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for

Politics and Public Policy



INTERVIEW

Retrogressive Changes to Child Labour Act Should Be Withdrawn: Nina P. Nayak

S. Rajendran

May 27, 2015



Nina P. Nayak is Member, Governing Council, Indian Law Institute, New Delhi. File photo: V. Sreenivasa Murthy

The recent approval by the Union Cabinet to a set of amendments to the Child Labour (Prohibition and Regulation) Act, 1986 (CLPR), has disappointed many, particularly those championing child rights. Added to this is the concern that the amendments will mar the implementation of the Right to Education Act, 2009 (RTE).

The present round of amendments, in the garb of reinforcing the three decade old Act, has been under discussion for nearly five years, with the United Progressive Alliance (UPA) Government introducing the amendment Bill in the Rajya Sabha in 2012. A Parliamentary Standing Committee to which the amendments were referred had also submitted some recommendations worthy of consideration.

The common complaint against the amendments is that the Union Government of the day has sought to tinker with the CLPR Act, rather than bring about comprehensive changes for the benefit of the child.

The Cabinet decision ¹ draws attention to the “country’s social fabric and socio-economic conditions” specifically rural-centric occupations, and argues that “In a large number of families, children help their parents in their occupations like agriculture, artisanship etc. and while helping the parents, children also learn the basics of occupations. Therefore, 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”.

By several accounts, India has seen a spurt in school enrolment particularly at the elementary level, due to efforts made by the *Sarva Shiksha Abhiyaan* (SSA) as well as the RTE. There is serious concern that the proposed amendments would hamper the attempts to provide education as a right, as the changes would allow children below the age of 14 years to work in “family enterprises” such as helping the family in fields, forests and home-based work after school hours or during vacations, or while attending technical institution, and in entertainment industry, except the circus and sports.

Nina P. Nayak, until recently a member of the National Commission for Protection of Child Rights, criticises the proposed amendments and draws attention to the inter-generational consequences of what she terms as “retrogressive” changes to the law. Excerpts from her conversation with **S. Rajendran**:

Are these amendments required at all, given that they run contrary to the Right to Education Act?

The amendments proposed in the CLPR Act are appalling, incongruent with children’s fundamental right to education and contrary to the provisions in the RTE, which mandates free and compulsory education for all children from 6 years to 14 years up to completion of elementary school.

This Right was gained after a long and hard fought battle by civil society groups and instead of moving ahead and extending the age for entitlement to free and compulsory education to 18 years, the proposed provisions take a retrogressive step which should be denounced, and the Act itself withdrawn at the earliest. Anyone up to 18 years is defined as a child in the UN Convention on the Rights of the Child ² (ratified by India); this is also in consonance with the Juvenile Justice (Care and Protection of Children) Act, 2000; the Indian Majority Act, 1875; the Indian Contract Act, 1872; the Guardians and Wards Act, 1890; and the Persons with Disability Act, 1995.

Are there any conditions to be met before bringing in such drastic changes?

Prior to bringing in such changes, the foremost task before the government would be to ensure the effective implementation of the RTE, to achieve universal quality education, retention and completion of elementary education.

To make this a reality, provision of adequate financial allocations and manpower is necessary and the Ministry of Human Resources Development, the State Departments, the SSA and parents should be held accountable. Clear lines of accountability should be drawn among these stakeholders and [the progress on ensuring education as a right] monitored through existing systems within the government and the SSA. Child Welfare Committees (CWCs) established under the Juvenile Justice Act must proactively be engaged to promote the interests of children out of school and the Commissions for Protection of Child Rights should exercise their jurisdiction too. The Department of Labour and Employment should promptly file cases of violations against children and the Courts must ensure speedy disposal of complaints of child labour so that there is a strong deterrence to end the exploitation of children.

Will the amendments result in children getting diverted to arduous work rather than focus on education?

I would endorse this statement without hesitation. Families mired in poverty and those unable to hire labour due to high adult labour costs — particularly during harvest time in the agricultural sector or to meet similar needs in high demand home-based sectors such as carpet-weaving, *beedi*-rolling, gem-polishing, manufacturing crackers, etc., — would invariably depend on the

labour of their young children to add to their family income, and find in these amendments a legally sanctioned leeway to do so at the cost of their children's right to education, health and leisure.

Families would also be tempted to fake reasons for withdrawal of children from schooling when such demand arises. They could also rightly justify their action claiming that the dismal quality of public education available to their children in large tracts of our country is non-productive as against investment of their children's time and energies in acquiring a skill and generating income.

Will the proposed amendments benefit factory owners?

This would depend largely upon the sector to which the children's labour is drawn. Within our largely agrarian economy, children's employment in the agriculture sector — for instance, cutting sugarcane or harvesting cotton which are raw materials for factory production — would most certainly benefit factory owners. Even otherwise, harvesting of other agricultural products would, though adding to family income, benefit wholesale dealers, but at a very high cost — that of children losing their right to education and [opportunities for] upward socio-economic mobility.

If these amendments are passed they could possibly be exploited by factory owners by enticing parents with higher wage compensation for home-based work where children are in high demand owing to their nimble fingers, necessary for intricate designs say in carpet industry, jewellery making etc., which would enable them to reap higher profits.

How many children under 14 years are in formal education and how many are still in employment despite the Act being in force? It is obvious that enforcement is quite poor.

The government claims that child labour has dropped from 12.6 million in 2001 to 4.3 million in 2014. The NSSO's 61st Round (2004-05) estimates child labour in India at 8.6 million with a third of such child labourers being engaged in agriculture. The declining numbers, quoted by the government, I would unhesitatingly state — and I would be endorsed by activists and the lay public — could be due to under-reporting because of fear of prosecution, and not increased school enrolment going by the number of children physically visible in public places during school hours in large metros, cities, towns and even smaller habitats, with unseen numbers working within the closed environment of homes and small factories.

In spite of provisions available in the CLPR and the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act), where the 'working child' is defined as a child in need of care and protection, and age broadened to 18 years, which can be invoked to protect them if they are being subjected to abuse and exploitation, the lack of political and administrative will continues to keep humungous number of poor children in home-based work and employed outside the home with impunity as there is little fear of the law and its penal consequences.

Enforcement mechanisms remain very weak with hardly any convictions across the country to serve as deterrents to employers. Statistics from the [Union] Labour Ministry for 2004-2014 show that there have been 1,168 convictions for children employed in hazardous industries with about Rs. 83 lakh collected in fines. This money has been designated for the rehabilitation and welfare of child labour. However, in this period, only Rs. 5 lakh was disbursed from this fund.

What is missing is a collaborative effort among functionaries of government departments, primarily the Department of Labour and the CWCs under the JJ Act to

1. remove all children below 14 years out of work environments,
2. regulate the employment of children in the age group 14 to 18 years, and,
3. speed up inquiries to facilitate early disposal by courts.

Stringent punishments for the accused and heavy compensation for rescued children workers in terms of wages under the Minimum Wages Act, and additional compensation for overtime and exploitation will serve to deter employers. It would also make possible the mainstreaming of children into an educational or skill training programme leading to economic independence.

The Rajasthan Government's notification of August 2012 — that a person below 18 years will be considered as a child labourer if he or she is employed — is worth replicating across the country as they also brought out a comprehensive standard operating procedure for identification, rescue, protection and rehabilitation of children employed in various occupations.

What are the fundamental differences in the amendments proposed by the former UPA Government in 2012 and those being finalised now?

The UPA government's Child Labour (Prohibition and Regulation) Bill, 2012, introduced in the Rajya Sabha ³, recommended a complete ban on all forms of child labour under the age of 14 years, making the employment of children below 14 years a criminal offence, which was congruent with the provisions in the RTE Act.

They also introduced a new category of adolescent children (14 years to 18 years), proposed a blanket ban on employing anybody below 18 years in hazardous occupation, allowed adolescents to work in other sectors, and re-classified "non-hazardous" to be in line with the broadening of child labour age from 14 years to 18 years. It was also proposed to make elementary education mandatory for employment of adolescents in non-hazardous industries.

However, what is now being sought to be done is to allow children below the age of 14 years to work in "family enterprises". This would surely undo much of the progress achieved through the RTE Act and civil society initiatives, and make enforcement even more difficult.

The Ministry's justification, that withdrawing children from home-based work will negatively impact children participating in work with family elders and curb their entrepreneurship skills, holds no water.

The Ministry's rejection of the Parliamentary Standing Committee's proposal to make elementary education a must for employment of adolescents in non-hazardous industries, by pointing out that a separate law existed to guarantee education, amounts to poor commitment as inclusion of such a provision would reinforce and improve the implementation of the RTE Act.

Girl children's education would also be badly hit as girls are engaged in all sorts of housework. This amendment would keep them away from school and further lower female literacy level which stood at 64 per cent in 2014, as against male literacy level of about 82 per cent, with school drop-out rate for girls almost double that for boys.

Lastly, by bringing in such drastic amendments, the Ministry would ensure that a sizeable chunk of the adult population remains in the informal sector for generations to come, deprived of minimum wages and social security.

[Resources: Notes by the Ministry of Labour and Employment \(Child Labour Section\) on the Standing Committee Report , in PDF format \[PDF 12.1 MB\], can be downloaded here](#)

What about adolescents and their employment in non-hazardous industries?

Adolescents account for 22.8 per cent [of the national population as on March 2001] ⁴, and those between 14 years and 18 years age group constitute 100.2 million children in our country. A majority of these children have been forced to assume the role of adults, grappling simultaneously with poverty, economic and personal security, ill health, early marriage, lack of education and exploitative environment from an early age both at home and in society.

While there are numerous legislations protecting children up to 14 years of age, there seems to be a legislative vacuum in terms of guarantees regarding children in the 14 years - 18 years age group, a large number of whom live in precarious conditions due to deprivation of education, early marriage, unwanted pregnancy, childbearing and rearing, untimely entry into the labour force, and exploitation at home and at workplace.

Allowing adolescents to work even in the non-hazardous sector is a retrograde step, which will help ensure millions of children remain illiterate and, therefore, employable only in unskilled, low paying jobs.

Providing access to employable and contemporary vocational skill development programmes on an apprentice basis, as is done in Germany, must be mandated for adolescents who are drop-outs or who never attended school. Roping in CSR [Corporate Social Responsibility] initiatives and civil society participation would be imperative to cover the huge numbers.

Children trapped in bonded labour is another important issue particularly in the rural areas, and is prevalent in a big way.

Bonded child labourers work in conditions of servitude and are usually bound to their employers by a debt or loan incurred by their relatives or parents or guardians. In rural areas, it is often a traditional worker-employer relationship in the agricultural sector and has moved on to several other industries located in larger habitats with debtors, perhaps, seeking the money to cover costs of an illness, perhaps to provide a dowry to a marrying child, or perhaps, as is often the case, to help put food on the table. It could also be linked to trafficking of children in many situations.

The worst-hit are children of Dalits, Muslims, tribal families and those belonging to marginalised communities in spite of the fact that the Bonded Labour System (Abolition) Act, 1976, strictly outlaws all forms of debt bondage and forced labour.

In 2000, the ILO [International Labour Organization] estimated that 5.5 million children had been forced into labour in Asia, while the Bonded Labour Liberation Front placed the figure at 10 million bonded children in India alone. In 1998, the government of India labelled bonded child labour as a marginal problem with only 3,000 or so cases, but this is only a tip of the iceberg.

Children in bonded labour are denied basic human rights and dignity, including freedom of movement, opportunities of education, development and recreation. They are compelled to work long hours, in unhealthy working and living conditions, and are at very high risk for physical and sexual abuse and neglect, sometimes leading to death, and denied wages and remunerations and never know when their debt will be considered paid.

Recommendations of Parliamentary Standing Committee

Highlights of the 40th Report of the Parliamentary Standing Committee, to which the Child Labour (Prohibition and Regulation) Amendment Bill, 2012, was referred. The Report was presented to the Lok Sabha on December 13, 2013.

- The Committee was concerned that various Acts have prescribed different ages to define a 'child'.
- It suggested that the *proviso* allowing a child to help his/her family after school hours should be deleted.
- It noted that though one of the objectives of the Bill is to 'to regulate the conditions of services of adolescents' *i.e.* children in the age group 15 years -18 years, it contains no provisions to give effect to this objective.
- It suggested that regulation of working conditions of the adolescents, including the criteria for their wages and settlement of disputes with regard to age of the child, be included in the Bill.
- It opined that adolescents should complete elementary education before being allowed to be employed in any occupation.

- It recommended that the definition of hazardous processes in which adolescents would be barred from employment be widened to include all processes that jeopardise health, safety and the morals of adolescents.
- The Bill provides that parents/guardians of children shall be liable for punishment if they allow children below 14 years to work for commercial purposes and adolescents if they permit him/her to work in enlisted hazardous occupations. The Committee noted the government's initiatives, to reduce parents' compulsion for putting their children to work, but felt that benefits of such initiatives have not percolated adequately, and recommended that the Bill be amended to take a lenient view of poor parents and those parents who were unable to benefit from such initiatives. [Page 25 of the 40th Report of the Standing Committee on Labour.]
- The Committee recommended that Vigilance and Monitoring Committees headed by local MPs be tasked with reviewing the implementation of the Act instead of the District Magistrate (as provided in the Bill).
- The Committee censured the Ministry of Labour and Employment for its casual reply on the issue of trafficking and street children. It recommended that all concerned Ministries should evolve a comprehensive strategy to solve this problem.
- The Committee noted that the Bill contains no provision for rescue and rehabilitation of children. It recommended that instead of entrusting multiple Ministries [such as Labour and Employment, Human Resource Development and Women and Child Development] with this task, the government should bring a new Child Labour Policy, which specifies the machinery to implement laws, policies and projects.

Source: **Lok Sabha Secretariat. 2013.** Fortieth Standing Committee on Labour, December. Accessed May 25, 2015.

[Full text of the 40th Report of Standing Committee on Labour](#)