

Comments of Ministry of Labour & Employment on the Draft Recommendations of the National Advisory Council on Social Protection on Abolition of Child Labour.

The comments of Ministry of Labour & Employment on the draft recommendation of National Advisory Council (NAC) on Social Protection on Abolition of Child Labour are as follows :

I. Child Labour for children between the age of 0-14 should be prohibited:

At present the Child Labour (Prohibition & Regulation) Act, 1986 prohibits the employment of children below the age of 14 years in hazardous occupations and processes and regulates the working condition of children in non-hazardous occupations/processes. Thus children below 14 years are not prohibited from working. Their working conditions are to be regulated under the Child Labour (Prohibition & Regulation) Act. The present position is based on the recommendation of Gurupadswamy Committee and the Child Labour Policy 1987 which was enunciated thereafter. The reason is that the Child Labour is a socio-economic problem and it cannot be eliminated by legislation alone. For eradicating child labour we need to address poverty. Therefore, child labour has been prohibited in hazardous occupations only.

Gurupadswamy Committee had also differentiated between child labour and child work. It was felt that prohibiting child labour in non-hazardous occupations would hinder the process of passing of skills in traditional industries from one generation to another generation.

ILO has adopted Convention 138 which mandates that the age of entry to employment should not be less than the age of compulsory education. That means as per Convention 138, the age of entry to any employment in India should be 14 years. Out of 182 ILO Member States, 161 countries have so far ratified Convention 138. India is one of the countries which has so far not ratified Convention 138.

Government of India's stand so far has been that we follow the sequential approach by initially prohibiting employment of children in hazardous work. Banning all the children below 14 years from employment is a very sensitive issue keeping in view the socio-economic condition of the country. Though there are no statutory restrictions of children working after school, we need to strive towards abolition of child labour below the age of 14 years. However, we feel that on such a sensitive issue a decision need be taken after arriving at a national consensus. The Ministry has already constituted an Inter-Ministerial Group for exploring the possibility of ratification of ILO Convention 138 which prohibits the minimum age of entry of employment i.e. 14 years. We have also circulated the recommendations of NAC to all the State Governments for their views. It would be appropriate if a decision on this be taken after a broad national consensus.

II. Under no circumstances whatsoever, should parents and guardians of children be punishable under this Act:

The Ministry of Labour & Employment agrees to it.

III. There should be no bar on children helping their families after school hours and in locations, in fields, in home-based work, forest gathering and vending.

The Ministry of Labour & Employment agrees to it.

IV. The distinction between prohibited and regulated occupations and processes should be retained in the CLA only so as to regulate work performed by children between the ages 15-18 in non-hazardous occupations and processes.

The present position is that under the Child Labour (Prohibition & Regulation) Act, children below 14 years are prohibited to work in hazardous occupations and they are regulated to work in non-hazardous occupations. It has been proposed by NAC Working Group that all children below 14 years be prohibited from working and children between the age of 15 years to 18 years be regulated to work in non-hazardous occupations. By implication it means that the age of the child be increased to 18 years and then a categorization be done for hazardous and non-hazardous occupations keeping cut-off point at 14 years. This would require a

change in the definition of the child, amendment in the Child Labour (Prohibition & Regulation) Act and other Acts like Factories Act, Plantation Act, Minimum Wages Act, Transport Act, etc.

The Constitution of India mentions that the State shall strive to provide free and compulsory education to children below 14 years. The framers of the Constitution while fixing 14 years age would definitely have the socio-economic condition of the country in mind. This has been repeated in a number of Acts like Child Labour (Prohibition & Regulation) Act, Factories Act, Minimum Wages Act, Plantation Act, Bonded Labour Act, etc. We cannot wish away the socio-economic conditions and the poverty aspect of the country while putting restrictions on the employment of children. Even ILO Conventions 138 and 182 do not impose any restrictions on working of children between 15 to 18 years in non-hazardous occupations. In fact Section 7 of ILO Convention 138 permits occupation of children upto 13 years in light work if national law so permits.

Moreover the NAC proposal talks of RTE as justification for prohibition of child labour. However RTE is only upto 14 years. There does not appear to be any justification of extending the restrictions to 18 years if age of compulsory education is not extended to 18 years.

We do not feel that the age of the child should be increased to 18 years at present because it would have huge socio-economic implications. Since the implementation of the Child Labour (Prohibition & Regulation) Act is with the State Governments, they need to be consulted on this issue. The issue of increasing the age of the child from 14 years to 18 years was discussed in the meeting of the Central Monitoring Committee in 2007 which was attended by 19 State Governments. The State Governments intimated that they would not be in a position to support the raising the minimum age to 18 years. We have already moved a Cabinet Note for prohibition of persons below 18 years in hazardous occupations. There we have proposed that adolescents (15 years to 18 years) be also prohibited along with children in hazardous occupations. However, keeping the above factors in view,

we feel that at present we should not regulate the conditions of work of occupation of persons between 15 years to 18 years.

V. The overall responsibility for implementation of the Act should vest with the District Magistrate and the subordinate executive magistracy.

The Ministry of Labour & Employment has no objection.

VI. The administrative framework of the Act should be split between monitoring and inspections on the one hand, and rehabilitation related functions on the other. The task of monitoring and inspections are best location in the Labour Department, as it has a well developed administrative machinery to perform this task. However, it should establish a Task Force to help guide and monitor its work, with representatives of labour unions, educationists and child rights activist. In high child labour districts, full day child care centres could be advanced. The task of rehabilitating laboring children is entrusted to HRD and WCD, under the leadership of the District Collector, as these are more likely to bring the relevant sensitivities and experience required for the task of rehabilitation.

The proposal of Working Group of NAC is two-fold – monitoring and inspection should be with the Ministry of Labour, however, rehabilitation should be left to HRD/WCD under District Magistrate.

The Ministry of Labour is already involved in monitoring and inspection of child labour. As far as the Task Force comprising of labour unions, educationists and child rights activists are concerned, we already have a Central Advisory Board comprising of tripartite partners, NGOs and civil society activists.

Regarding rehabilitation, Ministry of Labour & Employment is running a National Child Labour Project (NCLP) Scheme. The NCLP scheme envisaged project based action in the area of high concentration of child labour. The NCLP schools targeting the children withdrawn from hazardous occupation in the age group of 9 to 14 years with the aim of mainstreaming them within a maximum period 3 years of formal school or linking them with effective vocational training. Further, the NCLP scheme is an outcome of National Policy on child labour which was announced in 1987 in fact, a major thrust to the NCLP programme came with the landmark

judgment of Hon'ble Supreme court in 1996 which gave certain directions regarding the manner in which the children working in the hazardous occupations are to be withdrawn from work and rehabilitated. As a consequence of Supreme Court judgment and in keeping with National Policy on child labour, the NCLP scheme was expanded to 271 districts.

As per the Right to Education Act, there is a provision of special schooling for ensuring age appropriate admission to the children. NCLP schools are running as special schools for ensuring age appropriate admission to children in normal schools. We feel that inspection and rehabilitation are an integrated process and separating the two wings may create co-ordination problems. Hence NCLP schools may continue to be run by Ministry of Labour & Employment as per the provisions of RTE Act.

VII. Offences under the CLA should be made cognizable and penalties for violation of various offences under the CLA be made more stringent than they are at present.

At present the premises are raided by the Inspectors and based on the inspection regarding child labour FIRs are lodged. If we make it non-bailable and cognizable it would lead to a lot of harassment especially of poor people because child labour is a problem affecting the poor segments of society. As per the proposal of NAC, all out of school children are to be treated as child labour. However, Right to Education Act does not have any penal provisions. It is not clear whether in that case FIR would be lodged against out of school children under Child Labour (Prohibition & Regulation) Act and would it not be against the provisions of Right to Education Act. We do not feel that the offence should be made cognizable. However, we feel that the views of State Governments also be taken before taking a final view.

VIII. A more sensitive and child-supportive programme for rehabilitation of released child workers, and for child workers in most difficult circumstances like children of migrant labour, children subjected to bondage and trafficking and street children should be developed.

Ministry of Labour & Employment agrees to it.

We have already circulated the recommendations of NAC Working Group to State Governments but we have not received their comments. A final view may be taken after receiving their comments.
