

Amendments to the Child Labour Act: A Positive or Regressive Step?

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When the world observed anti-child labour day on June 12, 2015, a boy of school-going age was spotted carrying firewood to support his family in Udhagamandalam. File photo: M. Sathyamoorthy

*Any attempt to eradicate to child labour must recognise the complexity of the issue and must address the range of direct and indirect factors that contribute to this social evil, say **Rupa Chanda** and **Sudeshna Ghosh***

On May 13, 2015, the Union Cabinet, chaired by the Prime Minister, gave its approval to move official amendments to the Child Labour (Prohibition & Regulation) Amendment Bill, 2012. The proposed amendments to the Child Labour (Prohibition & Regulation), Act, 1986 (CLPRA) ban employment of children below 14 years of age in all occupations and processes, while allowing work in non-hazardous family businesses, entertainment and sports activities (except circus) after school hours or during vacations, without compromising the safety and education of the working children.

The Cabinet has made these exceptions within the blanket prohibition of child labour, considering the large number of children in India who help their parents in various activities, such as farming and handicrafts. The stated reason for these exceptions is that such activities may help children learn the basics of these occupations. Further, the existing provision of punishment for parents or guardians of the child being the same as that for the employer are to be altered with no punishment being applicable in case of a first offence. Alongside these exceptions, however, stricter penalties than those currently in place have been recommended in case of violation of the Act. A new definition of adolescent (ages 14 to 18) has also been introduced in the Bill, and employment of adolescents has been prohibited in hazardous occupations and processes.

In light of these proposed amendments, the question that naturally arises is whether these intended legislative changes will make the CLPRA more effective in reducing the incidence of child labour in India. What are the implications? Do they really improve upon the existing legislation and if so, to what extent and in which manner and if not, what more is needed?

Arguments can be made in favour or against. On one hand, the move to expand the scope of the prohibition of child labour across all occupations and activities can be termed a positive step. The introduction of stiffer penalties and the specific reference to adolescents are also a step in the right direction. However, the expanded ban on child labour and the exceptions permitted for family enterprises and within certain time frames could also result in more illicit and unregulated forms of child labour and could be misused. Hence, there are both pros and cons and the implications of the amended legislation are ambiguous.

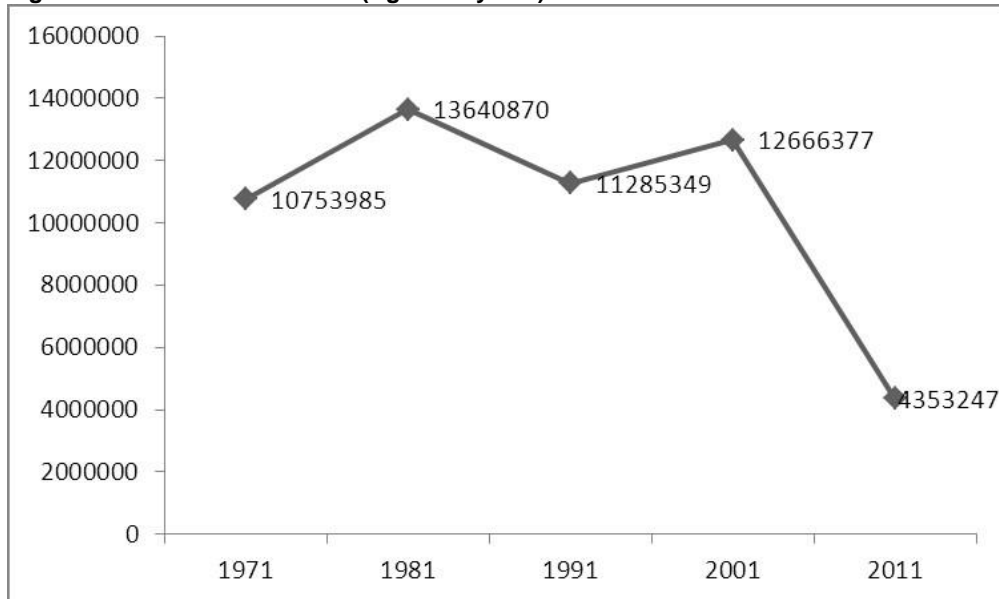
On balance, however, our contention is that these proposed amendments may do very little to address the problem, unless accompanied by a range of other measures and conducive conditions to eradicate child labour and unless enforcement of existing legislation is improved. They may also result in certain regressive and unintended effects such as on a child's right to education. The main reason for our not so positive stance is based on the fact that child labour is a complex and multifaceted problem which is hard to capture in numbers and difficult to tackle through legislation alone, especially given the institutional and regulatory lacunae in our system.

Looking behind the numbers

To assess the likely implications of the proposed amendments, we must begin with an understanding of the incidence of child labour, trends, distribution of child labour across hazardous and non-hazardous activities and success with respect to detecting and addressing violations. According to Census 2001, out of 238.8 million children between the ages of five and 14, constituting about a quarter of India's population, some 12.6 million (or five per cent of this age group) were working.

Andhra Pradesh, Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh had the largest number of child workers. There has been a decline in this number over time. As per a survey conducted by the National Sample Survey Organization (NSSO) in 2004-05, the number was estimated at a little over nine million and a subsequent NSSO survey of 2009-10 put this number at 4.9 million. The number has declined even further as per the 2011 Census to 4.4 million, albeit with variations across different States in the country ¹. Figure 1 shows the fluctuating trends in child labour over the 1971-2011 period and the sharp decline in the last decade.

Figure 1: Child Labour in India (Age 5-14 years)

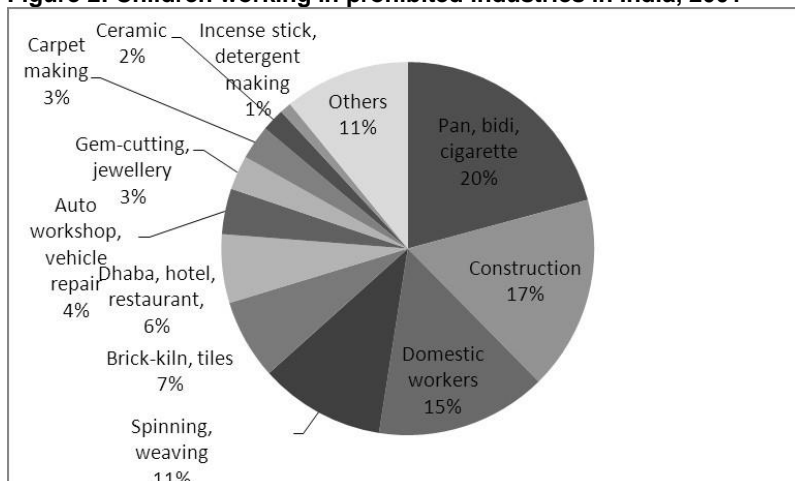


Source: Based on data obtained from <http://censusindia.gov.in/> (accessed 26 May 2015)

It might be argued that the government's efforts in addressing the problem and the existence of legislation such as the CLPRA have contributed to the decline in the number of child workers. However, we need to be careful in arriving at such conclusions and in inferring that the proposed amendments will help reduce the incidence of child labour in the country. There are several reasons for this.

Firstly, the numbers themselves should be taken with some caution as most surveys tend to underestimate the number of child workers (especially girls) due to the non-coverage of household work. More importantly, these numbers do not reveal how many of these children were working in hazardous and banned segments and the degree of vulnerability. Rapid urbanisation and growth of the informal economy has fuelled a rise in the employment of child labour in many informal trade and services, and, to some extent, manufacturing. Many of these occupations are outside the purview of the law. Notwithstanding the long-standing ban on children under 14 years of age working in hazardous occupations, a substantial number of children continue to work in such industries. According to Census 2001, approximately 1.2 million children were working in banned occupations or processes, the most prevalent ones being *bidi* making and construction, as shown in Figure 2 below.

Figure 2: Children working in prohibited industries in India, 2001



Source: Ministry of Statistics and Programme Implementation (2012)

Although we do not have the latest data on the number of children occupied in hazardous industries based on the Census 2011 data, some estimates suggest that a sizeable number continue to work in banned occupations and processes. Employment of children in roadside eateries and motels in excessive heat and cold, stone mining and stone quarries, occupations which have been added to the list of banned occupations in recent years, also continues. According to a 2007 Ministry of Labour press release, 2,229 violations of the notification banning employment of children under 14 as domestic help and in the hospitality sector were detected. Further, if one looks at the reported data on the number of inspections, prosecutions and convictions, as presented below in Table 1, it is evident that a large number of cases go undetected or unpunished.

Table 1: Numbers of inspections, prosecutions and convictions under CLPRA, 2007-11

Year	No. of inspections	No. of prosecutions	No. of convictions
2007	363,927	12,705	617
2008	355,629	11,318	763
2009	317,083	11,418	1,312
2010	239,612	8,998	1,308
2011	84,935	4,590	774

Source: Based on Government of India sources

The conversion rate from the number of inspections to the number of prosecutions was five per cent or less, and less than one per cent in the case of convictions throughout the 2007-11 period. If one adds to these numbers the fact that the inspected cases are likely to be only a fraction of the true extent of such violations, the share of actual cases of violation that are detected, inspected, reported and convicted is likely to be even smaller. There is also a steady decline in the number of inspections and prosecutions and, in fact, a steep jump between 2010 and 2011, which is difficult to explain.

Hence, the trends suggest that we need to be cautious about the role that legislation can play in eradicating child labour. Observed numbers may not reveal the full picture and, more importantly, the mere existence of legislation does not guarantee follow through and enforcement. If that were the case, the numerous existing legislation that address child labour in India, ranging from Article 24 of the Constitution to various industrial legislations such as the Factories Act, the Mines Act, the Plantations Labour Act, which forbid child employment in hazardous activities or prescribe terms and conditions of employment for child workers, would have been sufficient to tackle the problem. But they are clearly not enough and there isn't a one-to-one link between legislation and the incidence of child labour as there are many intermediating factors in this relationship. Much is contingent on proper enforcement of existing laws and provisions. Therefore, it is not realistic to expect the recent amendments to legislation to deliver significant gains in the eradication of child labour, given the magnitude of the problem and its complexities, and the deficiencies in legal enforcement and regulatory capacity.

Potentially regressive?

Our main concern regarding the proposed amendments, however, stems from the possible misuse of the exceptions that have been made for work in "family enterprises" outside of school hours. As the government statement put it, "...striking a balance between the need for education for a child and the reality of the socio-economic condition and social fabric in the country, the Cabinet has approved that a child can help his family or family enterprise, which is other than any hazardous occupation or process, after his school hours or during vacation." This exception is based on an underlying premise that such occupations and activities are not harmful to child workers, not prone to abuse, that one can clearly delineate hazardous and non-hazardous activities. This premise can be questioned. Given the above realities of enforcement and prevailing conditions, the permission

granted to children to work in certain non-hazardous informal sector activities (such as in family businesses and agricultural activities) could be a regressive step.

Some fallacies behind child work in family occupations

In the absence of adequate regulatory and institutional capacity to ensure child welfare, child workers in informal enterprises and family settings could be left unprotected and subject to exploitation, persecution and abuse. One cannot presume that such activities cannot be harmful to the child as much depends on the terms and conditions of work and how these are regulated and enforced. What prevents “family enterprises” from employing children in activities such as *bidi* rolling, carpet weaving and gem polishing, which are clearly hazardous and banned occupations? There is scope for employers to take advantage of “family enterprises” to employ child workers. So, unless there is strict enforcement of the law, it would be difficult to delineate the boundaries between different kinds of informal sector activities.

No activity can be presumed to be benign. In the informal sector, for example, agriculture draws the bulk of child workers. Often, children work long hours under severe hardship on the fields. They are exposed to the hazards of working with chemicals and machinery. In the service sector, in segments such as hospitality, entertainment, family-owned shops and dhabas, child labour may similarly involve long working hours under duress, lifting of heavy loads and enduring verbal and physical abuse and other exploitative practices.

Similarly, these “exempted” activities do not preclude the possibility of bonded child labour, which is a hidden phenomenon predominant in the informal sector, especially in agriculture where children are bonded to help pay off the family’s debt. There is associated physical and mental abuse. Therefore, the implicit assumption that children are given a choice to work or not work in family enterprises may not be correct.

Thus, the proposed changes in the Child Labour Act permitting certain occupations, albeit outside school hours, to employ children have many potential loopholes, which could increase the vulnerability of child workers. Prohibited activities could occur under the guise of the permitted exceptions. Given such possible outcomes, the argument that these permitted activities provide scope for skill development and impart an entrepreneurial spirit is not convincing.

Similarly, one can also question the poverty argument that has been given by the government to allow work in some activities. The argument is that in keeping with the country’s socio-economic realities, in order to help impoverished families earn a living, certain types of child work have been permitted. How justified is such a position which basically reiterates the age old belief that child labour is due to poverty? Critics of child labour often point out that children are used instead of adults as they are cheaper and easier to exploit and that child labour is often at the expense of adult employment, thus not contributing to poverty alleviation of the families concerned towards generating long-term sustainable and better paying jobs for adults. Hence, child labour can, in fact, perpetuate the problem of poverty for such households and denying children the opportunity to get educated can have a long-term adverse effect on human capital and income. It is also important to note that although the government has said that children would be allowed to work only in their spare time and that work in these permitted activities would not interfere with their education, who is to ensure that children do indeed work only outside of school hours given the widespread failure to enforce the law? Furthermore, such exceptions are likely to reduce the accountability of enforcement officials, employers and families.

A related issue is the social dimension of these amendments. Child labour predominantly affects the lowest castes and the poorest, such as the Dalits and the Adivasis, who are particularly vulnerable and have few alternatives. By making some forms of child labour permissible, the new amendments are likely to incentivise pulling these marginalised children out of education, thrust into work and subjected thereafter to a life of discrimination, exclusion and poverty in the long run. Any increase in the already high drop out rates of the most marginalized sections, among them Dalit girls, is likely to further negatively impact education, which is critical for poverty eradication. The proposed amendments could, therefore, have a retrograde outcome.

Concluding thoughts

In short, the recent proposals to amend the CLPRA can be critiqued on various grounds. The underlying premises may not be justified. The reasons advanced can be questioned. Further, there may be adverse unforeseen consequences on the socio-economic front. The progress that has been made in getting children out of work and into schools under initiatives such as the National Child Labour Project (NCLP), which has been in place since 1988 and under which 7,328 special schools ² have been opened for the children withdrawn from work, might be overturned.

But as highlighted earlier, both legitimising some types of child labour and a blanket ban on all child labour have their problems, as in either case there is scope of misuse and violation. Therefore, legislative approaches alone cannot be effective and must be backed by strong enforcement and adequate regulatory and institutional capacity. Legislation must also be supported by other measures, such as providing suitable alternatives for children, particularly with regard to inclusive educational facilities, and steps to sensitise employers, parents and society to ensure accountability in case there are violations.

Initiatives such as the NCLP, which is deemed to have been successful in providing non-formal education and pre-vocational skills besides raising public awareness and helping set up institutions to tackle this problem, must be strengthened and continued with adequate long term funding. Thus, much will depend on what other reforms and measures the government takes up to address child labour, how speedily this is done and on the government's overall approach towards this issue beyond the legislative framework.

To conclude, any attempt to eradicate child labour must recognise the complexity of the issue and must address the range of direct and indirect factors that contribute to this social evil. There must be a coherent, multi-pronged approach with multiple ministries, agencies and private sector stakeholders coming together. For instance, merely providing access to education for children cannot be enough. Alongside, there must be focus on the quality of this education, on the retention of children in schools, and on the removal of adult illiteracy and on parental education which is associated with a reduced incidence of child labour.

An approach that recognises the interconnected nature of child labour with other issues would focus on 1) steps to prevent violence at homes, 2) measures to empower and educate women, and 3) income and employment generation schemes for adults. "Learn and earn" apprenticeship schemes can be considered both for adults and children with a focus on imparting vocational skills that enhance income and employment opportunities. At a broader level, a holistic approach would recognise that rigidities in the labour market — which give rise to a large unorganised sector and prevent the scaling up and modernisation of Indian industry — are contributing factors to child labour in India and that labour market reforms and a more vibrant manufacturing sector should be part of the solution.

In sum, it is difficult to assess the implications of the recent changes in the Child Labour Act without further clarity on the government's position on other programmes and initiatives that have a bearing on the problem of child labour, and without information on what steps the government may be taking to improve enforcement of existing legislation. But on balance, we believe that the changes are unlikely to have much impact on the incidence of child labour in India unless they are accompanied by a host of other measures to combat this problem. We hope that the government does not lose sight of the larger social, cultural and economic context within which child labour has to be addressed and that these amendments are seen as part of a broad-based and holistic national strategy to tackle child labour across all its dimensions.

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Footnotes :

1. [△] Government of India. n.d. Census of India 2011. Accessed May 26, 2015. <http://censusindia.gov.in/>.

2. [△] Rao, Jyoti . n.d. "Assessing Child Domestic Labour in India." *Unicef India*. Accessed June 13, 2015. <http://unicef.in/Story/1139/Assessing-Child-Domestic-Labour-in-India>.

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