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The New Child Labour Law in India: Some Limits to Legal Solutions to a Structural Problem

The Child Labour (Prohibition & Regulation) Amendment Bill of 2012 was passed in Lok Sabha on 26 July 2016 amidst deep controversies surrounding the Bill. The new Child Labour (Prohibition and Regulation) Amendment Act of 2016 aims at amending the existing Child Labour Act of 1986, which prohibits the employment of children below the age of 14 years in certain types of occupations and regulates the working conditions in several others. It seeks to forbid employment of children below 14 years in all occupations except where they help their families in their free time, as well as to outlaw the employment of those between the age group of 15 to 18 years in certain hazardous occupations. On one hand, the amended Act balances the need for basic income with the need for an extra income, and on the other, it underestimates the adverse consequences of child labour for poverty alleviation in India.

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Introduction and Background

The Child Labour (Prohibition and Regulation) Amendment Bill, 2012 was introduced in Parliament in 2012 by the former Minister of Labour and Employment, Mallikarjun Kharge².

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² Prsindia.org. (2016). PRS | Bill Track | *The Child Labour (Prohibition and Regulation) Amendment Bill, 2012*. [online] Available at: <http://www.prsindia.org/billtrack/the-child-labour-prohibition-and-regulation-amendment-act-2012-2553/> [Accessed 10 Oct. 2016].

In May 2015, the Union Cabinet under Prime Minister Narendra Modi, sanctioned the amendments made to the Child Labour (Prohibition & Regulation) Amendment Bill, 2012, and on 26 July 2016, this bill was passed in Lok Sabha following a heated discussion in Parliament. The Child Labour Amendment Act, 2016, aims at altering the existing Child Labour (Prohibition & Regulation) Act, 1986, which prohibits the employment of children below the age of 14 years in certain types of occupations such as automobile repairing, bidi-making, carpet weaving, mining and domestic work, as well as regulates the working conditions in other occupations.

In light of the Right to Education Act of 2009, which is meant to ensure free and compulsory education to all children between the ages of 6 years and 14 years, the amended Act seeks to forbid employment of children below 14 years in all occupations except where they help their families after school hours. Also, as the existing Act does not conform with the International Labour Organisation (ILO) Conventions 138 and 182, which specify the minimum age of entry into employment and prohibit the employment of persons below 18 years in hazardous occupations, the amended Act introduces a new category of persons called “adolescent” which refers to a person between the ages of 14 years and 18 years and outlaws their employment in hazardous occupations as specified.³ The penalty for employing a child was increased and for employing an adolescent in hazardous occupations was introduced.⁴

At first glance, the amended Act seems progressive because while it is argued that child labour is not the solution for poverty alleviation, this Act does balance the need for basic income with the need for an extra income. At the same time, if the Government of India is serious about curbing poverty within the first century of the nation’s Independence, it should expand its budget for education policies and strictly enforce legislations meant to protect vulnerable children, giving them incentives to stay in school. The government must address the root of the problem which is poverty and illiteracy, which in turn will reduce child labour, rather than using child labour as a means to poverty alleviation. Safeguarding citizens’ rights and ensuring the enforcement of the country’s legislation would in itself create tremendous progress in the

³ Pib.nic.in. (2016). *Press Information Bureau English Releases*. [online] Available at: <http://pib.nic.in/newsite/pmreleases.aspx?mincode=61> [Accessed 11 Aug. 2016].

⁴ Prsindia.org. (2016). *PRS / Bill Track / The Child Labour (Prohibition and Regulation) Amendment Bill, 2012*. [online] Available at: <http://www.prsindia.org/billtrack/the-child-labour-prohibition-and-regulation-amendment-act-2012-2553/> [Accessed 11 Aug. 2016].

struggle against poverty and child labour. The amendment to the Child Labour Act, thus, leaves certain pertinent issues unaddressed.

Impact of the Child Labour (Prohibition & Regulation) Amendment Act of 2016 on Welfare and Poverty Alleviation

1. Government's Argument: Amended Act will Help Alleviate Poverty

When the Child Labour (Prohibition & Regulation) Amendment Bill was introduced in Parliament in 2012, it was supported by the argument that there was a pressing need in India for “a balance between the need for education for a child and the reality of the socio-economic condition and social fabric in the country”.⁵ India's Minister of Labour and Employment, Bandaru Dattatreya, stated that the Bill will help impoverished families earn a living, give children an “entrepreneurial spirit” and not take away time from children's education.⁶

2. Adverse Consequences of the amended Act

➤ Act will perpetuate poverty

The argument given by the government is heavily criticized by experts on child labour who reiterate that there is no proof that allowing children to work will help families overcome poverty. Official figures indicate that as of 2001 there were over 12 million child workers in India, but many non-governmental agencies claim that the real figure is up to 60 million.⁷ At the same time, ironically, there are almost 65 million unemployed adults of which most of them are parents of these very child labourers.⁸ This evidence suggests that child labour causes poverty and unemployment, further perpetuating illiteracy and backwardness.

⁵ Pib.nic.in. (2016). *Press Information Bureau English Releases*.

⁶ Nöhrind, R. and Oonk, G. (2015). *Diluting India's child labour law will trap families in cycle of poverty*. [online] the Guardian. Available at: <https://www.theguardian.com/global-development/2015/may/18/india-child-labour-law-families-poverty> [Accessed 11 Aug. 2016].

⁷ Mandlik, D. and Kalkar, P. (2015). Child Labour in India: A Curse on Humanity. *American International Journal of Research in Humanities, Arts and Social Sciences*, [online] 15(150). Available at: <http://iasir.net/AIJRHASSpapers/AIJRHASS15-150.pdf> [Accessed 10 Aug. 2016].

⁸ Satyarthi, K. (2012). *Child labour perpetuates illiteracy, poverty and corruption*. [online] Deccan Herald. Available at: <http://www.deccanherald.com/content/281292/child-labour-perpetuates-illiteracy-poverty.html> [Accessed 11 Aug. 2016].

As Nobel Peace Prize winner Kailash Satyarthi said, there exists a vicious circle between poverty, illiteracy and child labour. Children born into extremely low income families have a disadvantage since birth as they are often compelled to miss school due to their family's economic limitations. They grow up to be illiterate and vulnerable to exploitation. They are more likely than others to be pulled into child labour at the expense of their health, education and welfare. This cycle continues for generations until one such child receives quality education.

➤ **Act will dilute the impact of the legal system that protects workers**

While these reforms are supposedly meant to help alleviate poverty, they seem more to be aimed at creating situations that are conducive for economic growth and investment by removing the “red tape” from businesses.⁹ A reduction of the so called “bureaucratic obstacles” to employing under-age workers would dismantle labour inspections, restrict trade union activities, move employment law violations from criminal to civil code and reduce accountability of employers.¹⁰ It will lead to the growth of the informal sector running primarily on cheap and over-worked child labourers. These reforms have the potential of violating a central concept of the UN Guiding Principles on Business and Human Rights, which is that it is the duty of governments to protect citizens' human rights and the duty of businesses to respect these rights. Bonded labour, which is recognised as a variation of slavery, already affects millions in India, especially in agriculture and brick manufacturing. It has also recently emerged in export-oriented industries across the country such as the sporting goods industry in Punjab and the spinning mills in Tamil Nadu. These activities would be legitimized under the new amendments.¹¹ The Working Peoples Charter Secretariat – a group of trade unionists, labour activists and lawyers – are also fearful of a “race to the bottom” among businesses and states to cut costs by reducing wages and terms and conditions of employment.¹²

⁹ Prsindia.org. (2016). *PRS / Bill Track / The Child Labour (Prohibition and Regulation) Amendment Bill, 2012*. [online] Available at: <http://www.prsindia.org/billtrack/the-child-labour-prohibition-and-regulation-amendment-act-2012-2553/> [Accessed 11 Aug. 2016].

¹⁰ McQuade, A. (2015). *India's child labour 'reforms' could make it a dangerous place to invest*. [online] the Guardian. Available at: <https://www.theguardian.com/sustainable-business/2015/may/13/india-child-labour-reforms-dangerous-invest> [Accessed 11 Aug. 2016].

¹¹ Ibid.

¹² Ibid.

➤ **Negative impact on literacy rates**

While there is no harm in children helping their families in their free time, it should not be at the cost of their education and health. This new amendment to child labour laws will legalize children's participation in commercial activities at home and as a result, several law-breaking employers may fake familial connections with the child labourers to escape punishment.¹³ The leeway given to family enterprises may cause some forms of child labour to become invisible and the victims of child labour to end up with irregular school attendance, lower levels of learning, and eventual dropping out of school. Civil society has protested against the amendments because of their potential to grossly violate the fundamental rights of children for education, protection and development as well as overturn progress in literacy rates and child labour rates.¹⁴ These amendments are particularly disheartening coming immediately after India's Right to Education Act promised a revitalized effort to abolish child labour. Existing child welfare laws implemented by the government, such as the National Policy on Child Labour (1987), the National Child Labour Project (1988), Sarva Siksha Abhiyan and the Juvenile Justice Act (2000), will not be able to make as big a difference in the coming future with the implementation of the amendments to the Child Labour Act.

➤ **Adverse consequences for health and safety**

Another important dimension of welfare that would be severely affected by amendments to the Child Labour Act would be children's health, safety and nutrition. The amendments would hinder the success of government initiatives such as the Mid-day Meal Scheme and the work of non-governmental organizations such as Akshaya Patra that address two major issues simultaneously – school attendance and malnutrition. Also, working conditions that are safe for adults may not be so for children because of their physical differences. Unskilled and labour-intensive jobs such as mining and construction are risky by nature. Inadequate training and less experience make children more vulnerable to risky situations. Poverty-related health problems such as malnutrition and anaemia further increase the risks of work-related hazards. Long hours of work on a regular basis can have psychological impacts such as aggression and substance use, while the worst forms of child labour such as slavery, prostitution and drug

¹³ Satyarthi, K. (2015). *No half measures please*. [online] Times of India Blogs. Available at: <http://blogs.timesofindia.indiatimes.com/toi-edit-page/no-half-measures-please/> [Accessed 11 Aug. 2016].

¹⁴ Zahid Naem, Z. (2011). Child labor in relation to poverty. *International Journal of Health Sciences*, [online] 5(2 Suppl 1), p.48. Available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3533357/> [Accessed 11 Aug. 2016].

trafficking can have traumatic effects on children's minds.¹⁵ Young girls who are forced to work in hazardous environments may develop health problems due to exposure to certain chemicals, and this can cause their children to be born with birth defects that in turn increase health expenditure and perpetuate poverty.

➤ **Consequences for marginalized and discriminated groups**

The rigidity of the caste system in India is an important factor contributing to child labour. Children from marginalized and discriminated groups such as the Dalits, Adivasis and Muslims are often forced to work because of their family's low status and lack of better opportunities. Access to education is already limited for these groups because of prejudice and poverty. According to the UNICEF, the highest rate of exclusion from primary school and the highest dropout rates in India are found among Dalit girls. The new amendments to the Child Labour Act would make these children even more vulnerable to slavery and would perpetuate their state of backwardness and illiteracy.¹⁶

➤ **India's gradual isolation from international trade**

With NGOs spreading awareness on child labour and in particular bonded labour, educated global citizens are pressing their governments to exclude the products of such labour from their markets and hold criminally liable those businessmen who knowingly seek profit from the sale of such products. With legal requirements for western companies to report on their supply chains, morally sound business leaders would consider carefully before investing in India once the reforms are implemented. They would be apprehensive of investing in an economy where the lower rungs of the supply chains involve unethical and forced labour.¹⁷ As a result, India could face a gradual isolation from international trade.

➤ **Loopholes in the amended Act**

There are several loopholes in the amended Act that need to be addressed prior to its implementation. While the reforms recognize that in India you have unorganized cottage industries such as goldsmiths and artisans, who pass on their skills to their children at very young ages, the Act does not clarify the classification of millions of children who work as an

¹⁵ Child Labour Education Project. (2016). *Health Issues*. [online] Available at: https://www.continuetolearn.uiowa.edu/laborctr/child_labor/about/health_issues.html [Accessed 11 Aug. 2016].

¹⁶ Nöhrind, R. and Oonk, G. (2015). *Diluting India's child labour law will trap families in cycle of poverty*.

¹⁷ McQuade, A. (2015). *India's child labour 'reforms' could make it a dangerous place to invest*.

aid in contractual labour with their parents. This is akin to bonded labour and involves no skills. If this is not clarified, the amendments suggested will give impetus to these trends rather than stemming them.¹⁸ The limited list of hazardous occupations should be widened to include all activities that can jeopardize the health, safety and morals of adolescents. Alternatively, the central government should specify the kinds of non-hazardous occupations in which adolescents may be employed. While the RTE mentions that a child should have access to free and compulsory education till the age of 14 and the amendment to the Child Labour Act says that children between 14 and 18 years of age can work in certain non-hazardous occupations, it is unclear whether uneducated 14 year olds and above are allowed to work or not. Given the importance of literacy, it is crucial to clarify this grey area in the laws. There is also a crucial need to strengthen the inspection process. The monitoring needs to be extended to adolescents working in non-hazardous places because the adolescents are usually working against their will even in places where they are allowed to work because of family pressure.¹⁹

➤ **Excessive leniency towards parents, guardians and employers will create problems**

The amendment to the Child Labour Act also sees a dilution of penalties against parents and guardians. It says that in the event of a second or repeated offence, parents can financially compound the punishment by paying Rs. 10,000 and getting away. “This is not leniency but lunacy”, says Varun Gandhi. The Crime and Criminal Tracking Network Systems (CCTNS) which centralizes the access of data for criminal records is incomplete in police stations and most stations have not yet completed the process for FIRs to be registered online. This raises the question as to which mechanism would be in place to determine whether a parent, guardian or an employer is a first time offender or not²⁰. Also, the economic punishment to employers of Rs. 20,000 to Rs. 50,000 is not enough of a financial incentive to refrain from engaging child labourers.

Conclusion

In a country like India, where according to the Socio-Economic and Caste Census of 2015, 92% of rural households make less than Rs 10,000 per month, child labour becomes an essential

¹⁸ Gandhi, V. (2016). *Varun Gandhi's Speech in Parliament on Child Labour*. [video] Available at: <https://www.youtube.com/watch?v=BHZVJtfl-fE> [Accessed 11 Aug. 2016].

¹⁹ Ibid.

²⁰ Gandhi, V. (2016). *Varun Gandhi's Speech in Parliament on Child Labour*.

evil to survive. An equally important factor that contributes to the high levels of child labour in the country is the quality and level of education facilities available. In 'Learning Blocks', a CRY 2013 Report on primary and upper primary schools in India, it was found that, 75% of schools lacked essential furniture, 41% of schools held classes in open spaces, and 25% of schools did not even have blackboards. While child labour statistics in India have shown a tremendous improvement between the Census of 2001 and 2011, India is still home to the largest number of child labourers in the world.²¹

In light of the Right to Education Act, 2009, and the Child Labour (Prohibition & Regulation) Amendment Act, 2016, we can safely say that in the recent past, contrasting developments regarding child labour and literacy are taking place in India and these developments are not receiving the required attention that they call for. This essay has sought to analyse the impact of the Child Labour (Prohibition & Regulation) Amendment Act, 2016, on the Indian economy. The provisions of this amended Act need to be studied in great detail in order to alert policymakers that unless this new Act is implemented with the utmost caution and care, the government might overturn recent successes in literacy, health and child labour rates, trapping families in a cycle of poverty for yet another generation to come.

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²¹ Childlineindia.org.in. (2016). *Child Labour in India - Issues and Concerns*. [online] Available at: <http://www.childlineindia.org.in/child-labour-india.htm> [Accessed 11 Aug. 2016].