

Recommendations of the National Advisory Council

Prohibition of Child Labour

1. The Child Labour (Prohibition and Regulation) Act, 1986 (hereafter CLA) defines a child as a person who has not completed 14 years of age. No child is permitted to work in any occupation or processes listed as hazardous occupations. All other child work is considered legal, and only regulated for conditions of work. The NAC proposes that the law be amended to prohibit child labour for children up to 14 years, in the light of child rights, and the Constitutional commitment to ensure free and compulsory education to all children.
2. The NAC believes that a child who works instead of being in school loses opportunities to break out of poverty, and suffers severe and irreversible damage to her physical and mental health. The current regime of graded legality of child work is not in consonance with the fundamental rights of every child, including her right to be in school. The State has a Constitutional obligation to ensure that every child under 14 is in a mainstream school, and it cannot permit the child, instead, to be working in factories, fields, streets and homes. A well functioning school is a right which no longer should be denied to any of our children. It is in school that a child is equipped and empowered to build her own destiny.
3. Against the backdrop of The Right of Children to Free and Compulsory Education Act, 2009 (hereafter RTE), the distinction between prohibited and regulated employment that underwrites the CLA is no longer tenable. The abolition of child labour is inextricably linked to the task of providing every child with the right to education, and one cannot be achieved without the other. In other words the task of withdrawing a child from work should be understood as synonymous with inducting the child into school.
4. However, since poverty compels indigent parents to send their children to work at a young age, the law should not penalise parents for making their children work. Nor should the law criminalise children assisting their parents in work at home, in the fields or in vending after school hours or in vacations. What is required is a holistic approach to the elimination of child labour. This would include proper enforcement of law, provision of quality, relevant and universal education, child care services and social protection, and policies to address poverty in the household to which the child belongs.
5. The penalties under the current law are weak and poorly enforced. NAC proposes that all offences under the Act be made cognizable and non-bailable offences.
6. Much greater sensitivity is required in planning the rehabilitation of released child workers. The task of rehabilitating labouring children in the light of RTE might best be performed by the Ministry of Human Resource Development (HRD) or by Women and Child Development. The existing inspection framework of the Labour Ministry is capable of addressing the challenges posed by child labour. However, it should establish a Task Force to help guide and monitor its work, with representatives of labour unions,

educationists and child rights activists. In districts with high concentration of child workers , full day child care centres could be set up. The responsibility of ensuring quality education should vest in the specialised mainstream agency of the Ministry of HRD.

7. There is need for a far greater degree of convergence between the departments of Labour, Education, Women and Child Development and Health at the district and sub-district levels to facilitate school attendance by better monitoring, prevention, rescue and rehabilitation of child labour. To facilitate this greater degree of convergence, NAC suggests an implementation framework where the primary responsibility for the implementation for the CLA is vested with the District Magistrate and the subordinate executive magistracy, on lines similar to that of the Bonded Labour System(Abolition) Act, 1976.
8. The Central, State and elected local governments also need to do more by way of creating mass awareness against child labour with involvement of schools, industry, trade associations and media.
9. A more nuanced policy framework for various categories of children, like children of migrant labour, children subjected to bondage and trafficking, street children and other working children, is required for the effective implementation of the RTE.

In summary, the NAC Working Group makes the following recommendations:

1. Child Labour for children between the ages 0-14 should be prohibited.
2. Under no circumstances whatsoever should parents and guardians of children be punishable under this Act.
3. There should be no bar on children helping their families after school hours and in vacations, in fields, home-based work, forest gathering and vending.
4. The overall responsibility for implementation of the Act should vest with the District Magistrate and the subordinate executive magistracy.
5. The administrative framework of the Child Labour (Prohibition and Regulation) Act, 1986(CLA) 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 located in the Labour Department, as it has a well developed administrative machinery to perform this task. The task of rehabilitating labouring children be entrusted to Ministries of Human Resource Development or School education and Women and Child Development, 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.
6. 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.
7. A more sensitive and child-supportive programme for rehabilitation of released child workers, and for child workers in most difficult circumstances like children like children of migrant labour, children subjected to bondage and trafficking, and street children, should be developed.