

Flawed Child Labour Law Amendment

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By institutionalising child labour in family-based occupations under the age of 14 years and permitting the employment of children in many hazardous occupations, India has failed its children.

India is home to 33 million child labourers in the age group 0–18 years, according to Census 2011. It is unfortunate that an average of one in 11 children is found working in India, when they deserve a childhood free from labour and the pressures of fulfilling economic roles as adults. In such a bleak scenario, when the Child Labour (Prohibition and Regulation) Act 1986 (CLPRA) was to be revised after almost three decades, the expectation was that the policymakers would take this opportunity to objectively analyse and arrive at a protective and strong legislation to ensure a safe childhood for all children. However, the Child Labour (Prohibition and Regulation) Amendment Bill 2016 has left some serious concerns unaddressed.

The amendments allow children under the age of 14 years to help in family enterprises, and limit the scope of the definition of “hazardous” works by significantly reducing the lists of hazardous occupations and processes. This is likely to have a far-reaching effect on children’s right to learn, play and develop. This article tries to critically examine

the amendments in the child labour legislation in India in the light of the magnitude of the problem and the imminent impact of the amended legislation on the children. It further evaluates the approach of viewing this as just another labour legislation rather than a protective social one based more on the idea of justice than that of law.

An analysis of Census 2001 and 2011 data by Child Rights and You (CRY) reveals that the number of working children in the age group 5–14 years has been decreasing at a mere 2.2% per year over the last decade, contrary to popular perception of its substantial reduction (Figure 1, p 20). As over a crore of working children continue to be part of the country’s workforce, it would take more than a century to get existing working children out of labour at this pace. Another critical trend that this analysis brings to focus is that, the number of child labourers (5–14 years) in urban areas in India has increased by 53% during 2001–11. The enforcement machinery being primarily based in urban regions and the comparatively stronger child protection structures in urban India make this issue a serious concern. This trend could be attributed to increased migration, including seasonal migration for employment, as well as trafficking of unaccompanied minors.

Having said that, a staggering majority of working children (80%) are based in rural areas and three out of five of these

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Figure 1: 2.2% Reduction per Year in Last 10 Years
(in million)



children work in agriculture, as cultivators/agricultural labourers or in household industries, most of which are home-based employment. Child labour in India also reflects some remarkable age-based trends. The decade 2001–11 saw an overall 30% reduction (about 3.2 million) in working children in the age-group of 10–14 years. Contrary to this, the number of working children within five–nine years has increased by 0.68 million, an increase of 37% from 2001. Of particular concern is the whopping rise in child labour in the age group of five–nine years in urban areas. The number of working boys grew by 154% (an increase of 2,20,214) whereas the number of working girls grew by 240% (an increase of 2,00,791) from 2001.

Looking at this multidimensional problem and the gravity of the issue, one of the major concerns with the amended bill is that it proposes to allow children to work in family-based enterprises. In reality, only 33 children out of every 100 complete their higher secondary education in our country age-appropriately, according to District Information System for Education 2014–15, and children who combine school with “economic roles” may ultimately drop out of school due to extended periods of work.

Table: 1

| Age | Census 2001 | | Census 2011 | |
|------------------|-------------|-------------|-------------|-------------|
| | 5–9 Years | 10–14 Years | 5–9 Years | 10–14 Years |
| Main workers | 8,20,050 | 49,58,941 | 11,08,808 ↑ | 32,44,439 |
| Marginal workers | 10,29,630 | 58,57,756 | 14,24,830 ↑ | 43,50,586 |
| Total workers | 1,26,66,377 | | 1,01,28,663 | |

To draw a comparison between main workers (children who work for more than six months in a year) and marginal workers (children who work for less than six months in a year), where one in three of the main workers in the age group of 7–14 years are illiterate (close to 1.4 million child labourers), a shocking

two million marginal workers have had to compromise their education, based on an analysis of Census 2011 (Table 1). Needless to say, school and economic activities do not complement each other.

The state figures are but reflections of the national scenario. The number of illiterate child labourers in Bihar is 45%, in Rajasthan and Jharkhand the figure stands at 40%, and 38% in Madhya Pradesh and Andhra Pradesh. High illiteracy rate among the working children increases the chance of early school leavers and those not learning at school to remain outside the world of employment, thus contributing to the vicious inter-generational cycle of poverty and deprivation. For a strong nation, it is inevitable that we relook at our investments for our children’s education.

Defeating the Purpose

It has also been ignored that children working within the family set-up might be involved in a range of activities with diverse demands on a child’s physical and mental health. These include: (i) involvement in strenuous activities such as embroidery work, carpet weaving, bangle making, beedi rolling, etc; (ii) being forced to work at odd hours; (iii) being exposed to the threat of sexual, physical and emotional exploitation (for example, domestic child labour, work in agriculture farms); (iv) significant health hazards in certain occupations (for example, food processing, chemical industries, brick kilns); and (v) distress due to migration (for example: seasonal migration, migration for agriculture-related work in the sugar cane, cotton and soya bean industries).

In addition, the misuse of this provision by contractors to disguise child labourers as simple assistants to adult family members in most outsourced works cannot be ruled out. Thus, contractors have the opportunity to pass on higher quantum of work to children at considerably low wages, accentuating exploitation of children. There is more to decipher when we examine the definition of family and family enterprise under this amendment. For the purpose of this law, “family” in relation to a child means his mother,

father, brother, sister, father’s sister and brother and mother’s sister and brother; and “family enterprise” means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons. These definitions actually open up a range of settings for work by the child. Settings that any of these family members own, where any of these family members are employed or wherein any of these family members have subcontracted work. So this may practically include all occupations with their hazards. Additionally, this definition will serve as an evident loophole for increased scope of trafficking. In practice, in most cases of trafficking of children, the perpetuator is a close family member or a community member. Thus, under the guise of this extended definition of family and family enterprise, the trade of trafficking would flourish.

Therefore, government’s argument that “children help their parents ... and while helping they learn basics of occupations” completely defeats the whole purpose of protecting children from exploitative labour. 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. And this would be realised only when children are provided with a conducive environment where they are exclusively in school and not working.

In addition, allowing children to work in family enterprises tends to perpetuate the occupation-based caste system and binds children to their traditional family occupations. It does not give them adequate opportunities to learn new, employable trades as part of their education. Close to 35% of the working children in India (5–14 years) belong to the socially disadvantaged groups, hence maintaining status quo in the “social fabric” becomes a socio-economic threat to these children. These amendments create the scope of an environment that is not conducive to their retention in schools, receiving quality education through the years and are ultimately contrary to creating equal opportunities.

The Child Labour Amendment Bill was brought primarily to align itself with the Right of Children to Free and Compulsory Education (RTE) Act, 2009, and one of its stated objectives was to ensure that all children between the ages of six and 14 years are in schools rather than at workplaces. The amended bill does aim to synchronise the two laws in principle, making it seem to be ideal for children up to the age of 14 years. However, when it comes to implementation and actual practice, the child would end up becoming a victim of the systemic gaps. Hence, the government's justification that the amendment is striking a balance between the need for education for a child and the socio-economic reality remains highly contentious.

Apart from this, proviso to clause 4 of the RTE Act states that a child who may have missed school and hence could not complete elementary education by age 14 shall be entitled to free education till completion of elementary education even after completing 14 years of age. Allowing children above 14 years to work may push those who have not yet completed elementary education to leave school and start working. This is in contradiction with the constitutional mandate to provide elementary education to all children.

The child labour legislation defines "hazardous occupations" to prohibit the employment of children in such processes. The CLPRA 1986 specified a list of 18 occupations as well as 66 processes as hazardous. This list had progressively evolved over 30 years both through recommendations of the Central Technical Advisory Committee constituted under the said act and the orders of the Supreme Court. Unfortunately in the amended act, the list of hazardous occupations has been redrawn and is restricted only to mines, explosives and hazardous process as defined under Factories Act, 1948. It is imperative to note that the Factories Act is for the adult workers and its regulatory framework is applicable only to young persons and adults and therefore this approach cannot be applicable to a law for children. In doing so, the architects of the legislation have failed to recognise children as a separate

group with more specific needs of development and protection.

Narrow Interpretation

The redefining of hazardous occupations and processes has made a range of occupations like domestic labour, work in brick kilns, handling chemical insecticides in agriculture, gem cutting, work in slaughterhouses, carpet weaving, cotton ginning, stone breaking and crushing, tyre re-treading, etc, non-hazardous for children. The amended legislation prohibits children in the age group of 15–18 years as well as those in family employments to work in hazardous occupations. With such a narrow interpretation of hazardous occupations, the prohibition will only be restricted to the organised sector, thus making children vulnerable to risk of abuse and exploitation and health hazards across the unregulated informal sector. While closely examining the cumulative impact of both the amendments, the law has an increased scope of children below 14 years working in hazardous family employments as no family employment would be considered hazardous as per the scope of this definition.

The issue is even more complex when looked at through the gender lens. Due to limited mobility while growing up, girls are more likely to be affected as their involvement in family-based works, especially household-based work (including outsourced works), is higher. As per Census 2001 data, there were 1,85,505 children below 14 years employed as domestic workers in India, majority of which were girls. Since domestic labour is no longer categorised as a hazardous occupation, the girls of all ages shall be vulnerable to be inducted in domestic labour though for those below 18 years it shall be in the guise of accompanying their mother. This will also perpetuate trafficking of girls in the age group of 15–18 years for domestic labour.

Another flaw in the process of determining hazardous occupation is that it is neither based on any scientific methodology, nor is it rooted in evidence. Neither was it arrived at in consultation with diverse groups of stakeholders. Further, the judgments and recommendations of

Central Technical Advisory Committee and the Supreme Court have been undermined. The international standards and consultative process of arriving at this listing have been discussed in Article 3(d) and Article 4 of International Labour Organization (ILO) Convention. As per Article 3(d) of the ILO Convention 182, reference is made to "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children" as the worst form of child labour, which needs to be prohibited. Further, Article 4 states that:

The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.

On this issue of defining hazardous employment, the Parliamentary Standing Committee (PSC) had also categorically opined that the Ministry of Labour and Employment has not made any efforts to identify hazardous occupations and has taken the current list from the Factories Act. The PSC further emphasised that the ministry had ignored the provision of the ILO Convention 138 that such occupations should also include those which can jeopardise the safety and morals of young persons. It is therefore recommended that the Ministry of Labour and Employment reviews and widens the scope of the definition of "hazardous processes" to include all those processes that may jeopardise the health, safety and morals of adolescents.

In 1992, when India ratified the United Nations Convention on the Rights of the Child, a reservation was made in Article 32 with the articulation that the Government of India would progressively ban all forms of child labour. While amending this act, there was an opportunity to take a leap and come up with a progressive legislation protecting all children. Three decades later, by institutionalising child labour in family-based occupations under the age of 14 years and limiting the listing of hazardous occupation and processes, India has actually failed its children.