890, the employment of children aged between eight and twelve years, as well as young people aged between thirteen and seventeen years, continued to be lowered gradually, in the wake of further legislation, as Table 1 indicates.

Table 1. Children Aged Below 12 Years and Young Males Below 17 Years Employed in Textile Factories - united Kingdom (Percentage of Total)

Year	Children Aged 8-12 Years % Employed	Young Males Aged 13- 17 Years % Employed
1835	15.9	12.2
1838	7.9	15.3
1850	6.8	11.4
1867	10.0	8.7
1871	8.9	9.0
1874	12.5	8.4
1878	11.3	7.4
1885	8.9	7.9
1890	7.8	8.2

Source: Parliamentary Papers, *Reports of the Inspectors of Factories*, (1878-90). As reproduced by Nardinelli, C. (1990), *Child Labor and the Industrial Revolution*, Indiana University Press, Indianapolis, p.106.

Some economists dispute the role of legislation in reducing child labour, arguing that the industrial revolution decreased child labour as family incomes gradually improved. Nevertheless, there appears to be a correlation between the dates of Factory Acts and the pattern of decline in child labour (Nardinelli 1990:106-108). Of course protective legislation cannot be separated from other elements of the growth of the welfare state, such as compulsory schooling. The twentieth century was characterised by a combined reliance on welfare and regulatory approaches to child labour including at the international level.

Tripartite Regulation: The International Labour Organisation And Child Labour

As early as 1919, the International Labour Organisation (ILO) set up by the League of Nations [10] felt a need for some international guidelines by which employment of children could be regulated in industries. Hence, it suggested a minimum age of work as twelve years. Nevertheless, seventy years later, it estimated that there are 250 million child labourers in the world. This was a rough estimate, as reliable statistics are not available from most developing countries (ILO 1996b:12-19; 1997:11-31). ILO figures are based on national labour force surveys and do not include child labourers between 5 and 11 years of age. Not many countries collect information on child labourers below the age of 12 years. According to the ILO Conventions some forms of child labour are recognised as worse than the others and permit differences in the minimum age depending upon the type of work.

The Minimum Age Convention of 1973 [11] allows for a lower minimum age of 14 years in less developed countries and 12 years for light and non-hazardous work. However around 60 countries including India, exclude family undertakings (Anker 2000: 257-280). Article 7 of ILO Convention No.138 classifies light work by children as work which is (a) not likely to be harmful to their health or development and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programs approved by the competent authority or their capacity to benefit from the instruction received. The ILO Convention of 1999 [International Labour Organisation 1999] identifies the worst forms of child labour as slavery, forced or compulsory labour; use of children for prostitution; use of children for illicit activities like drug trafficking and work which is likely to harm the health, safety or morals of children (Anker 2000: 257-280).

Child Labour In India: Magnitude And Dimension

Children work in almost all parts of India in a variety of places, industries and agriculture. Broadly speaking, there are four kinds of child labour, which may be classified as follows:

- a) Children working in factories, mines and workshops. These are found in urban and semi-urban areas in organized as well as un-organized sectors.
- b) Children, who are under bondage to their employers either in agriculture or industry. Parents of these children have obtained loans from

the employers and they have been unable to return these loans with high interest.

- c) Street children, who are mostly homeless and live on and off the streets. They are found in urban and semi-urban India.
- d) Children, who work for their families. These children work as a part of family labour in agriculture, industry, cottage industry or home-based work (Burra 1995:27-43).

The relationship between the incidence of child labour and rural poverty was first identified in the 1971 Census, which showed that child labour was highest in the states of Andhra Pradesh and Karnataka, both located in the southern part of India. Within the state of Karnataka, the high child labour districts lie in the northern and southern plains with lower literacy levels, lower rainfalls and cultivation of dry crops like ragi, groundnut and jowar. By contrast, the lower child labour and higher literacy districts in Karnataka comprise the coast and malnad (hilly areas with abundant rain), where paddy and crops like coffee, areca nut and coconut are cultivated (Kanbargi 1991:127-156). The Census of 1991 made a significant contribution by attempting to compute unpaid work on farms or in family enterprise. Thus for the first time in India, women and children's work in economically productive activity was identified.

In general, the incidence of child labour is higher in dry tropical areas of India. Some of the places with dry land are Aurangabad and Sholapur in the state of Maharashtra; Mehsana and a number of villages in the state of Gujarat; Bhopal and a number of villages in Madhya Pradesh and most parts of the state of Rajasthan; Mahbubnagar, Kurnool and most parts of the state of Andhra Pradesh. These are drought-prone areas. In these areas, the peasants face inhospitable production environment. They have to make maximum use of good rain years and minimise loss during poor rain years. Child labour is very well suited to this structure, where children engage in animal grazing, tending young stock, harvesting minor crops in instalment for consumption by the family and collecting material from common property. They collect fuel, fodder, fibre and food items from the common property. Most of the families migrate during drought and most children are withdrawn from school to assist the family during these situations (Jodha 1991:63-77).

The State of Kerala, also in the south of India, has historically had the lowest incidence of child labour. According to the National Sample Survey of 1971, the work participation rate of children was 1.9 percent compared to the national figure of 7.1 percent. In this state almost all children from the age of six to eleven attend school. Already in the 1970s, the age group

of eleven to fourteen, 88 percent were study in school compared with the all India figure of 38 percent (Ministry 1979). According to the 1981 survey, Kerala had a high literacy rate of 70.4 percent, almost twice the national average. It had half the mortality rate of the country, and a low fertility rate (Nag 1983: 879-890). In the 1980s and 1990s, the government of Kerala spent more on education than any other state government in India. Though child labour has not been abolished, it has been reduced considerably. This occurred not as a result of any particular policing of child labour legislation, but by the expansion of the school system. By 1991, only 18 percent of children were dropping out of schools after the fifth grade and many of these children were finding employment in automotive workshops, electrical shops and construction related establishments (Weiner 1991: 1-27).

Table 2. Participation of Children in the Work Force by Sex, India, 1981

Location	Population Aged 5-14 '000	Main workers '000	Main and Marginal Workers '000	Child Work Participation Rate %	
				Main Workers	Main and Marginal Workers
Rural					
Males	72,993	6,681	7,339	9.2	10.0
Females	66,671	3,506	5,211	5.3	7.8
Urban					
Males	20,446	732	757	3.6	3.7
Females	18,942	281	281	1.3	1.5

Source: Registrar General and Census Commissioner, 1983, cited in S. Sivaswamy 1991: 42.

More generally, however, as late as 1981 in rural areas of India, 10.0 per cent of boys aged 4 to 15 and 7.8 per cent of girls in this age group were in the workforce, compared with 3.7 per cent of urban boys aged 5 to 14 and 1.5 per cent of urban girls. Most child labourers in all these groups were 'main workers' (working for the major part of the year), leaving little or no time for schooling (Table 2). There was a degree of association between illiteracy and child labour. In rural areas, the percentage child participation rate was 4.1 for males and 2.2 for females among literate children as against 13.4 for males and 6.4 for females among illiterate children. In urban areas, the percentage child work participation rate was 1.9 for males and 0.5 for females among literate children and higher and 7.0 for males and 2.5 for females amongst illiterate children. Parents who

could afford to send their children to school did so (Sivaswamy 1991:4-44). This suggests that poverty caused both illiteracy and child labour, but it does not follow that either 'trickle down' or 'push up' effects will of themselves remove child labour, without government regulatory intervention. Therefore, we turn to a history of government policy and legislation.

Child Labour and Employment Relations Legislation in India

Legislation in the field of employment relations has generally focused on protecting the health, safety and well being of the child. Some of the important Acts dealing with the employment and protection of children may be discussed as follows:

The *Children (Pledging Of Labour) Act, 1933* [12] prohibits making of any agreement to pledge the labour of a child below fifteen years. Section 2 of the Act defines "an agreement to pledge the labour of a child" as an agreement, written or oral, express or implied, whereby the parent or guardian of a child, in return for any payment or benefit received or to be received by him undertakes to cause or allow the services of the child to be utilised in any employment: An agreement for the employment of a child in return for reasonable wages was not considered to be an agreement to pledge the labour of a child. Thus the definition gave ample scope for child labour. The Act imposes penalties of only fifty rupees (which is equal to two Australian dollars) to those pledging a child's labour, and two hundred for anyone employing a child whose labour has been pledged under an agreement. This Act has not discouraged the employment of children, whose labour is pledged under an agreement, as the penalty is nominal and has no significance.

The *Employment of Children Act, 1938* [13] regulates the employment of children in certain industrial employment. Section 3 prohibits employment of children below fifteen years of age, in any occupation connected with the transport of passengers, goods or mail by railways; or in any occupation involving the handling of goods within the limits of any port, but exempts children employed as apprentices in receipt of vocational training. The competent authority in an emergency or due to public interest may also suspend the operation of these restrictions for a specified period, thus opening the doors for child labour. Children aged fifteen and sixteen in rail and port work were required to be given fixed rest intervals of at least twelve consecutive hours, including seven consecutive hours between

10 p.m. and 7 a.m. The Act prohibits the employment or work of children aged under fifteen in a number of other industries, but exempts any “workshop wherein any process is carried on by the occupier with the aid of his family only and without employing hired labour” [14]. The Act prohibits employment of a child below fourteen years in any of the following processes: bidi-making; carpet-weaving; cement manufacture, including bagging of cement; cloth-printing, dyeing and weaving; manufacture of matches, explosives and fireworks; mica-cutting and splitting, shellac manufacture; soap manufacture, tanning and wool cleaning. As we shall see, some of these areas are still those where child labour is common.

The *Factories Act, 1948* [15] prohibits the employment of ‘young persons’ in any factory. According to the Act, ‘young person’ means a person who is either a child or an adolescent and an ‘adolescent’ means a person who has completed his fifteenth year of age, but has not completed his eighteenth year. Two important sections prohibiting employment of children are section 23 and section 27. Section 23 of the Act prohibits the employment of young persons on dangerous machines, with the following major qualification:

“...unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and-

(a) has received sufficient training in work at the machine or

(b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.” [16].

The Act also prohibits employment of women and children near cotton openers [17]. However, the section permits employment of women and children at the feed-end, if the feed-end of the cotton opener is in a room separated from the delivery-end. Thus, once again there is scope for child labour.

The *Plantations Labour Act, 1951* [18] provides for the welfare of labour and seeks to regulate the conditions of work in plantations. It applies to any land used or intended to be used for growing tea, coffee, rubber, cinchona or cardamom which measured five hectares or more and in which fifteen or more persons are employed or were employed on any day of the preceding twelve months. Section 2 clause (c) of the Act defines a ‘child’ as a person, who has not completed his or her fourteenth year. Section 25 and section 26 of the Act deal with the employment of young persons in plantations. However, the Act prohibits the employment of children below the age of twelve years in plantations. Children above the age of twelve can be employed between 6 a.m. and 7 p.m. and non-adult workers need

to carry tokens, while working in a plantation [19]. The definition of a plantation provides the opportunity to employ children without any difficulty, on land measuring less than five hectares, where other crops are grown, and where fewer than fifteen people are employed in a year.

The *Mines Act, 1952* [20] prohibits employment of persons below eighteen years of age. It makes provision, however, for the appointment of apprentices and other trainees not below the age of sixteen, provided they work under proper supervision. Prior approval of the chief inspector or an inspector is required in the case of trainees, other than apprentices.

The *Shops and Establishments Acts, 1954*: In order to regulate employment and conditions of work in shops and establishments other than factories, states have enacted their own law. These Acts [21] prohibit employment of a child in shops and establishments. A child is said to be a person, who has not completed twelve years of age. However, some states consider a person below fourteen years to be a child. Thus there is no uniformity in relation to the age of a child.

The *Merchant Shipping Act, 1958* [22] prohibits the appointment of a child below fifteen years in a sea-going ship.

The *Apprentices Act, 1961* [23] regulates and controls the training of apprentices in trades. According to section 3 of the Act, a child less than fourteen years of age is not qualified to be engaged as an apprentice in a trade. Further, a person above fourteen years of age needs to satisfy certain standards of education and physical fitness before being engaged as an apprentice. The Act however provides no penalties.

The *Motor Transport Workers Act, 1961* [24] discourages child labour and prohibits the employment of children in any motor transport undertaking, but it permits the employment of adolescents, who must carry a token and is a person above the age of fifteen and below the age of eighteen.

The *Beedi And Cigar Workers (Conditions of Employment) Act, 1966* [25] requires that no child below fourteen years may be employed in any 'industrial premises'. However, the Act allows 'home workers' to roll beedies or cigars at their own home. A number of children, below the statutory age limit are engaged in this work

The *Child Labour (Prohibition and Regulation) Act, 1986* [26] is one of the most important pieces of social legislation designed to protect the interests of children who seek employment as a result of utter poverty. The Act extends to the whole of India. It prohibits the engagement of children in certain employment and regulates the conditions of work of children in certain other employment. It defines a 'child' as a person who

has not completed fourteen years of age [27]. Picking up on the 1938 legislation, it prohibits child employment in the transport of passengers, goods or mails by railway; cinder picking, clearing of ash pits; work in a catering establishment at a railway station, which involves movement from one platform to another or into and out of a moving train; and adds work related to selling of crackers or fireworks and work in slaughter houses. Part B also identifies prohibits employment in the same list of occupations with health risks, as those identified in the 1938 Act, already listed above. To these it adds work in the building and construction industry; manufacture of slate pencils; manufacture of agate products; processes using toxic metals and substances such as lead, mercury, asbestos etc; hazardous and dangerous operations; printing; cashew processing and soldering processing in electronic industries. Though the Act prohibits employment of children in match factories, it permits their employment in the process of packing, thus making scope for exploitation of children in a dangerous process. The Act prohibits the work of all children between between 7 p.m. and 8 a.m. [28]. Penalties for contravention include imprisonment for a minimum term of three months or a fine of ten thousand rupees.

National Child Labour Policy (NCLP)

While debating the 1986 Act, the Government of India announced a National Child Labour Policy (NCLP). Some industries were identified, where child labour existed on a large scale, requiring appropriate steps to tackle exploitation of children. The ten project areas identified (Burra 1995: 27-46) for priority action was as follows:

- a) The match industry in Sivakasi in the state of Tamil Nadu,
- b) The diamond polishing industry in Surat in the state of Gujarat,
- c) The precious stone polishing industry in Jaipur in the state of Rajasthan,
- d) The glass industry in Firozabad in the state of Uttar Pradesh,
- e) The brass-ware industry in Moradabad in the state of Uttar Pradesh,
- f) The hand-made carpet industry in the state of Jammu and Kashmir,
- g) The lock-making industry in Aligarh in the state of Uttar Pradesh,
- h) The slate industry in Markapur in the state of Andhra Pradesh,
- i) The slate industry in Mandsaur in the state of Madhya Pradesh and
- j) The hand-made carpet industry in Mirzapur-Bhadohi in the state of Uttar Pradesh

The beedi industry in India and the carpet industry in Mirzapur, which is located in Varanasi, were considered to be the most notorious. In these

industries, children have been mortgaged to the employer for loans taken by parents. Sometimes the loans are as small as 10 Australian dollars. In most cases, the children have ended up as bonded labourers, separated from parents forever. The state of Tamil Nadu had a high incidence of bonded labourers in the beedi industry. In the Palamau district of the state of Bihar, children have been either lured or kidnapped to work in the carpet industry. Fifty percent of the hired child labour force has been sold to the employer (Prembhai 1984:11-21; Burra 1995: 21-37). In the second half of the 1980s, some of the highest percentages of child workers occurred in the carpet weaving industry (12,000 or 40 per cent in Rajasthan; 100,000 or 25 per cent in Jammu and Kashmir); in the Moradabad brass industry in Uttar Pradesh (45,000 or 30 per cent), and in the Firozabad glass industry of Uttar Pradesh (50,000 or 25 per cent). Across India, 327,500 beedi makers (10 per cent) were children (Gupte 1985 and Jani 1987, cited in N. Burra 1995: xxv-xxvi).

Some Recent Initiatives by the Government of India

The Government of India and the United States Department of Labour signed a joint agreement called 'Enhanced Indo-US Cooperation on Eliminating Child Labour' in August 2000. Under this agreement, the 'INDUS PROJECT' has been developed with the objective of eliminating child labour completely (Labour and Employment Department 2005-2006).

The Government of Tamil Nadu took a proactive stand on the eradication of child labour on 12 May 2003, introducing a 'State Action Plan for the Eradication of Child Labour'. The government aimed to eliminate child labour in hazardous employment by the year 2005 and in non-hazardous employment by the year 2007. A survey conducted in March 2003 by the Sarva Siksha Abhiyan (Education for All) Scheme revealed that there were 70,344 child labourers from amongst school children in that state., and a similar survey conducted a year later suggested that the number had dropped to 44,418. The 7th State Advisory Board meeting, which was conducted on 8 December 2004 also discussed measures to eradicate child labour (Labour and Employment Department 2005-2006).

On 1 August 2006, the national Ministry of Labour and Employment issued a press release to prohibit employment of children as domestic servants or in dhabas (roadside eateries), restaurants, hotels, motels, teashops, resorts spas or in other recreational centres. The ban imposed will be effective from 10 October 2006 and anyone employing children in these places will be liable for prosecution (Ministry 2006).

Conclusion

It is clear that in India, legislation does exist to prohibit child labour, but defects lie in the weak enforcement machinery. There are a number of drawbacks in the existing enactments. Most employers pass off child labourers as members of their family, as the legislation puts children working for their families outside the scope of any statute. The *Child Labour (Prohibition And Regulation) Act, 1986* fails to lay down a minimum age for working children and makes no provision for the education of working children.

Children working in industries owned by families and agricultural fields do not attract any attention of the legislation as 'child labour' in these instances escapes in the guise of 'family concern'. Adoption as well as apprenticeship has led to child labour, which is rampant in factories, private homes and agricultural fields. Penalties imposed under most of the Acts in relation to child labour appear to be too small and the punishment does not match the injustice done to a child in the guise of child labour. If the welfare and the safety of the child is not recognised, then half a century of freedom of India will mean precious little to a growing child and may act as a detriment towards the proper growth of the country in the twenty-first century.

Child labour is seen as an effect of industrialisation. However, it has been an outcome of the decision of a responsible member of a family in order to improve the conditions of children. Families affected by poverty and with low income encourage children to work, in order to supplement the family income. Most children work willingly with the approval and support of parents. Poor families need additional income for their survival. In most cases, the poverty of a family plays a major role in the employment of a child.

How do we resolve the debate between law and economics, between abolition and reliance on 'trickle down' or 'push up' strategies? This is not an either/or debate: both economic and welfare policy and effective regulation are required. Many poverty stricken families cannot afford to give up the earnings of children. Poverty and income needs have to be considered and addressed in order to abolish child labour. Child labour is not a cause of poverty but it is a result of poverty. Hence, what is required is the regulation of child labour rather than its abolition. Certainly, abolition is justified in situations such as exposure to hazardous work conditions and in circumstances that violate humanitarian concerns. The number of working hours should be limited and the evidence suggests that compulsory schooling and the availability of proper schooling facilities for all children

may also assist. As the example of Kerala indicates, increased availability of education tends to accompany a declining incidence of child labour. It is also critical that there be effective enforcement mechanisms in place to ensure that offending employers are punished to the extent that it is undesirable and unprofitable to violate child labour legislation.

Notes

- 1 *Children (Pledging of Labour) Act, 1933*. Act No. 2 of 1933; Parliament of India, New Delhi. The Act extends to the whole of India. It came into force on 1 July 1933.
- 2 *Andhra Pradesh (Andhra Area) Children Act, 1920*.
- 3 *Bombay Children Act, 1948*. Section 4 (e) of the act defines a child.
- 4 The Constitution of India, 1950, New Delhi.
- 5 The Constitution of India, 1950, New Delhi, Article 15 (3) and Article 24.
- 6 The Constitution of India, 1950, New Delhi, Article 39(e) and Article 39(f).
- 7 The United Nations Children's Fund (UNICEF) is the world's leading organisation working specifically for children. UNICEF works with local communities and governments in 155 countries and runs long-term development programmes in areas such as child protection. [Online] Available: <http://www.unicef.org.uk/aboutus/index.asp> [accessed on 1 June 2006].
- 8 *Factory Act 1833*, Great Britain.
- 9 *Factory Act 1844*, Great Britain.
- 10 The International Labour Organisation (ILO) was founded in the year 1919. The ILO seeks promotion of social justice and human and labour rights. [Online] Available: <http://www.ilo.org> [accessed on 25 May 2006].
- 11 The International Labour Organisation (ILO) Convention. The Minimum Age Convention of 1973 (No.138).
- 12 *Children (Pledging of Labour) Act, 1933*, Parliament of India, New Delhi. The Act was assented by the President of India and it was published in the *Gazette of India* in 1966.
- 12 *Child Labour (Prohibition And Regulation) Act, 1986*; Act No.61 of 1986; Parliament of India, New Delhi; Assented to on 23 December 1986, published in the *Gazette of India*, Extraordinary Pt.II Section 1, No.75, dated 23 December 1986. The Act extends to the whole of India.
- 13 *The Employment of Children Act, 1938*; Act No.26 of 1938; Parliament of India, New Delhi; For Statement of Objects and Reasons, see *Gazette of India*, 1938, Pt.V, 284; The Act has been applied to the following: Darjeeling District with effect from 1 October, 1939 vide Notification No.301 dated 26 September 1939; Calcutta, *Calcutta*

- Gazette* dated 28 September 1939; The Union Territories of Dadra and Nagar Haveli by Registration 6 of 1963; The excluded areas in the State of Orissa by Orissa Government Notification No. 1444-III-C-14/41 dated 16 April 1941; Pondicherry by Registration 7 of 1963 and Lakshadweep by Registration 8 of 1965.
- 14 *The Employment of Children Act, 1938*, Section 3(3).
- 15 *Factories Act, 1948*; Act No.63 of 1948; Parliament of India, New Delhi. The Act extends to the whole of India. It came into force on 1 April 1949. The Act extended to the following: Lakshadweep vide Regulation 8 of 1965; Goa, Daman and Diu vide Regulation 11 of 1963; State of Sikkim vide special order 142(E) dated 12 February 1992; Dadar and Nagar Haveli by Regulation 6 of 1963; The union territory of Pondicherry vide Regulation 7 of 1963; For Statement of Objects and Reasons see *Gazette of India*, 1947, Pt.V, pp.580-581.
- 16 *Factories Act, 1948*, Sections 23 and 27.
- 17 *Factories Act, 1948*, Section 27.
- 18 *Plantations Labour Act, 1951*; Act No.69 of 1951; Parliament of India, New Delhi; The Act extends to the whole of India; It came into force on 1 April 1954; The Act was amended in 1960; The amending Act No.34 of 1960 came into force on 21 November 1960.
- 19 *Plantations Labour Act, 1951*, Section 1(4), 25 and 26.
- 20 *Mines Act, 1952*; Act No.35 of 1952; Parliament of India, New Delhi; The Act extends to the whole of India; The Act came into force on 1 July 1952, vide *Notification No. S.R.O 967* dated 27 May 1952 and was published in the *Gazette of India*, Pt. II Section 3, p.869; With a view to provide certain modifications, the Act has been amended by the Ministry of Education and Social Welfare, (1979) *Enrolment Trends in States, 1968-69, 1978-79*, Government of India, New Delhi. *Mines (Amendment) Act, 1983*; Act No. 42 of 1983; The *Mines (Amendment) Act, 1983* came into force on 31 May 1984. The amended Act provided for additional safety measures, closer association of workers with safety measures and penalties for gross negligence or recklessness.
- 21 *Shops and Establishment Act, 1954*, New Delhi; *Karnataka Shops And Establishment Act, 1970*; *Karnataka Shops & Commercial Establishment Act, 1961*; *The Tamilnadu Shops And Establishments Act, 1947*.
- 22 *Merchant Shipping Act, 1958*, Parliament of India, New Delhi. The Act was assented by the President of India and it was published in the *Gazette of India* in 1958.
- 23 *Apprentices Act, 1961*, Act No.52 of 1961; Parliament of India, New Delhi. The Act extended to Pondicherry by Regulation 7 of 1963 and to Goa, Daman and Diu by Regulation 11 of 1963 and to Jammu and Kashmir by Act No.25 of 1968; The definition of Apprentice was re-lettered by section 4 of the 'Act No. 27 of 1973'; Supplementary

amendments were made by the Apprenticeship (Amendment) Rules, 1997, which came into effect on 1 February 1997 and the amendment was published in the Gazette of India, Pt.ii, Section 3 (i).

24 *Motor Transport Workers Act, 1961*; Act No.27 of 1961; Parliament of India, New Delhi; The Act extended to the whole of India; The Act also extended to the following: Madhya Pradesh on 26 January 1962 vide Notification No.S.O.296 dated 23 January 1962; West Bengal on 1 March 1962; Maharashtra on 31 March 1962; Andhra Pradesh on 1 February 1962; Rajasthan on 1 February 1962; Bihar on 1 March 1962 vide notification No.S.O. 573, dated 16 February 1962; Assam, Mysore, Orissa, Punjab, Delhi on 1 February 1962.

25 *Beedi and Cigar Workers (Conditions of employment) Act, 1966*; Act No.32 of 1966; Parliament of India, New Delhi. The Act was assented by the President of India on 30 November 1966. It was published in the *Gazette of India*, Extraordinary, Pt.I, Section 1, No.45 dated 1 December 1966; The Act extended to the following: Andhra Pradesh with effect from 1 April 1968, vide *Andhra Pradesh Gazette*, Extraordinary, dated 1 April 1968, Pt.I, Section 3; Assam, with effect from 15 September 1970 vide *Assam Gazette*, Extraordinary dated 8 September 1970; Bihar with effect from 1 January 1969, vide *Bihar Gazette*, Extraordinary, dated 20 December 1968; Jammu and Kashmir on 1 December 1967, vide *Jammu and Kashmir Gazette*, Extraordinary, dated 30 November 1967; Gujarat on 1 April 1968, vide *Gujarat Gazette* dated 14 March 1968; Kerala on 15 August 1968, vide *Kerala Gazette*, dated 23 July 1968; Maharashtra on 1 April 1968 vide *Maharashtra Gazette* dated 1 April 1968; Madhya Pradesh on 1 April 1968 vide *Madhya Pradesh Gazette*, Extraordinary dated 31 March 1968; West Bengal on 1 June 1976 vide *Gazette* dated 26 August 1976; Orissa on 1 June 1968, vide *Orissa Gazette* dated 29 May 1968; Rajasthan on 19 March 1969, vide *Rajasthan Gazette*, Extraordinary, dated 19 March 1969; Punjab on 4 September 1967, vide *Punjab Gazette*, Extraordinary, dated 2 September 1967; Union Territory of Pondicherry on 1 September 1968 vide *Pondicherry Gazette* dated 30 July 1968; Tamil Nadu on 1 July 1968 vide *Tamil Nadu Gazette*, Extraordinary dated 30 July 1968; Karnataka on 10 November 1969; Uttar Pradesh on 3 October 1975 vide *Uttar Pradesh Gazette* dated 1 October 1975; Goa, Daman and Diu on 1 October 1968 vide *Gazette* dated 26 September 1968.

26 *Child Labour (Prohibition And Regulation) Act, 1986*. Act No.61 of 1986; Parliament of India, New Delhi; Assented to on 23 December 1986, published in the *Gazette of India*, Extraordinary Pt.II Section 1, No.75, dated 23 December 1986. The Act extends to the whole of India.

27 *Child Labour (Prohibition And Regulation) Act, 1986*, Section 2 clause (ii).

28 *Child Labour (Prohibition And Regulation) Act, 1986*, Section 7.

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