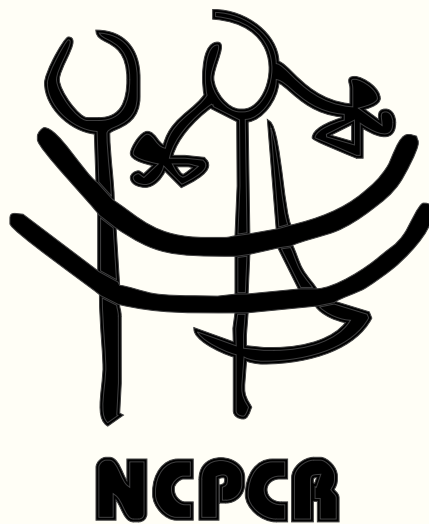


# **CHILD LABOUR AND RIGHT TO EDUCATION**



## **Position Paper**

**NATIONAL COMMISSION FOR THE PROTECTION OF CHILD RIGHTS**

## Child Labour and Right to Education

### National Commission for Protection of Child Rights

#### Introduction

India has the distinction of having the **largest number of child labourers in the world**. Many of these children are as young as four years of age. Across the country, these young children repeatedly risk their lives in their struggle to escape insults and humiliation in their work place. It is time we recognize their loss of childhood, suffering and exploitation, hunger, lack of education, and the damage that we cause to them by not meeting their basic right for dignity and education.

To do so, the national policy must be founded on some fundamental truths:

- (i) That child labour and poverty are mutually reinforcing, and; more so, child labour causes and perpetuates poverty.
- (ii) Non-economic factors play a significant causal role in sustaining child labour, and educational attainment of whom is the most important. Lack of education continues to entrench child labour in an inter-generational vicious cycle of poverty.
- (iii) Child work participation can systemically impede educational attainment of both out-of-school and in-school children.
- (iv) Poor families can and do send and support their children in schools.

#### Policy Imperative

As a nation we must be ashamed that 5,79,841 children in the tender age group of 0 - 5 years are currently involved in household sector (Census 2001). These and many more children, both in and out-of-school, cannot realise their right to education.

We must find child labour in any form objectionable, and we must guarantee children's right to education till they complete secondary school.

This endeavour must include every child up to 18 years of age irrespective of whether she has never entered the portals of education; or is a school dropout; or has enrolled her name in the school attendance registers but is engaged in work (either at home or outside) and never (or intermittently) attends schools.

#### Basis for legislative and policy reform

1. According to the Census 2001, there are about 13 million child labourers in the age-group of 5-14 years i.e. children who are economically active.<sup>1</sup> However, the NSSO 61<sup>st</sup> Round

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<sup>1</sup> The number was 11.3 million during 1991 (Population Census) thus showing an increase in the number of child labourers. Work has been defined in the Census 2001 as 'participation in any economically productive activity with or without compensation, wages or profit.' Such participation could be physical and/or mental in nature. This work includes supervisory work as well as direct participation in the work. The Census includes part-time help or unpaid work on the farm, family enterprise or in any other economic activity such as cultivation and milk production for domestic consumption also as work. All persons engaged in 'work' as defined in the Census are considered workers. Main workers are defined as those who have worked for the major part of the reference

(2004-5) estimates that the number of child labourers in India is much lower at 8.6 million. There is a need to build a consensus on what constitutes child labour based on a rights based perspective. This is important, because there is fairly wide acceptability of the fact that children are compelled to undertake work, because of their circumstances.

2. There are some, who have introduced the category of children who neither going to school nor to work. They have been referred to as '**nowhere children**'.<sup>2</sup> The Census 2001 reports that, 85 million children are not attending schools, and if we were to accept that the entire set of 13 million children working are not going to school this leaves 72 million children who are 'nowhere'. The category of 'nowhere' children dramatic as it may sound consists of children who in reality are everywhere. A large numbers of girl children fall into this category. These 'nowhere children' have to be included in the category of child labour.
3. There is yet another method of excluding all these children from the purview of policy and the law, by categorising their activity as child work (harmless/good) and not as child labour (harmful/bad). The Ministry of Labour estimated a target of 2 million child labourers as engaged in hazardous occupations<sup>3</sup> and all efforts are being invested to prioritise withdrawal of these children from the labour force. However, segregating work done by a child into exploitative 'labour' and non-exploitative 'work' suffers from basic flaws, as there is no simple method by which some activities indulged in by a child could be classified as 'work' and some as 'labour'. This task is rendered even more arbitrary by the fact that there is nothing to prevent the child from transiting from one category to another. An inclusive definition of child labour must not make an artificial distinction between child work and child labour or hazardous and non-hazardous work.
4. Most perspectives on child labour have significantly **left out the large numbers of children working in agriculture and allied activities**, either on a paid or unpaid basis, or as bonded labourers, either near their homes or having migrated or been trafficked to far away unfamiliar workplaces. Two-thirds of the child workers are engaged in agriculture, accounting for 73 per cent of casual wage child labourers and 9 per cent of the regular workers.<sup>4</sup> They are a major part of the labour pool and have to be defined as child labour.
5. **A large amount of work which girls are routinely engaged in does not even figure as child labour.** Girls do all the work at home - fetching water, fuel wood, caring for siblings - almost like machines as if it were expected of them by their families and society at large. It is well established that girl children are largely engaged in running the household from a very early age, even before they are capable of wage-earning activities. Their work needs to be recognized as child labour.

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period that is 6 months or more. And marginal workers are those who have worked but for less than 6 months period during the reference period.

<sup>2</sup> Choudhary, D.P. (1998) *Challenge of Child Labour in Rural India: A Multi-dimensional Problem in Need of an Orchestrated Policy Response*, Working Paper presented at the ILO-IPEC Workshop on 'Policy Changes for Elimination of Child Labour in Rural Areas', NIRD, July 1998.

<sup>3</sup> This is based on a survey conducted by the Ministry in 1997 after which there have been no further estimates.

<sup>4</sup> NCEUS (2008), *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector*, National Commission for Enterprises in the Unorganised Sector, New Delhi: Government of India; Table 6.6: Percentage of Child Workers (5-14 years) across Industry Groups by gender 2004-05

6. **Undoubtedly a large numbers of children in the child labour pool are from the scheduled caste, scheduled tribe and other marginalised communities and they work in sectors that have not been prohibited by the law.** Thus, an inclusive definition of child labour would subsume all children from communities which have been totally marginalized compelling them to be absorbed in the child labour force and being denied their right to education.
7. By differentiating between child work and child labour; introducing the concept of 'nowhere' children; focusing on abolishing hazardous or 'worst forms of child labour' and tolerating 'non-hazardous' forms of child labour; disregarding the labour rendered by girls and even boys in similar predicaments, we narrow the definition of child labour and exclude large numbers of children who are deprived of education.
8. A broad consensus has emerged over the years that the **definition of child labour should be inclusive** and determined in relation to a child's access to full time formal school. It must include all children in the workforce, whether the work done is paid or unpaid, as part of family labour or for an outside employer, as child labour.

#### **Current Legal Instruments to Combat Child Labour: Limitations**

1. As per Article 24 of the Constitution, no child below the age of 14 years is to be employed in any factory, mine or any other hazardous activity. Further, Article 39 requires the States to direct its policy towards ensuring that the tender age of children is not abused and that they are not forced by economic necessity to enter vocations unsuited to their age or strength. Recently, with the insertion of Article 21A, the State has been entrusted with the task of providing free and compulsory education to all children in the age group of 6-14 years.
2. In terms of legislative measures, the most significant effort to tackle child labour has been the Child Labour (Prohibition and Regulation) Act, 1986.<sup>i</sup> The Act, by and large, seeks to prohibit child labour in certain occupations and processes and regulate working conditions in other areas of work.<sup>ii</sup> There are a number of 'loopholes', which makes the law ineffective. For instance, the law does not ban child labour if rendered for one's own family in those areas of occupations and processes that have been prohibited by the Act. Likewise, it has no purview over regulating the conditions of work if children are engaged to work by the family or in the household. This provision is widely abused by employers.<sup>5</sup> Added to this, there is an increasing in-formalisation of the labour market with greater use of the sub-contract modality, wherein work is given to workers to complete at home. Needless to say, work shared by children remains unaccounted for.
3. The Act does not cover agriculture and allied activities, which account for the highest incidence of child labour. This invariably coincides with those children who are most excluded from the school system such as the scheduled caste, scheduled tribe, minorities and girls. This is also true of the millions of children engaged in all other forms of work

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<sup>5</sup> For example growing numbers of children engaged in the *zari* industry, carpet industry as part of household work and not establishment or workshops.

that are not listed as prohibited processes and occupations. All such children do not come under the purview of the Child Labour Act.

4. Regulating child labour under the Act; itself, is an affront to the fundamental right to education. It is un-constitutional to allow children to work even under the regulatory provisions of the Act. While the 86<sup>th</sup> Amendment guarantees all children free and compulsory elementary education, the Child Labour Act continues to allow children to work. Clearly children cannot be at work and in school at the same time.
5. The Child Labour (Prohibition and Regulation) Act, 1986 does not cover children of 15-18 years of age. They contribute as illiterate or semi-literate unskilled workforce. They are totally marginalised enjoying no fundamental rights, having no options but to join the ranks of the disempowered and marginalised sections of our society.
6. The Act is silent on the violation of children's rights and especially the right to education. It does not account for compensating the psychological damage done to a child due to the deprivation of her basic rights, her loss of dignity and freedom.
7. Based on the 'poverty argument', the Act limits the extent to which child labour can be legislated against.<sup>iii</sup> If child labour were deemed as inevitable, any legislation which strictly prohibits it would automatically become un-implementable. And so the best one can do is to legislate against extreme forms of child labour and regulate child labour in other areas. This is precisely what the Child Labour (Prohibition and Regulation) Act 1986 has done.
8. It is also argued, that since it is not possible to abolish child labour in all its forms, let us select those that are in need of immediate attention and gradually implement the programme for the rest. With an argument like this, the message that goes out is, 'we must be practical'. This makes the law half-hearted and compromises on the vision of the fundamental right to education and its goal of universal schooling.
9. Ground level realities have shown that it is difficult to isolate children in the prohibited sectors alone, and work towards the rehabilitation of only such children for enforcement of the law.<sup>iv</sup> There have been compulsions to be inclusive and rescue even those child labourers who may not have fallen under the category of occupations and processes, which are prohibited. Significantly, this compulsion underlies the moral conflict of those intervening on the ground in neglecting or ignoring any one form of child labour and exploitation that they are faced with, based on comparative distinctions of those prohibited under Act.

### **Competing demands: parents for education vs. market for cheap labour**

1. There is an explosive demand for education among the poor today.<sup>v</sup> Parents, even among the poorest are not only capable of sending their children to formal daytime schools; they are also willing to do so. Parents of erstwhile child labourers are making enormous sacrifices to see that the education of their children is not disrupted until they finish at least class ten. It has been recorded, that there has been a profound change in even those parents who initially resisted the idea of their children being withdrawn from work. They owned

up with pride to the transformation of their child from a child labourer to a student. If we repose faith in the poor, they are capable of partnering in the endeavour to abolish child labour and overcome the poverty trap for future generations.

2. It is also important to appreciate the difficulties faced by the children of illiterate parents in schools and the lack of preparedness of the school system to absorb poor and first generation learners. This includes the woefully poor infrastructure and educational facilities in the government schools, humiliation suffered by children due to pressures from and insensitivity of the system, often leading to children being pushed out of school.
3. As against the parental demand for education, there is a more powerful force of the market that prefers child labour because it is a source of cheap labour. Children can be forced to work for long hours under sub-human conditions of work. Their exploitation goes unseen under the garb of 'charity' as if the employer was doing a favour to the child in employing the child and in keeping him/her alive. Such exploitation of children goes unabated because there is neither shock nor outrage in society that children are in work and not attending schools. The tolerance of child labour is so pervasive that it gets internalised by the parents too. Absence of a social norm and corresponding weak action by the State to enforce the laws makes it easy for the market to employ children thus perpetuating child labour.
4. Thus there is a need for legal and policy framework in support of the parental demand for education and their battle for schools and as against the gains of the market forces in perpetuating child labour.

#### **For a changed Legal Framework**

1. The definition of a 'child' has to include all children up to 18 years of age in consonance with the Juvenile Justice (Care and Protection of Children) Act, 2000, and the United Nations Convention on Rights of the Child (UNCRC), 1989 as ratified by Government of India on 11<sup>th</sup> December 1982.
2. The legal framework must have clarity on the definition of child labour. It must be inclusive and cover all forms of work that children are engaged in.
3. From rights based perspective the definition of child labour must encompass all activities that interfere with the child's enjoyment of her right to education in a formal school.
4. The provision for the regulation of children's work should be removed so that there is a prohibition of all forms of child labour.
5. In the same spirit, the penal provisions must be enhanced and the enforcement machinery strengthened to the level that acts as a deterrent to the engagement of children as child labour.

6. Adequate and effective legal provisions must be in place to ensure relief, compensation and reparation and restitution for abuse, torture, harassment (physical, mental and psychological).

### **Policy Framework: Policy for preventing and abolishing child labour**

1. The first step is to clearly enunciate a policy that 'no child must work and every child must attend full-time formal school upto 18 years of age'. This policy must be recognised as non-negotiable and as a goal that is possible to achieve.<sup>vi</sup>
2. A national policy on child labour must move out of the targeted approach and address the universe of children who are out-of-school and engaged in some form of work or the other and insist on a rights based perspective.
3. **It must anticipate that all children who join in class one would necessarily continue up to class ten and accordingly provision must be made for full infrastructural support, including appointment of teachers.**<sup>vii</sup> The education system must be geared to tackle all levels of education simultaneously; i.e. pre-school, primary, upper primary, secondary and senior secondary schools and not follow a sequential model of starting with focus only on primary school at the outset.<sup>viii</sup>
4. Increase in number of hostels for children of scheduled caste, tribe and minorities, especially girls, is needed to ensure their continuation in mainstream schools, as they constitute the bulk of child labourers.
5. There must be a preparation to bring the huge backlog of children who have missed out on schooling and are engaged in work into the mainstream school system, with arrangements for lateral entry and preparing children for appropriate classes according to their age. The system must respond to the demand for education and provide for all that is necessary, in terms of infrastructure, schoolteachers and sensitivity to the first generation learner.
6. For older children of 15 - 18 years, who have either dropped out of schools even before attaining class five or have never been enrolled, there has to be a policy of integrating them into an appropriate education programme that will enhance their capabilities and also give them a second chance towards pursuing formal education. The State must ensure that the child studies until she completes 18 years of age. Courses of good quality across educational streams should be provided for children after completing class 10.
7. To invoke public interest and large-scale awareness on this issue, there is a need for an extensive awareness generation campaign launched over a period of time at the Centre, State and District levels on a sustained basis.

### **Conclusion**

In the final analysis, chronicling even a single day in the life of a child labourer would reveals to us how lonely and vulnerable her existence is. It will reveal how deprived they all are of education, health, nutrition and a safe environment, how they are routinely subject to heat and

noise pollution, exposure to chemicals and pesticides, physical and mental abuse. In fact, it would reveal how their existence and toil denies them all basic human rights.

Instead all our children must be in school and not at work so that they:

- Are redeemed from the world of drudgery and monotony of exhausting labour.
- Able to Invest in their own well-being and growth through fulfilling their right to education
- Not subjected to any exploitation or labour, which invariably serves only to create assets and wealth for the exploiter.
- Do not live precarious lives as marginalised citizens unable to access their rights and fulfil their potential.
- Are able to access their right to education and all their entitlements to recreation, sports, co-curricula activities, health and nutrition.
- Develop confidence to make informed choices contributing to their own communities and the cosmos they live in as enlightened citizens.
- Break the inter-generational cycle of poverty and ignorance.

**Children must be in schools - learning to think, explore, discover, question and acquire knowledge thereby enriching and liberating themselves, paving the path for future generations of children and in the process the entire nation. Children must be in schools and not at work for a more just society with equity and fairness leading to deepening democracy in our country.**

i Other laws on child labor are: Juvenile Justice (Care & Protection of Children) Act, 2000 (Section 26), Factories Act, 1948 (Section 67), Mines Act, 1952 (Section 40), Merchant Shipping Act, 1958 (Section 109) and Motor Transport Workers Act, 1961 (Section 21), The Children (Pledging of Labour) Act, 1933, Plantation Labour Act, 1951 (Section 2), Minimum Wages Act, 1948 (Section 2 (ii) (bb), Apprentices Act, 1961 (Section 3), Beedi & Cigar Workers (Conditions of Employment) Act, 1966 (Section 2 (b) & 24).

ii List of occupations and processes in which Child Labour is prohibited are: Occupations: (1)Transport of passengers, goods or mails by railways; (2) cinder picking, clearing of an ash pit or building operation in the railway premises; (3) work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from the one platform to another or in to or out of a moving train; (4) work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines; (5) a port authority within the limits of any port; (6) work relating to selling of crackers and fireworks in shops with temporary licenses; (7) abattoirs/Slaughter House; (8) automobile workshops and garages;(9) foundries;(10) handling of toxic or inflammable substances or explosives; (11). handloom and power loom industry; (12) mines (underground and under water) and collieries;(13) plastic units and fiberglass workshops; (14) domestic workers or (15) servants and (16) dhabas (roadside eateries), restaurants, hotels, motels, tea shops, resorts, spas or other recreational centers.

Processes (1) Beedi - making. (2) carpet - weaving. (3) cement manufacture, including bagging of cement. (4) cloth printing, (5) dyeing and weaving.(6) manufacture of matches, explosives and fireworks, (7) mica - cutting and splitting,(8) shellac (9) manufacture.(10) soap manufacture. (11) tanning. (12) wool - cleaning. (13) building and construction industry.(14) manufacture of slate pencils (including packing). (15) manufacture of products from agate. (16) Manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos. (16) "hazardous processes" as defined in Sec. 2 (cb) and "dangerous operation" as noticed in rules made under section 87 of the Factories Act, 1948 (63 of 1948). (17) Printing as defined in Section 2(k) (iv) of the Factories Act, 1948 (63 of 1948). (18) Cashew and cashewnut descaling and processing. (19) Soldering processes in electronic industries. (20) 'aggarbatti' manufacturing. (21)Automobile repairs and maintenance including processes incidental thereto namely, welding, lathe work, dent beating and painting. (21) brick kilns and roof tiles units. (22) cotton ginning and processing and production of hosiery goods. (23) detergent manufacturing.(24)fabrication workshops (ferrous and non ferrous) (25) gem cutting and polishing. (26) handling of chromite and manganese ores. (27) jute textile manufacture and coir making,(28) lime kilns and manufacture of lime.(29) lock making. (30) manufacturing processes having exposure to lead such as primary and secondary smelting, welding and cutting of lead-painted metal constructions, welding of galvanized or zinc silicate, polyvinyl chloride, mixing (by hand) of crystal glass mass, sanding or scraping of lead paint, burning of lead in enameling workshops, lead mining, plumbing, cable making, wiring patenting, lead casting, type founding in printing shops. store typesetting, assembling of cars, shot making and lead glass blowing. (31) manufacture of cement pipes, cement products and other related work. (32) manufacture of glass, glass ware including bangles, florescent tubes, bulbs and other similar glass products. (33) manufacture of dyes and dye stuff. (34) manufacturing or handling of pesticides and insecticides.(35) manufacturing or processing and handling of corrosive and toxic substances, metal cleaning and photo engraving and soldering processes in electronic industry.(36)manufacturing of burning coal and coal briquettes.(37) manufacturing of sports goods involving exposure to synthetic materials, chemicals and leather. (38) moulding and processing of fiberglass and plastic. (39) oil expelling and refinery. (39) paper making. (40) potteries and ceramic industry. (41) polishing, moulding, cutting, welding and manufacturing of brass goods in all forms. (42) processes in agriculture where tractors, threshing and harvesting machines are used and chaff cutting.(43) saw mill – all processes. (44) sericulture processing. (45) skinning, dyeing and processes for manufacturing of leather and leather products.(46) stone breaking and stone crushing. (47) tobacco processing including manufacturing of tobacco, tobacco paste and handling of tobacco in any form. (48) tyre making, repairing, re-treading and graphite beneficiation. (49) utensils making, polishing and metal buffing. (50) 'zari' making (all processes)'. (52) electroplating; (53) graphite powdering and incidental processing; (54) grinding or glazing of metals; (55) diamond cutting and polishing; (56) extraction of slate from mines; (57) rag picking and scavenging.

iii The Act is informed by the Gurupadha Swamy Committee, 1979 Recommendations

iv Based on evaluation of the INDUS project which is a US\$ 40 million project has been jointly initiated by the Government of India and the US Department of Labour. It aims at eliminating child labour in 10 hazardous sectors across 21 districts in five States namely, Maharashtra, Madhya Pradesh, Tamil Nadu, Uttar Pradesh and NCT of Delhi. This project, popularly known as INDUS, is being implemented by ILO.

v DISE, NUEPA, 2007; Seventh All India Educational Survey, NCERT; Also see Public Report on Basic Education (PROBE), New Delhi : Oxford University Press, 1999

ix Burra et al (2007) Born Unfree: Child Labour, Education and the State in India, New Delhi ; Oxford University Press.

x. Once in school children's survival in the school system until they finish class 10 is precarious. There are several structural reasons for older children being pushed out. There are just not enough upper primary and high schools. The system is

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structured on the premise that almost 1/3<sup>rd</sup> of children entering primary school will drop out before they reach upper primary and another 1/3<sup>rd</sup> before they reach high school and so on. Thus if 100 children join in class one only ten of them are able to reach up to class 10. 54.6% children (56.9 girls) drop out before they complete class 8 and 66% (68.6% girls) drop out before they reach class 10. These percentages are appallingly low in tribal areas, backward districts and among the Scheduled Castes and Scheduled Tribes.

<sup>viii</sup> Indeed Ambedkar clearly argued that with the provision that 'is made in article 18 to forbid any child being employed below the age of 14.... Obviously, if the child is not to be employed below the age of 14, the child must be kept occupied in some educational institution. That is the object of article 36, and that is why I say the word "primary" is quite inappropriate in that particular clause and I therefore oppose his amendment.' After sixty years of independence it is necessary to revise Ambedkar's view of the age at which child labour can be tolerated. There has been tremendous change in circumstances since then. Children today need at least 12 years of continuous education and complete secondary school in order to be prepared for a world of market and opportunities.