

RAID AND RESCUE: WILL THAT BE ALL?

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INTRODUCTION

Twenty years ago, amidst much activism for child rights, the Government of India passed the Child Labour (Prohibition and Regulation) Act banning child labour in several sectors labeling them as hazardous. The obvious answer to the obvious question is – No, the Act did achieve its objective of ___ child labour in the hazardous sectors. India continues to employ the largest number of child workers in the world. While official reports peg the number at 12.7 million, unofficial sources estimate the number to be over 14 million!¹ This paper tries to examine the reasons for the limited success of child labour eradication measures in India and suggests alternative strategies to combat the problem. The law, the implementation and rehabilitation - the principal facets of any anti child labour operation - mark the three broad divisions of this paper. Part I examines the law as it exists, revealing its shortcomings and suggesting amendments essential in light of international obligations as well as an obligation towards children. Part II discusses the aspect of implementation and emphasises the importance of developing creative methods of implementation, especially in light of invisibility of child workers. Part III studies the aspect of Rehabilitation, which is the key element in implementation of anti child labour measures. Finally, Part IV discusses strategies that should inform any future action in the area of child labour. The researchers have obtained inputs from all important parties in the issue of child labour - victims, NGOs and state actors.

1. THE LAW

The international standard in the elimination of child labour was set in the year 1999 when the ILO Member States unanimously adopted the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No. 182) [hereinafter “Worst Forms of Child Labour Convention”] at the 87th annual International Labour Conference. This Convention prohibits the following categories of child labour terming them “worst forms of child labour” which should not be tolerated by any country – (a) slavery (and all its forms), debt bondage, serfdom and forced or compulsory labour (b) child prostitution or pornography (c) production or trafficking of drugs and (d) work likely to harm the health, safety or morals of children.² It further provides that “work likely to harm the health, safety or morals of children” should be determined by national legislations drafted

¹ Parul Sharma, *Child Labour and Cultural Relativisms*, 3 COMBAT LAW 23 (April-May 2001).

² ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 17th June, 1999, art. 3 [hereinafter “Worst Forms of Child Labour Convention”]

in consonance with international standards such as the Worst Forms of Child Labour Recommendation, 1999.³

The standard adopted by the Indian Constitution as well as the Child Labour (Prohibition and Regulation) Act, 1986, (hereinafter “CLPRA”) the principal legislation on child labour in India, departs from the international standard in two respects. Firstly, it makes an ambiguous distinction between hazardous and non-hazardous forms of labour, bringing some of the “worst forms of child labour” under the ambit of “non-hazardous” employment.⁴ Secondly, it permits children to engage in hazardous/worst forms of child labour from the age of 14, as opposed to the minimum age requirement of 18 years prescribed by the Convention.

Article 24 of the Constitution of India prohibits employment of children below the age of fourteen years in any factory, mine or any other hazardous employment.⁵ The Constitution, by distinguishing between hazardous and non-hazardous activities, in effect, permits children below the age of fourteen to practice certain kinds of labour. The CLPRA reiterates the stance adopted by the Constitution and attempts to define the term “hazardous”.⁶ The problem lies in the fact that this definition attempts to lay down an exhaustive list of physically hazardous activities rather than adopting an inclusive definition to give effect to the spirit of the Worst Forms of Child Labour Convention. According to the World Health Organisation, what makes child labour “hazardous” is the presence of hazards and risks at the workplace (such as the presence of chemicals, noise, ergonomic risks like lifting heavy loads etc) and working conditions (long hours, nightwork, harassment).⁷ This view, however, does not find acceptance in Indian law. The CLPRA, in its attempt to define the term “hazardous”, draws out a list of activities and processes in which employment of children below the age of fourteen is barred. Occupations such as rag-picking and sewer-cleaning⁸ which can have potentially deleterious effects on the physical and

³ Worst Forms of Child Labour Convention, 17th June 1999, art. 4.

⁴ For instance, rag picking, sewer cleaning etc, which can make children susceptible to several health hazards, are not categorized as “hazardous”.

⁵ CONSTITUTION OF INDIA, art. 24 - Prohibition of employment of children in factories, etc. — No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

⁶ Child Labour (Prohibition and Regulation) Act of 1986, §3 - Prohibition of employment of children in certain occupations and processes – No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on.

⁷ WORLD HEALTH ORGANISATION, Hazardous Child Labour, <http://www.who.int/ceh/risks/labour/en/index.html> (last visited July 29, 2008).

⁸ Rajyasri Rao, *India 'losing' child-labour battle*, available at news.bbc.co.uk/2/hi/south_asia/1970708.stm (last visited July 28, 2008).

mental health and well being of children, and can be classified as “Worst Forms of Child Labour Convention are not regarded as “hazardous” under the Indian law.

Recently, the hospitality and domestic work sectors have been brought within the ambit of “hazardous” employment under the CLPRA. On July 10, 2006, the Ministry of Labour and Employment, Government of India released a Notification expressing its intention of adding employment of children as domestic workers or servants and employment of children in *dhabas* (road-side eateries), restaurants, hotels, motels, tea shops, resorts, spas and other recreational centres, to the list of hazardous occupations and processes. This Notification came into effect on the 10th of October, 2006.⁹

Domestic child labour refers to the practice of engaging someone as domestic help, and is very common in urban India especially among the middle and upper middle income groups. A UNICEF survey conducted in India in 2000 revealed that almost one out of every five (20%) children under 14, working outside the family is a domestic child worker and nearly 80% of them are girls.¹⁰ A 2004 IPEC Report titled “Helping Hands or Shackled Lives” defines child domestic labour as situations where children perform domestic tasks in the home of a third party or ‘employer’ under exploitative conditions which could include long working hours, with no or little wages (below the minimum wage).¹¹ Children working as domestics are not only denied basic rights such as right to education and the right to avail basic health facilities, they are also subjected to physical and sometimes even sexual abuse. Owing to this, domestic child labour constitutes a worst form of child labour. The main problem is the invisibility of these child workers. They are invisible to their neighbours, to NGO activists and officials of the labour department attempting to rescue them, and to society at large.

Domestic child labour involves the transfer of children (most often girls) from rural areas to the city, by a relative or employment agency, in order to cater to the ever-increasing demand for domestic help in urban areas. Thus it can be categorised as a form of child trafficking.¹² Two common situations of

⁹ ILO, *Helping Hands or Shackled Lives*, available at http://www.ilo.org/public/english/standards/ipec/publ/download/cdl_2004_helpinghands_en.pdf, (Last visited July 26, 2008).

¹⁰ ILO, *Child Labour and Responses in South Asia*, available at <http://www.ilo.org/public/english/region/asro/newdelhi/ipec/responses/index.htm> (Last visited July 26, 2008).

¹¹ ILO, *Helping Hands or Shackled Lives*, available at http://www.ilo.org/public/english/standards/ipec/publ/download/cdl_2004_helpinghands_en.pdf, (Last visited July 26, 2008).

¹² According to the UN ODCCP Protocol to Prevent, Suppress, and Punish Trafficking in Persons, child trafficking is the recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of deception, of the abuse of power or of position of vulnerability or of the

trafficking have been observed. The first is where the parents are aware of their child's whereabouts and work, and the monthly wage earned by child is remitted back to the family in order to alleviate their poverty. The second, highly treacherous situation is where the child is brought to the city under the pretext of gaining a better education and subsequently sold to rich families. Most often the child is physically and emotionally abused. She remains unpaid, receiving basic necessities such as food, clothing and shelter in return for her services.

In November 2006, a month after the Notification came into effect, the researchers conducted a field study in Bangalore (Karnataka) with the aim of assessing the implementation of the law. It was observed that notwithstanding the Notification, instances of domestic child worker abuse continued unabated. In several cases, victims even complained of severe burn injuries¹³ and sexual abuse¹⁴.

Another sector which thrives on child labour in India is the hospitality sector. With particular reference to Bangalore, children are often found working in "Darshinis" - small to medium-sized restaurants selling south Indian delicacies at extremely affordable prices to all classes of people. For a child employed in a Darshini, the day begins at around 5-am, when he wakes up to clean the kitchen and put together the ingredients required for the day's preparations. This is followed by non-stop work, as customers keep pouring in. There are no shifts when it comes to children, and if lucky, the manager may permit a short lunch break. The day ends at around 11-00-pm, after the Darshini is cleaned up. The child gets no more than 5-6 hours of sleep a day and is forced to work seven days a week. Akin to the domestic sector, children in these restaurants are forcibly confined to the kitchen and therefore, tend to lead an invisible existence.

Such children are deprived of safety, which is a pre-condition for their normal growth and development.¹⁵ A child forced into an avocation at an early age is exposed to a wide range of dangerous situations (physical and sexual abuse, disease and hunger) and is also denied his right to education.

giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

¹³ Jayanti (12 years) and Chaitra (15 years) [names changed] had been rescued by an activist belonging to the non-governmental organization 'BOSCO', which runs a child helpline in Bangalore. In their testimony, the children stated that their employer inflicted burn injuries on them using a heated knife or iron spatula and that they were made to sleep in the bathroom with merely one bedsheet for protection.

¹⁴ Shashi [name changed] a 12 year old girl, was working in the house of a well respected government employee (employed with the Karnataka State Finance Corporation) despite the fact that the Karnataka Civil Service Rules regarded the employment of children, by a government employee, a severe misconduct. On examination it was also found that Shashi had over 30 bite marks all over her body!

¹⁵ *Child Abuse and the Impact of Poverty, Resources Aimed at the Prevention of Child Abuse and Neglect*, Agenda No. 33, RAPCAN THE POVERTY ISSUE, 43-48 (1997).

Children without education grow up to join the pool of illiterate labourers, thereby perpetuating the vicious circle of poverty and illiteracy.¹⁶ The researchers submit that any avocation that interferes with a child's right to education and exposes him to a range of risks is "hazardous", and should be declared unlawful. It is heartening to note that efforts in this direction are underway. The Working Children (Rescue, Rehabilitation and Welfare) Bill, 2006 seeks to abolish child labour of all forms and free children from the obligation of rendering work. Certain states have also played a pro-active role in combating child labour, for instance, the Goa Children's Act, 2003 is an exemplary legislation in the area of child rights, prohibits employment of children below the age of 14 in the state of Goa.

2. THE IMPLEMENTATION

Identifying and rescuing child labourers, especially those engaged in less visible work, can be a challenging task. The Karnataka police department, recognizing this problem, has facilitated the establishment of a Child Helpline – a telephone number which children, neighbours, bystanders and almost anyone can call to make a complaint or supply information about the existence of unlawful child labour. When there were parallel efforts to enable a much larger network of help lines, the Bangalore police cooperated in order to make possible the establishment of a national level child line.¹⁷ On receiving a complaint or any other information, a labour inspector¹⁸, along with certain voluntary workers with experience in the area of child rehabilitation proceed to the site of work to rescue the child labourer/s. Rescued children are then placed in certain shelter facilities before being produced before the Child Welfare Committee.

Post – rescue initiation of proceedings against the offender - the Child Welfare Committee

The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 makes it mandatory to have one Child Welfare Committee in each district.¹⁹ It is required to dispose of cases for the care,

¹⁶ *Child Labour - FAQ, Stop Child Labour – School is the best place to work, available at <http://stopchildlabour.concern.net/answers.php> (Last visited July 29, 2008).*

¹⁷ Childline Service1098 has responded to over 11 million calls from children who live and work in Mumbai , and has grown into a national child protection service that operates in 81 cities, *available at <http://www.childlineindia.org.in/1098/1098.htm>*

¹⁸ Appointed under Section 17 of the CLPRA. Section 17 - Appointment of Inspectors - The appropriate Government may appoint inspectors for the purposes of securing compliance with the provisions of this Act.

¹⁹ Juvenile Justice (Care and Protection) Act of 2000, §29 - Child Welfare Committee – (1) The State Government may, by notification in Official Gazette, constitute for every district or group of districts, specified in the notification, one or more Child Welfare Committees for exercising the powers and discharge the duties conferred on such Committees in relation to child in need of care and protection under this Act.

protection, treatment, development and rehabilitation of children in need of the same, and to provide for their basic needs and protection of human rights.²⁰

The CWC consists of one chairperson and four members of whom at least one shall be woman and another, an expert on matters concerning children. It functions as a Bench of Magistrates and has the powers conferred by the Code of Criminal Procedure, 1973.²¹ While there is no explicit mention of child labour in the Act, rescued child labour victims could be brought within the definition of “a child in need of care and protection”,²² specifically “a child used for unconscionable gains”. In order to facilitate the setting up of CWC’s in every district and to ensure their effective functioning, the Scheme shall provide adequate infrastructure and financial support to the State Government and Union Territory Administration.

3. REHABILITATION

While legislations can provide for the rescue of child labourers, it is upon the executive and the citizenry to ensure that the rescued children do not re-enter the rut of labour. The first step in this direction is to arrange for the re-integration of the child into the formal education system.

A child labourer may have dropped out of school for a good number of years, enough to make him feel alien in a regular school environment. Hence, it is important that he or she is sensitized to the schooling system through bridge courses provided at the National Child Labour Project (hereinafter “NCLP”) before being directly introduced into a regular school. Presently, children below the age of nine are directly placed in regular schools whereas it is mandatory for the older children to undergo the bridge course before they return to regular school.

NCLP schools have been set up under the National Policy on Child Labour which was formulated in 1987. They seek to impart formal as well as non formal education along with vocational training. In addition to

²⁰ Juvenile Justice (Care and Protection) Act of 2000, §2 - "child in need of care and protection" means a child - viii. who is being or is likely to be abused for unconscionable gains.

²¹ Juvenile Justice (Care and Protection) Act of 2000, §29 - Child Welfare Committee – (1) The State Government may, by notification in Official Gazette, constitute for every district or group of districts, specified in the notification, one or more Child Welfare Committees for exercising the powers and discharge the duties conferred on such Committees in relation to child in need of care and protection under this Act.

(5) The Committee shall function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class.

²² Juvenile Justice (Care and Protection) Act of 2000, §2 - "child in need of care and protection" means a child (viii) who is being or is likely to be abused for unconscionable gains.

this, the children are also supplied with a monthly stipend, supplementary nutrition and regular health check-ups, in an effort to prepare them for regular schooling.²³

The 9th five year plan of the Government of India approved 100 NLCP projects and also set up a project society in every District, which was assigned the task of enforcing child labour laws, encouraging non-formal and adult education, setting up special schools, generating public awareness and developing income and employment generation strategies.²⁴

An analysis of the 10th plan reveals a focused action plan to eliminate child labour in hazardous occupations by the end of the plan period, expansion of NCLP projects to an additional 150 districts, linking the elimination of child labour to various schemes such as *Sarva Siksha Abhiyan* (Universal Elementary Education)²⁵ and converging other schemes of Department of Education, Health, Women and Child Development and Rural Development in order to attain the objective of eradication of child labour. The 10th plan is indicative of a significant rise in the budgetary allowance to tackle this problem (Rs. 602 crores has been allotted under the 10th plan as opposed to the Rs. 178 crores that were set aside in the 9th plan).²⁶

NCLP Schools in Bangalore, Karnataka:

According to Mr. Chavan, NCLP Director, Bangalore, Karnataka, 40 schools have been sanctioned under the NCLP project in Karnataka. Presently, there are 38 schools, with a total strength of 1650 students. In order to ensure quality education, it has been stipulated that the NGO involved should have been registered for a minimum period of three years and should be actively involved in child welfare activities.²⁷ The NCLP provides five rupees a day for the nutrition of each child. The children are also provided with a stipend to make good the loss suffered due to the loss of job. This move however, has

²³ *Initiatives towards elimination of child labour – action plan and present strategy, available at <http://www.labour.nic.in/cwl/ChildLabour.htm>, (last visited July 24, 2008).*

²⁴ *Ibid.*

²⁵ Department of School Education and Literacy, *A Programme For Universal Elementary Education Framework For Implementation available at http://education.nic.in/ssa/ssa_1.asp (last visited July 24, 2008)*

²⁶ *Initiatives towards elimination of child labour – action plan and present strategy, available at <http://www.labour.nic.in/cwl/ChildLabour.htm>, (last visited July 24, 2008).*

²⁷ As told to the researchers by the NCLP Director in Bangalore, Karnataka, in their field study conducted in November, 2006.

met with widespread criticism, with activists arguing that the money will be better utilized if added to the nutrition allowance of the child.²⁸

The NCLP schools house children for a maximum time period of three years. A pre admission assessment is conducted where the capability and capacity of the child is gauged, after which, they are enrolled into an appropriate course. Children falling between the thirteen-fourteen age group are encouraged to take up courses in vocational training.²⁹ Children who are above the age of twelve and willing to join residential bridge courses are discouraged from doing so on account of the fact that they are too old to be in school.³⁰ It is necessary to note that children above the age of fourteen are not allowed to enroll into an education programme, instead, they are encouraged to opt for a vocational course. This is because the NCLP curriculum only extends upto the 10th standard, and does not provide for higher education. The researchers are of the opinion that there is a need to expand the NCLP curriculum to include higher education, thereby providing all children, an opportunity to study further. Although the right to education has been recognized by the Constitution of India, this right is age-restrictive in its application, in that it is the obligation of the State to provide free and compulsory education to all children falling between the ages of six and fourteen. Hence, children between ages fourteen to eighteen are excluded from the current scheme of the NCLP project. However, the researchers feel that fourteen as an upper age limit for education is exclusionary, when viewed in the context of development through education. Age fourteen, in India corresponds to a Grade Eight or Nine education, which is simply inadequate- the qualifications of a Grade Eight or Nine student is not sufficient to fight the vicious circle of poverty and child labour.

It is important to note that the root cause for child labour in most cases is poverty. An effective solution to the child labour problem lies not just in generation of educational opportunities but also in granting assistance to the family as a whole. Rescue of the children has to be coupled with incentives to their parents in order to decrease their reliance on child labour.

Child labour can only be tackled if the action-plan addresses aspects such as educational and training opportunities, stable incomes for the adults in the family, creation of awareness etc. It is seen that only

²⁸ As told to the researchers by the NCLP Director in Bangalore, Karnataka, in their field study conducted in November, 2006.

²⁹ As told to the researchers by the NCLP Director in Bangalore, Karnataka, in their field study conducted in November, 2006.

³⁰ Shanti Sinha, *Getting Children into School: Flexibility is the key*, available at <http://www.mvfindia.in/documents/articles/GETTING%20%20INTO%20SCHOOL.pdf> (last visited July 25, 2008).

such comprehensive projects stand a chance of success. The NCLP scheme takes a step in this direction, not just by providing educational opportunities to 'rescued' children, but also by focusing on the family of the child in question, gauging their financial background, and then encouraging the establishment of a self-help group or referring them to various schemes such as IRDP (Integral Rural Development Programme), TRYSEM (Training For Rural Youth for Self-Employment), Nehru Rojgar Yojana, National Rural Employment Guarantee Act (NREGA) etc, which are aimed at poverty alleviation. NCLP recognizes the root cause of child labour to be poverty, and hence endeavours to help the parents of these children face the crisis of a financial strain.

At this juncture, it is necessary to mention the importance of the role played by *panchayats* (local governments at the village level) in the implementation of various schemes, focused towards eradication of child labour. Considering the number of programs and self help groups that have been advocated by the Government in an effort to rid of this problem, the need for the involvement of the local body heads cannot be undermined – There has to be a consolidated effort at every level, even at the grassroots, to arrive at a fruitful result.³¹

NCLP provides funding to these schools only if they comply with certain conditions. Schools can claim a total of Rs. 2, 44, 000 per year. Schools that do not meet the prescribed standards are derecognized. Most often, derecognized schools are ones with very poor attendance.

NCLP project has restored trust in the schooling system for many a child labourer, who traditionally associated schools with abusive teachers, bad teaching, or no teaching at all. Many feel their dreams of a higher education and a better future may actually become a reality, while others wish to pursue vocational training. The view held most often is that while education ensures financial stability, the process is too long drawn and expensive. Hence, they prefer acquiring skills such as tailoring, carpentry, electronics and computer training which guarantee a decent livelihood. The researchers however, submit that given the importance of education and the consequent promise of a better future, rescued children (even above the age of fourteen) should be included within the educational scheme of the NCLP

³¹ *Help Govt. in rehabilitation of child labour, local bodies told*, THE HINDU, Mar 3, 2004, available at <http://www.hindu.com/2004/03/03/stories/2004030305130300.htm>,

schools, so that should they choose to pursue higher education in future, they would be able to cope with mainstream schooling system.³²

For a child to stay in school, school has to be made an attractive option. While there are some well equipped NCLP schools like APSA, there are also a fair share of schools with no infrastructure at all. For instance, one such school was so lacking in infrastructure that all it consisted of was a building of three small rooms, for a school which must have housed a minimum of thirty students. A lot is left to be desired of. However, this can happen only through funds, which never happens to be enough.³³

The midday meal scheme which usually serves as a measure that attracts more participation has severe problems in implementation,³⁴ despite the Apex court of India issuing guidelines enforcing the same³⁵ . The Government will have to make efforts to revamp the education system in these schools and ensure that the children in these schools undergo a wholesome learning experience.

Child Tracking

Child tracking enables regular monitoring of rescued child labour victims. It is aimed at ensuring that the victim does not return to the labour force after the rehabilitation process. In order to be successful, it requires an accurate collation of child-related data in a centralized depository.³⁶

UNICEF has developed a new software to track the progress of rescued child labourers.³⁷ This software maintains a record of child labourers sent to bridge schools, the number later enrolled into regular

³² Information obtained during field research from rescued child labourers housed in NCLP schools in Bangalore such as Association for the Promotion of Social Action (APSA), Baduku Trust, Excellence School, Bismillah Nagar etc.

³³ As observed by the researchers in the field trip to some of the NCLP schools in Bangalore-Rural, Karnataka, in November, 2006.

³⁴Shantha Sinha, *Mid day Meal Scheme and Schools –A Need for Universal Coverage* (2004), available at http://www.righttofoodindia.org/data/shanta_sinha_mdm.doc - Thus as of now there are only 50 million children who avail of the opportunity for the mid-day meal scheme and about 150 million children in the 5-14 age group are not being covered under this programme. It is estimated that the overall coverage of the scheme as of January 2004, is only in half of India's 31 states, with seven states with an aggregate of 400 million population not implementing the scheme so far despite the Supreme Court order. It is being implemented fully in the states of Gujarat, Kerala, Rajasthan and Tamil Nadu and in substantial parts of other states including Karnataka, Madhya Pradesh, Maharashtra and West Bengal, partially in Chattisgarh, Delhi, Orissa, and Punjab, but not at all in Assam, Bihar, Jharkhand, Uttar Pradesh and Haryana (Third Report of the Commissioner, May 1st, 2003).

³⁵ Peoples Union for Civil Liberties versus Union of India & Ors, Writ Petition (Civil) No. 196 (2001) - The Court issued guidelines seeking the implementation of the midday meal scheme.

³⁶ BASIC/Child Tracking, available at <http://www.ilpnet.org/node/372> (last visited July 29, 2008).

schools, their attendance and academic performance, scholarship details and their access to other basic requirements. A follow up on reasons for problems are also documented.³⁸ Karnataka currently uses the software on a trial basis in at least four districts, namely, Bangalore (urban), Bangalore (rural), Gulbarga, and Dharwad.³⁹

An effective rehabilitation and follow-up programme is absolutely essential to tackle child labour. When the child and the family are 'rescued' and then left to fend for themselves, they are left with no alternative but to re-enter the labour-force. Mouths have to be fed, and hence, hands have to work. Children therefore, work once again, their thoughts of a rescue leading to a better livelihood, shattered.

4. The Way Forward – An Inter-departmental Approach

A Model Rehabilitation Legislation

The Goa Children's Act passed in 2003, is a unique legislation in terms of its holistic approach in dealing with child rights issues. It deals with varied aspects of child rights and looks at their interaction with the law as victims, be it abuse, exploitation, education, nutrition and health. The definition of 'child in need' expressly recognizes a child labourer to be inclusive in it⁴⁰. The Act recognizes all the necessary rights in accordance with the Convention of Rights of Child. It lays specific emphasis on education, health, and children's homes and provides a wide definition to the term 'child labour', which is inclusive of both hazardous and non- hazardous sectors. Section 7 (2) c of the Act specifically takes cognizance of the domestic labour– even part time domestic work. The Act distinguishes between hazardous and non-hazardous sectors, and makes child labour punishable, regardless of the sector it falls under. It lays

³⁷ Staff Reporter, *Child tracking programme to prevent child labour soon*, THE HINDU, Thursday July 31, 2008, available at <http://www.thehindu.com/2008/07/31/stories/2008073151110200.htm> (last visited July 31, 2008); *Child Tracking System on Cards*, DECCAN HERALD, July 31, 2008, available at www.deccanherald.com/Content/Jul312008/state2008073181947.asp (last visited July 31, 2008).

³⁸ As told to researchers by Ms. Suchitra Rao, UNICEF Co-ordinator for the Domestic Child Labour Elimination Project, in November, 2006.

³⁹As told to researchers by NCLP Director, Bangalore.

⁴⁰ Goa Children's Act of 2003, §2 (I) (i) Child in need of care and protection and juvenile in conflict with law as defined in the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000); "Child labour" means all forms of labour involving children below the age of fourteen.

down a blanket compensation of Rs 50,000 for violations in the hazardous sector and Rs 25,000 for the non hazardous sector.⁴¹ Domestic labour is given a blanket compensation of Rs 50,000.

The practice with respect to compensation of child labour victims is that the labour department of the Government is in charge of calculating of wages and corresponding compensation. The CLPRA focuses on the offender, providing for an imposition of fine or imprisonment.⁴² It does not contain any provision mandating the payment of compensation to the victim. Thus it is submitted that the CLPRA should be amended to give courts the power to order payment of compensation to the victim of child labour under the CLPRA is the need of the hour.

Legislations in the making

⁴¹ Goa Children's Act of 2003, §7. Child Labour -

(5) The punishment for violation of the provisions of this Section shall be as under:-

(a) for all forms of hazardous employment, a fine of Rs. 50,000/- (Rupees fifty thousand only) with simple imprisonment of one year for the employer;

(b) for all forms of non-hazardous employment, a fine of Rs. 25,000/- (Rupees twenty five thousand only) and simple imprisonment of three months for the employer;

(c) for all forms of domestic labour, a fine of Rs. 50,000/- (Rupees fifty thousand only) for the person employing the domestic child labour.

(6) The State shall formulate a comprehensive Plan of Action to eradicate all forms of Child Labour within a period of two years from the commencement of this Act. The Plan shall include schemes for the identification, release and rehabilitation of the child labourers, their education, integration into society and imparting skills and vocational training to them and for the prevention of child labour.

(7) The Plan of Action shall be implemented phase-wise over this period of 2 years and the Government shall specify the dates from which each of the penal action in sub-section (5) above shall be effective and full publicity to this shall be given by the Director.

(8) There shall be a Child Labour Vigilance Officer in each Taluka to monitor the implementation of the Plan of Action to eliminate child labour, and to carry out such other duties as the Government may specify. The Officer shall be assisted by a Task Force of such other persons as may be prescribed.

(9) Trafficking in Children for the purposes of employment shall be prohibited under this Act. Any person who employs, aids or abets in the trafficking, including by employment of such trafficked children shall be penalised with a fine of Rs. 50,000/- and/or imprisonment of either description of not less than three months.

⁴² Child Labour (Prohibition and Regulation) Act of 1986, §14 – Penalties - (1) Whoever employs any child or permits any child to work in contravention of the provisions of Sec. 3 shall be punishable with imprisonment for a term which shall not be less than, three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

(2) Whoever, having been convicted of an offence under Sec. 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

(3) Whoever - (a) fails to give notice as required by Sec. 9, or

(b) fails to maintain a register as required by Sec. 11 or makes any false entry in any such register; or

(c) fails to display a notice containing an abstract of Sec. 3 and this section as required by Sec. 12; or

(d) fails to comply with or contravenes any other provisions of this Act or the rules made there under, shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

Recent times have seen the introduction of a Working Children's Bill which does not seem to draw a distinction between hazardous and non-hazardous industries and edges towards what could prove to be a comprehensive action plan for child labor victims. The concise bill aims at rescue and rehabilitation offering the children free food, clothing, boarding, lodging and medical care.⁴³

The need for an exclusive body that deals with the post rescue hurdles

The Goa Children's Act, 2003 provides for the establishment of a specific "children's court" to deal with "all offences against children whether specified in the act or not".⁴⁴ It also effectively tackles the issue of implementation by appointing a child labour vigilance officer in each *taluk* to manage the Plan of Action to eliminate child labour within his designated area.⁴⁵

The Competent authority (Secretary in charge of the Department of Women and Child Welfare) under this Act is allowed to enter and inspect any premises for the purpose of enforcing the provisions contained in this Act including removal of a child from such premises.⁴⁶

There have been efforts by the legislature with regard to considering the possibility of a 'children's court' as well. For example, the National Commission for Children Bill considered the establishment of a Children's Court⁴⁷ to enforce speedy trial of offences against children or of violation of children's rights, in each district.

⁴³ Working Children's Bill, § 4 - Survey, enumeration and rescue of working Children - The working children rescued under sub-section (2) shall be lodged in shelters established by the appropriate Government for rehabilitation of such working children where such children shall be provided the following facilities, namely:—

- (a) free food, clothing, boarding, lodging and other necessities of daily life;
- (b) free medical care; and
- (c) such other facilities as may be prescribed.

⁴⁴ The Goa Children's Act of 2003, §30 - Jurisdiction of the Children's Court -

- (1) Subject to the provisions of this Act, the Children's Court shall have jurisdiction to try all offences against children whether such offence is specified under this Act or not;
- (2) The quorum for the proceedings of the Children's Court shall be the President and one Jury Member;
- (3) The powers of the Competent Authority and the Special Officers under this Act shall not fall within the jurisdiction of the Children's Court.

⁴⁵ The Goa Children's Act of 2003, § 7 (8) - There shall be a Child Labour Vigilance Officer in each Taluka to monitor the implementation of the Plan of Action to eliminate child labour, and to carry out such other duties as the Government may specify. The Officer shall be assisted by a Task Force of such other persons as may be prescribed.

⁴⁶ The Goa Children's Act of 2003, § 15 (4) - The Competent Authority or any Special Officer may enter and inspect any premises for the purpose of enforcing any of the provisions contained in this Act including removal of a child from such premises.

⁴⁷ National Commission for Children Bill - § 29 - Children's Courts - For the purpose of providing speedy trial of offences against children or of violation of children's rights, the State Government may, with the concurrence of

There are several cases which have been noted by the researchers, wherein abuse has been prevalent amongst child labourers in the domestic sector. Such cases need to be handled in a delicate manner, such that least discomfort is caused to the victim at hand. These instances have led to incidents where the Child Welfare Committee, in addition to the normal wages that are computed, has also calculated exemplary damages and additional rehabilitation measures are also taken into account. It is submitted that there should be a structural framework that is transparent in its operation. Each function of the organ should be specifically delegated.

The Child Welfare Board has to deal with several forms of child rights violations. Thus, it may be necessary to establish a body that is empowered to specifically deal with child labour. In order to be able to comprehensively deal with the situation it becomes necessary to have a single window system that would deal with all issues simultaneously. There are aspects of compensation that need to be dealt with. Further there is also a need to examine child abuse violation – wherein there is a need to facilitate better rehabilitation through counselling as well. The *Sarva Siksha Abhiyan* programme must operate in conjunction with the NCLP to devise a plan tailored to each child's learning capacity, age and other such important parameters.

There is a need for massive restructuring with respect to channels of implementation. There is a need for decentralisation of responsibilities. One manner of doing so could be involving individuals at the local self government (*Panchayat*), Municipal Ward and Council levels. For example, the Right to Education Bill instates School Management Committees to monitor the progress of the goals of the Act. This ensures monitoring at the grass-root level in order to ensure that the lofty goal of universal education is achieved.

Identification and rescue is only the first step in the larger goal that is the implementation of anti- child labour measures. What needs to come into force is a multi-tiered rehabilitation system that weeds out

the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Children's Court to try the said offences.

Provided that nothing in this section shall apply if –

- (a) a Court of Session is already specified as a special court;
- or
- (b) a special court is already constituted, for such offences under any other law for the time being in force.

§ 30 - Special Public Prosecutor - For every Children's Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

the root causes of child labour. Raid and rescue without a stringent follow up procedure could end up being a regressive measure.

Further it becomes necessary to question the imposition of a fine as punishment to discourage child labour. It has been noticed by the researchers, that there is a departure from legislative guidelines and the practice seems to be more in the nature of awarding compensation to the victims, than imposing a fine. It is submitted that the latter would be a more beneficial to the victim. There is a requirement for specific legislative guidelines in this regard in order to enforce a much needed standardised procedure, to limit the scope for administrative confusion.

Rescue of victims of child labour serves as a connect between the state and a large and usually invisible section of the population, which is in need of upliftment. Poverty is a direct cause, and therefore this is an arena wherein outreach is necessary as well as possible. Poverty alleviation should be integrated into the rehabilitation programme. It needs to be understood, that rescue alone will not suffice. When the child and the family are simply 'rescued' and then left to fend for themselves, they are left with no option but to re-enter the work force. Hence, the need for a comprehensive programme which not only focuses on the educational aspect but gives ample importance to the need for financial assistance that the child's family would require to support his education after the special school programme, cannot be undermined. The crux of the problem lies in two aspects so interconnected, that it is difficult to identify whether it is the lack of education that is contributing to the rising poverty levels, or vice-versa. Taking note of the circular fashion in which this problem seems to thrive, the researchers submit that it is simply impossible to adopt a linear approach towards the solution. The issue demands an inter-departmental approach. Education does not hold the promise of better wages alone, it is a tool of empowerment which enables one to make an informed choice. Such empowerment is at the very heart of the movement towards the eradication of systemic, institutionalized deprivation that manifests itself in child labour.