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VARIOUS ENACTMENTS AND THEIR IMPLEMENTATION IN THE CONTEXT OF CHILD LABOUR

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ABSTRACT

Millions of children worldwide are subjected to violence, exploitation and abuse including the worst forms of child labor in communities, schools and institutions; during armed conflict; and to harmful practices such as female genital mutilation/cutting and child marriage. Millions more, not yet victims, also remain without adequate protection.

While progress has been made, many children in South Asia continue to suffer from discrimination, violence, abuse and sexual and economic exploitation. Many more children face protection risks. Violations of the child's right to protection take place in every South Asian country and are often invisible, under-recognized and underreported. Such violations may occur by acts of omission or commission and occur across all sectors of society regardless of wealth quintile or other determinants. From the evidence available, it is clear that the consequences of child maltreatment can result in lifelong inequities for those children who experience any form of maltreatment and, sometimes, even in their death.

INTROUCTION

Birth registration, a fundamental human right under Article 7 of the Convention on the Rights of the Child (CRC), provides an official record of a child's existence, yet in South Asia 64 per cent of children less than five years old have not had their births registered. Throughout the region, birth registration levels are disparate between rural areas (where 69 per cent of under 5 children were not registered) and urban areas (50 per cent) and particularly between the poorest quintile (78 per cent of children under five years of age not registered) and the richest quintile (37 per cent).

Despite its prohibition by law in most countries of South Asia, child marriage tends to be perpetuated as a social norm: almost half (46 per cent) of women 20-24 years old in South Asia were married before the age of 18, while 18 per cent were married before the age of 15. Children in some countries may even be betrothed or married well before they are 10 years old. Although girls are generally more at risk of child marriage than boys, the countries most at risk of child marriage in the region -Bangladesh, India and Nepal - have significant rates of men 20-24 years old who were first married or in union before the age of 18 – respectively 5 per cent;10 per cent and 16 per cent.

Despite legislation addressing child labour having been enacted in South Asian countries, child labour still persists within the region. 13 per cent of children aged 5-14 in South Asia are

engaged in child labour – around 44 million. Of these children, 29 million live in India, where the child labour rate is 12 per cent. Large disparities exist among countries. In Nepal, the country with the worst indicator for child labour among the countries for which data exist, 34 per cent of children aged 5-14 are engaged in child labour. One of the worst forms of labour children are engaged in the region, is sexual exploitation: while girls are generally at greater risk, boys are also at risk of sexual exploitation and abuse. Trafficking of children into sexual exploitation or other exploitative situations such as hazardous labour or domestic servitude is also a major concern for all countries of South Asia. The invisible and clandestine nature of trafficking and the lack of data make it difficult to know the exact number of children trafficked. Children are trafficked both within countries, and from one South Asian country to another, for example from Bangladesh and Nepal to India, or from Pakistan to Afghanistan. South Asian trafficked children are also found outside the region, such as in Europe and the Middle East.

The Committee on the Rights of the Child has expressed its concern that juvenile justice systems in South Asia do not aim sufficiently to ensure the dignity of children and reintegrate them into the community. These systems are not distinct from those applied to adults, and they resort too swiftly to institutionalization. Sound data on children detained through justice systems in South Asia are lacking, but evidence shows that juvenile justice systems remain weak across the whole region and that often children in detention have not committed serious offenses.

There are growing concerns about the situation of children outside parental care and the provision of suitable alternatives for them in South Asia. An estimated 43 million girls and boys in South Asia are growing up without one or both of their parents due to the impact of poverty, disability, HIV/AIDS, armed conflict, natural disasters and migration. While some children without parental care live with their extended families in kinship care arrangements, others no longer have their families, have been separated from them, or their families represent a serious danger to their development and/or protection. For these children, States have the responsibility to provide special protection and assistance.

POLICY OPTIONS

Pre-independence Period: Several preventive measures have been initiated in India for regulating child labour during the pre-independence period by enacting important legislations like The Indian Factory Act 1881 which defined “child” to be any young person below 12 years of age, and fixed the minimum and maximum ages for employment at seven and twelve respectively, and the hours of work at nine a day with an interval for rest of one hour, and a weekly holiday.

By this amendment, the definition of “child” became any person below 14 and the minimum and maximum age limit for employment of children were raised to 9 and 14 respectively, and their hours of work were limited to 7 a day.

The Children (Pledging of Labour) Act, 1933 came into being to prohibit the pledging of labour of children. The Act lays down that an agreement, oral or written, expressed or implied, made by parent or guardian of child in consideration of some payment or benefit for causing or allowing the services of a child to be utilized in any employment, shall be void (Section- 3). However, it is worth mentioning that an agreement without detriment to the child and made in consideration of any benefit, other than reasonable wages to be paid for the services of the child and terminable at not more than a week's notice will not be void.

In consonance with the recommendations made by The Twenty Third Session of the International Labour Conference held in 1937, India passed the Employment of Children Act, 1938. The Act prohibits the employment of children who have not completed 15 years of age in any occupation connected with the transport of passengers, goods or mails by railways; or connected with cinder picking, clearing of an ash pit or building operation in the railway premises; or connected with the work in a catering establishment at a railway station, involving the movement of the vendor or any other employee of the establishment for one platform to another or into or out of the moving train; or connected with the work relating to the construction of railway station or with any other work where such work is done in close proximity or between the railway lines; or connected with a port authority within the limits of any port [Section- 3(1)]. The Act further prohibits the employment of children below 14 years of age in workshops connected with beedi making, carpet weaving, cement manufacturing including bagging of the cement, cloth painting, dyeing, weaving, manufacture of matches, explosives and fireworks, mice cutting and splitting, shellac manufacture, soap manufacture, tanning and wool cleaning(Section- 3(3)). The penalty for the breach of the provisions of Act was with a simple imprisonment up to one month or fine up to 500 or both (Section- 4).

THE UN CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

This convention is the most widely ratified convention and every country in the world, with the exception of two, have signed and agreed to abide by it. The Convention recognises that children, as a special and vulnerable group in society, should have a set of basic rights and protections that ensure their access to health care and education as well as legal, civil and social services that protect them from harm, exploitation and abuse.

- **Article 19:** Children will be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.
- **Article 27:** Recognises the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
- **Article 28 & 29:** The right to education
- **Article 31:** The right to play
- **Article 32:** The right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

“States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of this article. States Parties shall provide for a minimum age or minimum ages for admission to employment, provide for appropriate regulation of the hours and conditions of employment, provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

INTERNATIONAL PROGRAMME ON THE ELIMINATION OF CHILD LABOUR (IPEC)

The International Programme on the Elimination of Child Labour is a global programme launched by the International Labour Organization in December, 1991. India was the first country to join it in 1992 when it signed a Memorandum of Understanding (MOU) with ILO. The MOU that expired on 31.12.1996 has thereafter been extended from time to time and has recently been extended till 31st December, 2006. The long-term objective of IPEC is to contribute to the effective abolition of child labour. Its immediate objectives are:

- Enhancement of the capability of ILO constituents and NGOs to design, implement and evaluate programmes for child labour;
- To identify interventions at community and national levels which could serve as models for replication; and
- Creation of awareness and social mobilization for securing elimination of child labour.

POST-INDEPENDENCE PERIOD

India's commitment to children is clearly manifested in its Constitution wherein several articles are incorporated dedicated to children, viz.:-

- Article 14—The State shall not deny to any person equality before the law or the equal protection of laws with in the territory of India.
- Article 15—The State shall not discriminate against any citizen.....Nothing in this Article shall prevent the State from making any special provisions for women and children.
- Article 21—No person shall be deprived of his life or personal liberty except according to procedure established by law.
- Article 21 A—The State shall provide free and compulsory education to all children of the age of 6-14 years in such manner as the State may, by law, determine.
- Article 23—Traffic in human beings and begar and other forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.
- Article 24—No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
- Article 45— The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

➤ Article 243G read with Schedule 11 – provide for institutionalization of child care by seeking to entrust programmes of Women and Child Development to Panchayat (Item 25 of Schedule 11), apart from education (item 17), family welfare (item 25), health and sanitation (item 23) and other items with a bearing on the welfare of children.

The Factories Act, 1948 prohibits the employment of child under 14 years of age in factories (Section- 67). A child who has completed the age of 14 years is not permitted to work in a factory for more than 4 hours in any day (Section- 71(1) (a)). They should not work at night i.e. twelve consecutive hours including the period from 10 P.M. to 6 A.M. (Section- 71(1) (b)). The period of work is to be limited to two shifts which should not overlap and spread over more than five hours (Section- 71(2)). They should not be employed in two separate factories on the same day (Section- 71(4))

Minimum Wages Act, 1948 provides for the fixation of minimum rates of wages in certain employments which have been specified by appropriate Government in the schedule of the Act. The Act made provisions for fixing minimum rates of wages for adults, adolescents and children (Section- 3).

According to the Plantation Labour Act, 1951, a child (below 14 years) or an adolescent between 15-18 years cannot be employed for work unless he is certified fit for work by a surgeon (Section- 26). The certificate of fitness is given by a certifying surgeon who certified that the person being examined by him is fit to work as a child or as an adolescent. This Act makes the provisions for education as the responsibility of the employer (Section- 14) and so is for housing (Section- 15) and medical (Section-10) and Recreational facilities (Section- 13)

The Mines Act, 1952 provides for some more stringent provisions. The Act prohibits employment of persons (below 18 years) in any mine or part thereof (Section- 640) and also their presence in any part of the mine above ground where any operation connected with or incidental to any mining operation is being carried out (Section- 45).

The Act prescribes punishment of fine up to Rs. 500 in case of employment of persons below 18 years (Section- 68). For contravention of any other provision of the Act, there is provision of imprisonment up to three months or fine up to Rs. 1000 or both (Section- 73).

The Merchant Shipping Act, 1958 prohibits employment of children under 15 years in a ship, except in a school ship or training ship; or in ship governed by family members, or in a home trade ship of less than two hundred tons gross; or in a home trade ship of less than two hundred tons gross; or where such person to be employed on nominal wages and will be in the charge of his father or other adult near male relatives (Section 109).

The Motor Transport Workers Act, 1961 covers every motor transport undertaking employing 5 or more persons. The Act prohibits employment of persons under 14 years of age in any capacity in the motor transport undertaking (Section21).

The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 covers all industrial premises wherein any manufacturing process connected with making of beedi or cigar or both is being, or is ordinarily carried on with or without the aid of power. The Act prohibits the employment of children below 14 years in any such premises (Section 24).

The National Policy for Children, as adopted on 22nd August, 1974, stands as the basis of several national policies and programmes initiated in the last few decades to address the varied needs of children, and is the policy frame for this plan. The policy laid down that the State shall provide adequate services towards children, both before and after birth and during the growing stages for their full physical, mental and social development. The policy emphasized the need for the measures of the balanced growth of children; children shall be protected against neglect, cruelty and exploitation.

The Committee examined the problem in detail and made some far-reaching recommendations. It observed that as long as poverty continued, it would be difficult to totally eliminate child labour and hence, any attempt to abolish it through legal recourse would not be a practical proposition. The Committee felt that in the circumstances, the only alternative left was to ban child labour in hazardous areas and to regulate and ameliorate the conditions of work in other areas. It recommended that a multiple policy approach was required in dealing with the problems of working children.

Based on the recommendations of Gurupadaswamy Committee, the Child Labour (Prohibition and Regulation) Act, 1986 was enacted. The Act prohibits employment of children in certain specified hazardous occupations² and regulates the working conditions in the jobs that it permitted, and put greater emphasis on health and safety standards.

A National Charter for Children, 2003 emphasizes Government of India's commitment to children's right to survival, health and nutrition, standard of living, play and leisure, early childhood care, education, protection of the girl child, equality, life and liberty, name and nationality, freedom of expression, freedom of association and peaceful assembly, the right to a family and the right to be protected from economic exploitation.

The National Plan of Action for Children, 2005 emphasizes the role of Government to ensure all measures and an enabling environment for survival, growth, development and protection of all children, so that each child can realize his or her inherent potential and grow up to be a healthy and productive citizen.

PRIOR STRATEGIES ON CHILD LABOUR

After independence, the observations of the Whitley commission and the labour investigation committee of 1946 and various statements and observation of many social reformers on the evil of existing child labour depriving the children of education and health influenced the framers of our constitutions. Therefore, one of the main objectives of our constitution is the protection of children from adverse effects of their employment on their physical and mental development.

The following are the provisions of our constitution relating to children in India. Article 15(3) of the constitution lays down that "nothing in this article shall prevent the state from making any special provision for women and children." Article 23 also says that traffic in human beings and other similar forms of forced labour are prohibited. Any contravention of this provision is an offence punishable in accordance with law. The chapter of the constitution contains specific direction in relation to the welfare of children. Article 39(e) maintains that tender age of children should not be abused. Article 39(f) makes it obligatory on the part of the state to direct its policies towards securing opportunities and facilities for the healthy development of children.

At present, there are 14 major legislative enactments which provide legal protection to the children in various occupations. These are:

- Factories Act, 1948,
- Mines Act, 1952,
- Plantation labour Act, 1951,
- Merchant shipping Act, 1958,
- Motor Transport workers' Act, 1961,
- dock workers' regulation and employment Act, 1948,
- Children (Pledging of labour) Act, 1933,
- Employment of children Act, 1938,
- Apprentices Act, 1961
- Bidi and Cigar workers (conditions of employment) Act, 1966,
- Contract labour (regulation and abolition)Act,
- Radiation protection rules 1971 under the atomic energy act, 1962,
- Shops and commercial establishment act under different nomenclatures in states, and
- The juvenile justice act, 1986.

The government as a whole and the Department of Labour have already started taking action to identify what needs to be done on the issue of child labour. In doing so, the government built on actions that had already occurred. The following were key steps in the direction of an integrated but focused approach to address the issue:

The 1993 Interim Constitution provided for the protection of children against exploitative labour practices and work that is hazardous or harmful to their education, health or well-being.

The United Nations (UN) Convention on the Rights of the Child was ratified by South Africa in 1994. This Convention sets the framework for action to protect and develop children.

In 1996, the Department signed a Memorandum of Understanding with the International Labour Organisation. This was aimed at ensuring that South Africa will benefit from international experience and assistance in addressing child labour in our country, subject to the views of South Africans as to what should be considered as child labour, and how the issue should be addressed.

In 1997, the Department of Labour assumed formal overarching responsibility for child labour, at least in an employment context, when the Basic Conditions of Employment Act was adopted. This Act prohibits certain forms of work by children.

In 1997, the Department facilitated the formation of the Child Labour Intersectoral Group (CLIG), a body consisting of representatives of key government departments, non-governmental organisations (NGOs) and employers' and employees' organisation. This body coordinates work on child labour, and is the subcommittee of the National Programme of Action on the Rights of the Child (NPA) responsible for this area of work.

In 1998, the Department facilitated the formulation and adoption of a provisional Child Labour Action Programme. The policy identified five primary areas of action: employment law, educational policy; social security, job creation and social mobilisation and information.

CONCLUSION

According to the UNICEF statistics, an estimated 218 million children aged 5-17 are engaged in child labour, excluding child domestic labour. Some 126 million of these children are believed to be engaged in hazardous situations or conditions, such as working in mines, working with chemicals and pesticides in agriculture or working with dangerous machinery. They are everywhere but invisible, toiling as domestic servants in homes, labouring behind the walls of workshops, hidden from view in plantations. Worldwide, agriculture is the sector where the largest percentage of working children is found - nearly 70 percent. Over 132 million girls and boys aged 5 to 14 years old often work from sun up to sun down on farms and plantations, planting and harvesting crops, spraying pesticides, and tending livestock.

Based on the recommendations of Gurupadaswamy Committee, the Child Labour (Prohibition & Regulation) Act was enacted in 1986. The Act prohibits employment of children in certain specified hazardous occupations and processes and regulates the working conditions in others. The list of hazardous occupations and processes is progressively being expanded on the recommendation of Child Labour Technical Advisory Committee constituted under the Act.

In consonance with the above approach, a National Policy on Child Labour was formulated in 1987. The Policy seeks to adopt a gradual & sequential approach with a focus on rehabilitation of children working in hazardous occupations & processes in the first instance. The Action Plan outlined in the Policy for tackling this problem is as follows:

Legislative Action Plan for strict enforcement of Child Labour Act and other labour laws to ensure that children are not employed in hazardous employments, and that the working

conditions of children working in non-hazardous areas are regulated in accordance with the provisions of the Child Labour Act. It also entails further identification of additional occupations and processes, which are detrimental to the health and safety of the children. Government has accordingly been taking proactive steps to tackle this problem through strict enforcement of legislative provisions along with simultaneous rehabilitative measures. State Governments, which are the appropriate implementing authorities, have been conducting regular inspections and raids to detect cases of violations.

Some other provisions of the Constitution that do not appear, at first glance, to relate to children's work-related activities, may nevertheless impact on one or more of the categories of child work discussed below. An example is the right to basic nutrition, shelter, and social services. The constitutional rights in respect of children are not subject to the state's available resources and must therefore be realised immediately. In March 1998 the child labour provisions of the new Basic Conditions of Employment Act of 1997 took effect. These and other legal provisions that can be used to address child labour are summarised in Annexure A to this discussion document.

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