

CHAPTER II

FROM CHILD LABOUR TO CHILD WORK: A THEORETICAL FRAMEWORK

The issue of child labour is directly related to the issues of childhood, the perceptions that the community holds with respect to children and their role in the family and the community life. This chapter looks into various understandings of childhood and explores the linkages which the conceptualisation on rights of the child provides for a complete understanding of the problem of child labour.

Childhood and the Status of the Child - A Socio Historical View:

Definitions of childhood depend upon the society from which they emerge. In ancient times, a child was viewed as property of the family. This ownership of the child by the family was so complete that the child could be grossly maltreated by the parents without invoking any external censure to their acts. Needless to say that there was no sensitivity to the rights of the child, and that the children often met with extremely exploitative treatment. The history of childhood is a nightmare and if one goes back in history, one finds lower levels of child care (De Mause, 1992). The most extreme and the oldest form of abandonment noted was the outright sale of children. Child sale was legal in the Babylonian times. The Church tried for centuries to stamp out child sale. In the 7th century the Church held that a man might not sell his son into slavery after the age of seven. It was believed that the English had been selling their children to the Irish as slaves and the Norman invasion was a punishment from God for this slave traffic (Sommerville, 1982).

The first historian to propose a radical critique of concepts of childhood was Aries. His contention was that in the medieval society, the idea of childhood did not exist. He stated that childhood was discovered in

Europe between the 15th and the 18th centuries and till then children were depicted as 'miniature adults' (James and Prout, 1990). The other perception that existed during this time was that of 'child as a human chattel'. The child was essentially the property of the parents¹, essentially the father. Parents had an absolute legal right² over their children's property and person (Stewart, 1987:2). After the 18th century, the society became aware of the special needs of children. Since the early 1900s, war, welfare, psychoanalysis, and medicine, profoundly affected the ways in which childhood got to be understood (Hendrick, 1990:36-38). The idea of schooling before attaining adulthood took ground only during this period. Rousseau's assertion that 'Nature wants children to be children before they are men' was reiterated by various reformers throughout the 19th century. However, a majority of them had lost the subtlety of the innovative child-nature relationship, reducing it to a crude view of children as distinguished by 'natural' incapacity and vulnerability. The construction of childhood propagated by Rousseau had to struggle after the French revolution and had to co-exist with the political economy of a growing child labour force in factories and mines (Coveney, 1967:40-44; Somerville, 1982:127-131). The 19th century discussion on the meaning of childhood in an industrialising and urbanising nation was very much the work of the Evangelicals who produced their own agenda for reform. The debate was seized by primarily two political³ questions: should children continue to be employed as wage labourers and what was to be the role of education for the masses. During the debate, the Romantic view of the child as a dominant ideological prescription started losing ground despite its continued (though limited) influence in portraying childhood as fundamentally different from adulthood; different, that is, in the sense of having its own nature and not simply being an immature condition, apprenticed to adulthood (Hendrick, 1990).

These new ideologies on childhood were relevant only to the elite classes who could afford to allow their children to indulge in 'non-adult' or childhood activities⁴. However, these special activities of childhood did not

make much sense to the poorer sections of society, where children from the age of 7-8 years continued to share both the domestic life and the professional life of their parents and also of adults who were not their parents (Wood, 1977). In many areas child sale continued sporadically into the modern times until the 19th century. In England, it was apparent that the industrial technology could use unskilled labour that was available in plenty. Children could start tending the new machines immediately, without the apprenticeship training of the old crafts. By 1830s the cotton mills of England depended on children for nearly half of their labour force. Evidence of cruelty to 'chimney sweeps' induced the Parliament to pass laws to protect them in 1788 and later⁵. This era marked a shift from intermittent family based work to regular work on the production line. In fact no one had ever worked such long hours before the introduction of machinery (Sommerville, 1982).

However, with the passage of time, the trends in defining the role of children as against that of adults diffused downwards and childhood started getting institutionalised for all. It was not until the early 20th century that the notion of childhood as a unique developmental phase began to gain widespread support (Gustavsson & Segal, 1994:5). The prevailing view of childhood⁶ itself has been one of children as passive victims and appropriate objects of external intervention, rather than as active social subjects or agents of change, capable of both claiming and exercising rights and of independent social and political action (Freeman, 1988; Freeman, 1992a; Prout & James, 1990; Hoyles & Evans, 1989). There have been two alternative views held of children in the poor countries in the 19th century: the child as an innocent 'slave' in need of rescue, or the untamed, amoral child as potential 'savage' in need of control and protection 'from' freedom, embodied most typically in the image of the urban street child (Fyfe, 1989; Boyden, 1990). The view which has partly replaced these in the 20th century, is that of a child as an 'empty bucket' to be filled with culture, learning and values and the 'cultural dope' of conventional socialisation theory (Prout & James, 1990). However, within

everyday rhetoric childhood is taken for granted, it is regarded as necessary and inevitable and thus as a normal part of life (Jenks,1992).

In juxtaposition with the adults, the child is viewed as less than fully human, unfinished or incomplete (Jenks,1992; Verhellen,1994, Knutsson, 1996). The idea of childhood continues to be bound up with the idea of dependence. One could leave childhood only by leaving the state of dependence, or at least lower the degrees of dependence. It is believed that childhood is a condition which expresses more about power relationships than chronology. Children's powerlessness is due to their limited access to economic resources, their exclusion from political participation and a corresponding cultural image of childhood as a state of weakness, dependency and incompetence (Franklin, 1995:9). The same notion continues today, especially when confronted with the idea of granting certain rights to the children. Children also appear to be viewed as non-entities, as non-existent outside their family structure. They have been left out in all social accountings at the national and the international level (Quortrup, 1990). The reasons for the exclusion of children from the political and economic calculus can be found in the positivistic natural science tradition within both the capitalist and socialist approaches. Children, women, minorities and even ordinary communities either did not matter in their calculation or did not fit into the dominant models of causation and were consequently neglected (Knutsson,1996; Verhellen,1992).

Emergence of Children's Rights:

The history of the origins of children's rights can be traced in three phases.

Phase One: Children as a separate social category: The beginning of the concern for children as a separate category of human beings was evident in the Geneva Declaration that was adopted in 1924 after the First World

War. This five point 'Declaration of the Rights of the Child', provided five clear cut obligations to be fulfilled for the betterment of children in the post-war times. These were, an obligation to provide food, health, protection against abuse and neglect, care, and opportunities for normal development. Though it did not speak the language of conferring rights on the children, it indirectly did so by conferring certain duties on the States and the international community in general. The Declaration was adopted in the General Assembly of the League of Nations mainly as a defensive instrument in the wake of post war conditions which left millions of children in most deplorable states (Verhellen,1994). In 1934, the Declaration was reconfirmed by the League of Nations' General Assembly and the Member States 'promised' to pass legislations which were in tune with the Declaration. However, since it was a 'soft law' and not a 'hard law' in the form of a treaty, the States were not bound to keep their promise.

Phase Two: Children's Rights as part of Human Rights: After the Second World War, the Commission on Human Rights began its work on the International Bill of Human Rights and the Universal Declaration of Human Rights was adopted by the General Assembly on 10th December, 1948. This Declaration, though once again a 'soft law', was a basic international statement of the inalienable and inviolable rights of all members of the human family. It thereby covered children in its purview. The Declaration stated in Article 25 (2), '...childhood [is] entitled to special care and assistance'.

The Universal Declaration on Human Rights has had a wide impact throughout the world, inspiring national constitutions and laws as well as conventions on various specific rights. At the international level, the concept of children's rights got covered for the first time under the generic category of human rights. Children were not explicitly recognised as a category of human beings eligible to enjoy the rights equal to other human beings, but they were recognised as a special category of human beings who required special attention and care till maturity.

It is worthy to note that during the preparation of the International Covenant on Civil and Political Rights (which was a part of the International Bill of Human Rights, and passed only in 1966), there was a fierce debate on the need for a separate and therefore specific article on the rights of the child. Opponents felt that it was sufficient to refer to the non-discrimination principle contained in Articles 2 and 26; in other words they felt that human rights should apply to children too. In the end a specific Article 26, which granted equality to all persons before law and entitled them to equal protection under law without any discrimination, was included. Poland, together with a number of States argued in favour of drafting a binding convention rather than a declaration which was not binding in nature.

Phase Three: Children's Rights in their own right: This phase is marked by two important documents; one being the Declaration on the Rights of the Child and second being the Convention on the Rights of the Child (CRC).

The Declaration on the Rights of the Child was adopted in 1959, soon after the Universal Declaration of Human Rights. The Geneva Declaration was used as a basis for formulating this document, yet, the 1959 proclamation was more specific by mentioning the different rights that the children held on account of their status as children. It contained ten principles dealing with the children's rights to health, family, education, recreation, nutrition, housing, equality as well as protection from exploitation, neglect, cruelty and any form of discrimination. In its Preamble it called upon all those concerned with children to recognise these rights and ensure their implementation. The Declaration being a 'soft law' and not a binding treaty and had very little direct impact on State policies.

The Convention on the Rights of the Child (CRC) came up on account of Polish initiative which fought for a separate binding treaty for children from the time of the Universal Declaration on Human Rights. It was noted that

between 1959 and 1978, numerous instruments which had some reference to children existed in a scattered form, some of them being binding, while others not. The terminology used varied, and there were a number of overlaps as well as inconsistencies. Therefore, it was thought of having a single comprehensive document on children's rights that would be binding on all the State Parties that ratified the treaty. Thus, the Convention was unanimously adopted on 20th November 1989 which supplemented the 1959 Declaration. The Convention introduced two significant conceptual elements with important substantive ramifications: a] the 'best interests of the child' (Article 3) became a compulsory criteria 'for all actions concerning children'; and, b] the principle that parents (or others responsible for the child) should provide guidance to their child in exercising his or her rights, in accordance with the child's evolving capacities (Article 5). For the first time the Convention introduced the participation rights for children besides the usual survival, protection and development rights that were accorded. Linked to this was the explicit recognition of the need to ensure that the children themselves were informed about their rights.

In relation to human rights provisions in general, rights accorded to children under the Convention on the Rights of the Child:

* reaffirmed or reflected rights granted to human beings of whatever age, e.g. protection from torture, the right to name and nationality, the right to social security.

* improved with regard to the children, the standards applicable to human beings in general, e.g. special conditions of employment, administration of juvenile justice, conditions of deprivation of liberty.

* addressed issues that were solely or more specially relevant to children, e.g. adoption, primary education, contact with parents.

However, the exercise of drafting the CRC threw open a lot of issues for debate which even today find no consensus. There has been a lot of debate, especially after the Declaration of Rights of the Child in 1959 about whether there should be a special treaty for children. The CRC is looked at as complementary to the other treaties that exist on human rights. Some scholars felt that children do not have to be given human rights since they have it by the virtue of being human beings (Verhellen, 1994). Others were worried about the competency issue while giving the children the same rights as adults. However, many would agree with the fact that in addition to the basic rights which the child is entitled to as a human being, s/he is also entitled to certain special rights due to the special nature of their status. Initial debates while drafting the CRC on whether the civil and political rights should be accorded priority over the social, economic and cultural rights were shadowed by the independent stance of the UN that both categories of rights are of equal importance. The Third World countries which believed that human rights were Eurocentric were pressurised to side either the East or the West. One of the results of such a cold war was to re-open the cultural relativism debate⁷; that is, the extent to which the situation of children and their entitlements can be understood and evaluated within their own national context (Alston, 1994).

Issues related to children's rights in society:

Children's rights are debated upon more than rights of any other category of human beings. This is due to a lack of common understanding with respect to the capabilities of children, the nature of rights that they could execute on their own, the parties against whom these rights can be enforced, including the family and parents, as well as the probable implications of exercising these rights. The main issues pertaining to¹⁾ children's rights and their enforceability are: Who defines the rights of the children? Who has to give effect to those rights? Who enforces children's

rights? Against whom can these rights be enforced? What are the implications for the children?

Firstly, adult centrism is deeply rooted in all cultures and is even enforced by law (Verhellen,1992). Even the role of determining the needs of the children as well as the rights that are to be granted to them, is exercised by the adults. Needs and rights are intimately related. A part of the difficulty in trying to establish agreed upon rights for the child is due to the nature of childhood and the ambiguities associated with the label of childhood (Gustavsson & Segal, 1994: 3). Yet, the relationship between children's need and rights is by no means straightforward. It is a philosophical issue that a need, even an extreme need has not traditionally been regarded as sufficient to justify a right (John,1996). Thus, children's needs are a larger gamut of issues, all of which may not necessarily be covered as the children's rights.

Secondly, it is important to note that the society assumes that parents are in the best position to meet the needs of their children and it is their responsibility to meet the physical, emotional, intellectual and spiritual needs of their children. The State may intervene in the relationship between the parents and children only when the parents violate the community or the normal societal standards of minimum care (Gustavsson & Segal,1994: 9). However, it is relevant to note that there are a multiplicity of interests in the family (Roche,1996: 24) and the last few decades have seen the emergence of children's liberation movement⁸ that asserts the need for independent legal rights for children and a reluctance to rely on parents or the State to act in the best interests of children (Hegar,1989: 107-116). With the international law progressing and transgressing the hitherto held sanctity of the private areas of family life, the whole attitude towards looking at children's rights has been changing. The treatment given to the children can be monitored against a set of internationally accepted standards, and the State has the right to

intervene in cases where it feels that the child's interests are under jeopardy, under the 'parens patriae' doctrine⁹.

Children's rights are legal rights and are by definition enforceable. The Courts however, are by definition reactive institutions in the sense that they do not actively seek causes of action or solicit cases¹⁰ (Gustavsson & Segal, 1994:5). Thus, the onus of enforcing the rights of the child is ambiguously placed on the State and the society, including the families of the children. In India, there is presently no forum where children can enforce their rights in their own ways. Moreover, who decides whether the child has a capacity to decide - it is normally on the basis of adult judgment (Freeman, 1992b). However, it is imperative to understand that the children's rights have to be free from adult interference and judgments and are meant to be protected and enforced as human rights.

Thirdly, a child's life is not essentially improved by giving him/her more rights. This is so because the child is primarily dependent on parents. Dependency implies a sufficient justification to suspend basic rights. Being dependent means being deprived of the basic rights and being legitimately subject to the often arbitrary and invasive authority...who enforce rules with which the dependent must have to comply. The CRC has done very little to reduce the equation of this dependency¹¹ (Freeman, 1992a). Moreover, conceptualising power in distributive terms means considering power as something to be possessed in greater or lesser amounts. But power is a relation rather than a thing. The exercise of power very often depends on the possession of certain resources, but it is wrong to confuse resources with the power itself (Freeman, 1992a).

Fourthly, the issue of competence of children is debated as a significant reason for not allowing children to exercise their rights. In virtually all contexts, adults are presumed to be competent and the children incompetent under the law¹². One can see three trends in the debates on the competency issue: the reformist trend which views children as

incompetent but believes that children acquire competency much younger than is generally assumed and it is gradually acquired. They argue in favour of lowering the age of majority and of gradual acquisition of rights by children. The radical trend disputes the validity of the incompetence arguments on moral grounds; their basic principle is equality of all people. Any form of discrimination on the basis of age is considered morally wrong. To them granting children all human rights is the only solution. The pragmatic trend favours granting children all civil rights, including the right to exercise them autonomously, unless it is proven that they are incompetent to exercise them. In this case the burden of proof would be reversed. Today the children are in a weaker position since the burden of proof is on them (Verhellen,1994).

Some scholars believe that it should not follow that children should not be allowed to make decisions because they might make the wrong ones. Mistakes should not be judged as wholly negative but as experiences from which one can learn. Children do reveal a competence for rational thought and do make informed choices. The age limits on rights are incoherent because children assume adult responsibility at different ages and in different arenas of activities. Childhood is a long span of time and it is not correct to generalise for the whole category of childhood (Franklin,1986). Others believe that the modern State should not treat the minors in the same way as adults (Ludwig,1992). It is argued that the increased role of law in matters affecting children works to their disadvantage. Children's rights are not met by the divisive language of rights and the increased possibility of recourse to the law (King & Trowell, 1992). It is argued that children are excluded from public dialogue, are marginalised and lack power to challenge. Thus the language of rights is only one mechanism which permits the constitution of the community with children as its constituents. (Roche,1996: 23-24).

The issue concerning children's rights receiving adequate importance and attention becomes valid in the context of children contributing to the

sustenance of their families through their wage. In these situations, the matter of granting and protecting the rights becomes crucial as the children prematurely take over the role of the adults in the family on the one hand, while on the other hand, get exposed to the exploitative situations without having a choice. The next section looks into the problem of child labour and analyses the current approaches towards its elimination from the perspective of rights of the child.

Eliminating Child Labour:

The elimination of child labour is as complex a task as the problem of child labour itself. The existing understandings on child labour have the potential of influencing the interventions towards its elimination as is seen in the existing statutes and policies in the Indian context. An analysis of the current approach towards eliminating child labour follows.

Current Approaches: The current approaches to eliminate child labour can be differentiated on the basis of the process and the time frame suggested for eliminating child labour.

1] Prohibition: This approach suggests a complete and an immediate abolition of child labour despite the socio-economic problems of the families and society. It implies that the practice of child labour is abominable in any form and is against the rights of the child and gradual elimination is another way to perpetuate the evil practice. One way suggested for achieving total prohibition and abolition is by removing children from employment immediately and by putting them into activities of education and/or personality development. This approach is supported by the proponents of the universal compulsory and free primary education.

2] Prohibition and Regulation: This approach suggests a mixed approach of prohibition and regulation of employment of children. It draws upon a

classification of the economic activities of children into 'hazardous' and 'not-so-hazardous' categories. On the one hand, it suggests a complete prohibition of child labour in 'hazardous' activities, and on the other hand, it advocates a gradual elimination of child labour in the 'not-so-hazardous' activities. It implies that a complete abolition of child labour is not attainable in a short run due to the socio-economic realities and measures to regulate and humanise child labour are therefore essential during the transitional period until elimination can be achieved (Banerjee,1979; Rodgers and Standing,1981). Thus, the approach of gradually eliminating child labour consists of prohibiting child labour in the hazardous occupations and regulating their conditions of work in not-so-hazardous occupations.

It may be noted here that the origins of differentiating between child labour and child work in the Indian context were made by the Committee on Child Labour in 1979¹³ which divided the economic activities of children in two categories; one child labour, where the children are engaged in occupations that by themselves do not cause hazard to the child; and two, exploitative child labour, where the child is engaged in the hazardous occupations. The report also recognised that all work is not harmful and work in the right proportion and supervision could even benefit the child.

This differentiation formed the basis of the 'prohibition and regulation' approach adopted by the Government of India. In line with its division on child labour in hazardous and non-hazardous sectors, the Indian State is of the view that the problem of child labour cannot be abolished immediately given the present socio-economic realities which force children to work. Thus, the Govt.'s policy has been to abolish child labour by immediately prohibiting it in the hazardous sectors of work and gradually eliminating it from the non-hazardous sectors of work as is reflected in The Child Labour (Prohibition and Regulation) Act, 1986 and The National Policy on Child Labour which was adopted in 1987.

A critique of the current approach: The approach of dividing the economic activities pursued by children in two conceptually different categories of 'hazardous' and 'not-so-hazardous' and adopting State policies and programmes addressing these differences can be examined on various grounds. Firstly, the whole range of activities that are pursued by the children under the supervision of their parents/guardians at home are not protected under law because it is assumed that the rights of children who are engaged in their own families are not violated¹⁴. This understanding is reflected in the current statutory provisions where certain scheduled occupations and processes are prohibited¹⁵, others are regulated¹⁶, while still others that take place within the precincts of the home are not covered by the laws¹⁷. A review of literature, however, indicates that children are engaged in many 'hazardous' activities, even in the family setting¹⁸. While a classification of the activities on the basis of the hazard can be said to be valid, that on the basis of location of the activity seems unreasonable. Secondly, the activities pursued by the children are so multitudinous that they cannot be divided into only two rigid categories of 'hazardous' and 'not-so-hazardous'. There could be a range of activities within each of the two categories that has varying impact on the development of the child and would therefore require different handling. Thirdly, the mandate of the Convention on the Rights of the Child requires that policies (both legal and otherwise) should protect children engaged in all forms of economic activities. The current policies, however, do not make it mandatory on the State to achieve rights of the child to survival, protection, development and participation. Fourthly, there is no clarity about the exact nature or content of the 'gradual method' of eliminating child labour which presently exists in the 'regulated' sphere. Although the Government of India in its National Policy on Child Labour (1987) attempts to lay down some components of the gradual method of eradicating child labour¹⁹, given their remedial nature and an absence of concrete strategies to attack the roots of the problem, there is no certainty that child labour would be eventually abolished.

Studies have shown that a reasonable equity within and across generations constitutes the core principle of sustainable development. Placing children at the very centre of theories and strategies is extremely crucial for human betterment (Anand & Sen, 1994; Chen & Singh, 1995). For these reasons, attempts to portray the dynamic reality of child labour become important in order to guide a process for eliminating child labour.

A Need for a Dynamic Understanding of Child Labour:

The present attempts of proposing definitions on 'child labour', 'child work' etc. do not reflect the dynamic reality with multitudinal activities pursued by children, but only stop at showing the reality as a static entity. If one has to propose a framework for the eradication of child labour, one has to go a step beyond the available definitions and evolve a more realistic understanding of child labour which focuses not only on the problem (situation as it is) but also on a solution (situation as it ought to be). Such kind of an understanding would also enable a review of the present courses of action undertaken and renew them on the basis of emerging issues.

The definitions on child labour had been the guiding force for an understanding of child labour for a long time. As practitioners and researchers went closer to the field realities of working children, two significant insights were gained into the issue. Firstly, it was found that the economic activities pursued by children were multitudinous and that all activities were not equally hazardous in nature. In fact, some activities could be positive and could contribute to the child's overall growth and development. Secondly, given the resources at hand and the complexity of the problem as a whole, it was believed that attacking the problem as a whole would be extremely difficult and therefore a progressive elimination of child labour would be a feasible and practical solution. This led to an emergence of theoretical propositions which described the dynamic reality of child labour and also prescribed the process of eliminating child labour.

It marked a movement from relying on the ivory tower definitions of child labour towards an operational understanding of child labour which accommodated the plurality of the real world.

Notable, in this context, are the propositions developed by Ben White (1995) and The Concerned for the Working Children²⁰(1996). The continuum developed by Ben White is referred to as the 'Child Labour-Child Work Continuum' and can be presented by the following diagram.

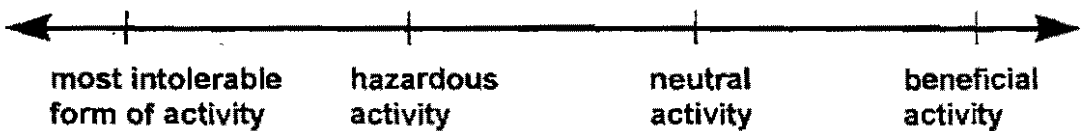


Figure 1. Ben White's Continuum

This continuum describes the economic activities engaged in by children in the form of a gradation. The activities are plotted along a longitudinal continuum with the 'most intolerable form of labour' on the extreme left-hand side. This constitutes the form of employment which cannot be tolerated in any circumstances. These situations very often violate not only the labour laws but also the criminal laws. Next to that is the 'hazardous' category which includes those activities which in their present form are 'hazardous' and 'detrimental' to the child. On the right-hand side of this category, are the 'neutral' activities which by themselves are neither harmful or beneficial to the children who are engaged in it. At the extreme right-hand side of the continuum is 'positive' or the 'beneficial' activity which positively contributes to the child's growth and development. The model prescribes a combination of steps to combat child labour consisting of firstly, prioritisation of action for immediate rescue and rehabilitation of children engaged in the 'most intolerable forms of labour' as it is not susceptible to any efforts towards improvement, and; secondly, a linear transformation of children's employment from 'detrimental' to

'neutral' and from 'neutral' to even 'beneficial' activities. This continuum was reiterated by the UNICEF (1997) wherein, it acknowledged the divergent conditions of children's employment. It stated that '... to treat all work by children as equally unacceptable is to confuse and trivialize the issue and to make it more difficult to end the abuses. This is why it is important to distinguish between beneficial and intolerable work and to recognise that much child labour falls into a grey area between these two extremes'.

The second model is the one developed by the 'The Concerned for the Working Children'. Based on their experience and continuous reflection, NGO developed an innovative proposition which may be called a 'Pyramidal Model' (a name ascribed by the researcher for the convenience of discourse in this thesis). It could be presented in the following diagram.

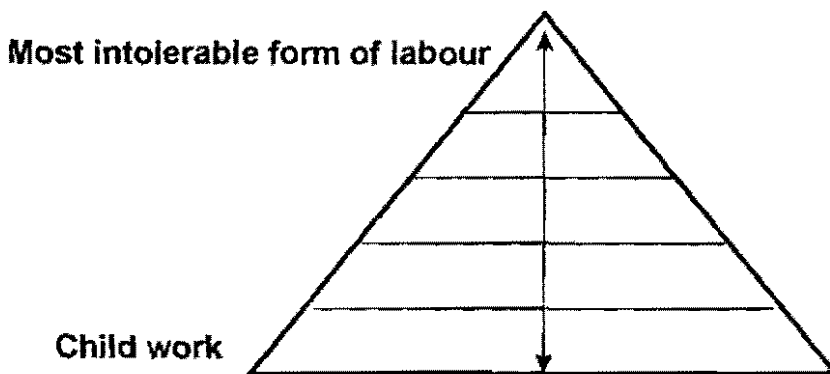


Figure 2. CWC's Pyramidal Model

This model endorses the gradation put forth by Ben White but plots it onto a pyramid instead of a longitudinal continuum. At the peak of the pyramid is the 'most intolerable form of child labour'. The degree of hazard decreases towards the base of the pyramid. At the bottom of the pyramid is the 'child work' which includes contributions of the children even to the family. The pyramidal form of this model is used not just for creating a new

geometrical conceptualisation, but for fundamentally advocating a different strategy. It prescribes that any action towards the elimination of child labour should not be linear but should attack a vertical cross-section of the population. The reality is in a state of constant flux. While trying to attack child labour at one level, children belonging to the 'not-so-hazardous' sectors are likely to get into 'the most intolerable form of child labour'. Therefore action would have to be concurrent and directed towards all children, rehabilitating some from grossly exploitative situations while preventing others from getting into similar situations.

Child Labour and Child Rights: A Continuum

Although the above mentioned theoretical models reflected the dynamic reality of child labour for the first time, they had two broad limitations. Firstly, they did not suggest any specific operational indicators for determining which activities could be termed 'most intolerable' or 'hazardous' or even 'beneficial'. Secondly, although they prescribed attacking the problem in a linear or a vertical manner, they did not state the content of these strategies. In addition, children's rights are not operationalised into integrated policies for the welfare of the children. The problem of child labour is one such issue which requires a holistic approach within the framework of the rights of the child.

Closely associated with the above mentioned dynamic conceptualisation of child labour is a model which crystallizes the nature of economic activities performed by children and develops clear, specific and operational indicators which are required to guide any change process. This conceptualisation is based on the framework of the Rights of the Child and the content of the process of eliminating child labour is also viewed from this perspective.

The rationale for using the 'rights of the child' framework was: firstly, child labour is a gross violation of the fundamental rights and freedoms that the

child is entitled to under various international laws. Eliminating child labour is synonymous to protecting the child's rights against such forms of exploitation. Similarly, the development of appropriate strategies for the elimination of child labour can be greatly benefited from the conceptual categories of child's rights as contained in the international treaty, especially the CRC, which India has ratified. Secondly, children's rights, like all other human rights, are indivisible. They can be looked at as a system with the individual rights interrelated with each other. Violation of a single right could result in subsequent violations of other rights. Child labour is the symptom of a condition where several rights of the child are violated. For example, when right to education is violated, children generally enter the labour market, whereby the right against economic exploitation also gets violated. Therefore, viewing elimination of child labour as equivalent to protecting the child's right against economic exploitation alone is not sufficient. A comprehensive look at the other rights of the child is equally important since sustainable elimination of child labour can occur only when all the basic rights of all the children are protected and restored.

The Convention prescribes four categories of child's rights. They are: *survival, protection, development and participation rights*. Survival rights include those of health, nutrition and basic care needed to sustain life; Protection rights include those against abuse, exploitation, neglect and prejudice; Development rights include those for education, recreation and personality development; and Participation rights include those related to the freedom of expression, decision making and assembly.

A close examination of these rights reveals that the rights can be placed in a hierarchy with the survival rights being the most basic rights and the participation rights being a higher category of rights. Building on the earlier theoretical propositions which described activities of the children in the form of a gradation (from the most to the least hazardous activities), the researcher modified the earlier models so as to incorporate the

provisions of child's rights as a system. In this context, child labour would be seen as a continuum with various activities pursued by children assuming various points on the continuum. These points of activity coincide with the four categories of children's rights. The continuum so obtained was conceived of as follows:

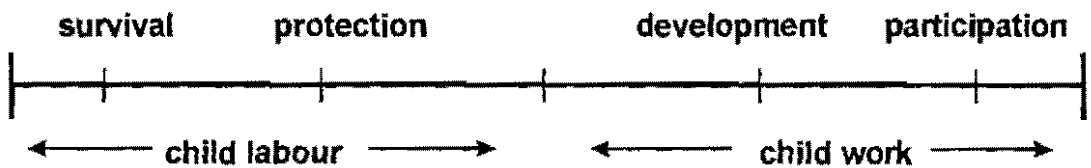


Figure 3. Child Labour - Child Rights Continuum

The activities performed by the children can be positioned into two categories of child labour and child work which can be further sub-divided into two categories each, depending on the level at which children's rights are violated. At the left, we have the crudest form of employment i.e. child labour and at the right we have the most acceptable form of work i.e. child work. There is no clear point of neutrality assuming the centre position, however the two positions of work comprising of 'child labour' on the left side are more negative in their character whereas the two positions on the right are more positive in their character. The work undertaken by children can thus be plotted at four positions, which represent the four objectives that have to be met and the stages that have to be passed for a gradual process of eliminating child labour.

At the first position on the extreme left in the 'child labour' category, we have child labour as is seen in the most exploitative forms today in almost every developing country. Here the main issue of concern is that of survival. The work assumes proportions serious enough to threaten the life and liberty of the children. For example, children in slavery or bondage, children used in prostitution, children used in wars and many

more forms of work where children receive nothing in return and exist only because they have submitted themselves to the grave realities. At the survival stage the objective to be achieved is survival rights of the children, namely, the right of life and liberty. The violation of these rights can also be explained by situations where children are compelled to work in order to survive, or have the responsibility to ensure that their family survives. They are also forced to work in situations that directly threaten their well-being and health. At this stage, action should be taken to tackle the conditions that push the children to the brink of their survival and force them to work in conditions that violate their right to life and liberty.

At the second position on the left in the 'child labour' category, is the form of work where the main issue of concern is protection. In this position, the children engage in forms of work that are harmful due to the persons, place, processes or problems inherent in the work. These activities are abusive by way of long hours of work, strenuous tasks, poorly paid work, etc. At the second stage, ensuring the protection rights is the goal to be achieved. Here, the action strategies should address the child's right to better working conditions including better wages, lesser hours of work, improved facilities, less abusive environment, etc.

At the third position from the left falls the 'child work' category, the main issue of concern is development. Here the work undertaken by the child does not threaten the child's survival nor is it abusive in nature. But at this stage, the work is neither educational nor recreational and thus does not contribute to the child's development. Thus the objective of the third stage, when the earlier rights have been protected, is to ensure the protection of the development rights of the working child. Here, provision of education, recreation and facilities for personality development are crucial.

At the fourth position, we have the most acceptable form of child activity. Here the main issue of concern is that of participation. This work is neither

threatening nor abusive. It even contributes to the child's development by being of educational and recreational value. Yet, at this stage, the child's expression and genuine participation in the kind of work done by him/her is vital. This is the stage where the work done by children can be considered as truly positive in its contribution to their development. So at this stage, the action should be directed towards achieving the participation rights of the children at their workplace. This would include, the children's rights to information, decision making and assembly.

When all the rights are met, one would say that the child is truly engaged in 'child work' that may be a productive and a learning experience for the child. The action on the basis of this continuum can occur sequentially, that is after successfully meeting the basic rights, one can move to higher rights; or it can happen simultaneously where the action is geared to achieving all the four categories of rights together, or with the help of each other. The work done by children would fall in any of the four categories depending on the issue which is at stake and the objective to be met. It is commonly understood that the fulfillment of the higher needs happens only after the fulfillment of the basic needs. This is explained in the Maslow's theory of hierarchy of needs which states that the higher needs of self esteem and self actualisation can be fulfilled only when the basic needs of food, security and affection are met. Similarly on the child labour-child rights continuum, the child's survival rights have to be ensured first before the other rights to protection, development and participation are secured if one has to gradually eliminate child labour.

The nature of economic activity pursued by children at each stage is indicated in this continuum. The rights which are therefore to be aimed at are also indicated above each category of children's employment.

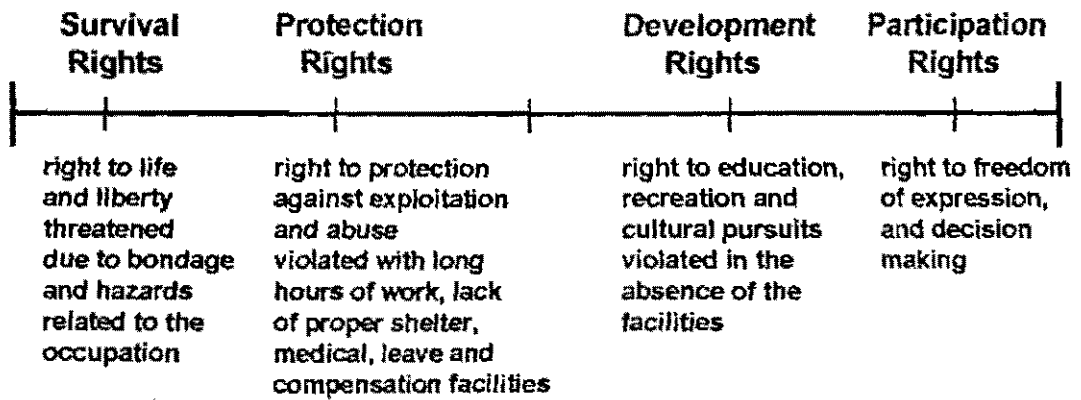


Figure 4. Elimination of Child Labour: Goals and Conditions

This proposition on the elimination of child labour using the continuum addresses the needs of a variety of settings in which children are made to work. It keeps the child as the focal point for undertaking any change process, be it immediate removal or gradual elimination of child labour. This continuum presents the different stages that the child labour elimination process has to go through in order to gradually eliminate child labour. At present, the approaches that are regulatory in nature do not have the elements for a forward growth in themselves. The current regulatory approach is purely ameliorative and cannot lead to elimination of child labour on its own. Although it subscribes to the ideology that child labour is to be eliminated over a period of time as the socio-economic reasons compel the child to work at present, it remains at the phase of regulating child labour and does not create conditions which will lead to a phased elimination of the problem. The programmes meant for regulating child labour get into the trap of stagnating as they are able to meet some needs of the working children. For the programmes to be dynamic and aimed at achieving a sustainable process of eliminating child labour, they need to move along with the components of protecting the survival and protection rights of the child along with those protecting the development rights of the child. For the purpose of gradual elimination of child labour, the continuum suggests a course of action which is likely to lead to one of the following two conditions: one, a situation where the child continues to

be in a work situation which is gradually transformed from 'child labour' to 'child work' i.e. from an exploitative situation to a developmental and an empowering situation; and two, a situation where child labour is made redundant or uneconomical for the employers by guaranteeing the children's rights to protection, development and participation, thus leading to elimination of child labour. In a situation of exploitative child labour, it is often unfeasible to immediately remove children from employment as the alternatives are absent. A gradual approach on the lines of 'Child Labour-Child Rights Continuum' can ensure that the conditions of work are gradually converted from abusive to non-abusive conditions to the child. If the issue of the elimination of child labour is perceived from the point of view of children's rights as granted by the Convention on the Rights of the Child, one would view the services provided to the children as a matter of children's rights. Thus, non-provision of these services amounts to the violation of children's rights that are legally granted to the children. When it is a matter of children's rights, it is the duty of the State, families and the society at large to provide for the fulfillment of the rights.

The continuum is applicable for different kinds of employment activities pursued by the children. If the child is in bondage, the target is to begin from fulfilling the survival rights of the child. If the child is in a non-hazardous activity but is still abused, one has to begin from fulfilling the protection rights of the child. If the child is in a non-hazardous, non-abusive work situation, the aim should be to provide for the child's development needs and finally, if the child is currently in a work situation where his/her development rights are also met, efforts must be made to restore the child's participation rights. In other words, the continuum demonstrates a way of eliminating the problem by successively addressing the survival, protection, development and participation rights of the child labourers so that they are gradually removed from employment.

In the present study, an attempt is made to examine the role of law and the NGOs in transforming the situation of child labour along this continuum. The following chapter describes the methodology followed for operationalising this continuum.

Endnotes

¹ In the contemporary times, this gets reflected in the commodification of the child in the process of debt bondage.

² Adult power over children arises from authority relations within the family on which most legal systems are based (Ernew and Brian, 1989:19). It is reported in Pappas (1983) that the 'law even provided positive reinforcement for parental authority in the form of severe sanction by the State for filial recalcitrance, including in some instances, even the death penalty'.

³ With the rapid development of industrial society, the State began to interfere in very many ways in the family life and the relationships between adults and children (Meyer, 1983) and the issues pertaining to the role of the child, became the issues of concern to the State.

⁴ Sommerville (1982) notes that although there existed a class division between children who formed the backbone of industrialisation and those whose pampered lives rested on that labour, there is a sense in which even the idolisation of childhood among the upper classes was exploitative.

⁵ These statutory interventions sought to regulate their working conditions and promote their physical and moral welfare, in addition to establishing compulsory education and a separate treatment of children in the judicial system.

⁶ There is not one childhood, but many, formed at the intersection of different cultural, social and economic systems, natural and man-made physical environment (Ivar, 1993:1). Moreover, the age boundary between childhood and adulthood is established at different ages in different spheres of activity (Franklin, 1995:8).

⁷ Primary to this debate was the idea that childhood was not universal in its definition and there could be conflicts in the concept embodied in the Convention and the existing conceptions of child in different contexts. Ernew (1995) argues that the Convention was drafted with a particular type of childhood in mind and therefore treats children outside this model as marginal. This means that children's rights as a concept within the human rights field does not fully engage with the whole range of human beings who are defined as children.

⁸ It is important to bear a caution against romanticising children's participation in their liberation movements. Hart (1992) describes an eight-level model of child participation and points out that adults must be able to distinguish what is 'child initiated' and 'child driven' participation from activities where adults might use children to promote their own causes.

⁹ This doctrine suggests that the State is the ultimate guardian of its children and has the responsibility of protecting the interests of all its children.

¹⁰ In the Indian context, Public Interest Litigation (PIL) is one method by which members of the public can bring in cases on behalf of those suffering from victimisation or exploitation. In certain cases, the judgments in the PIL have gone beyond the immediate

cause of action and have brought in issues that exist at the wider level. The case of *M. C. Mehta v State of Tamil Nadu* (AIR 1997 SC 699) where the judgment goes beyond the issue of child labour in match industry of Sivakasi and lays down directions to be followed by other industries engaging child labour, is an example.

¹¹ This could be looked at as a limitation of an international treaty like the CRC and not necessarily as a limitation of the document of the CRC.

¹² Protection rights of the children are rarely contested but liberty rights are contested on the grounds that such rights require the capacity for reason, rationality and autonomy and that therefore children are excluded from their possession - along with people who are mentally ill or brain damaged (Scarre, 1980).

¹³ This Committee was also referred to as the Gurupadaswamy Committee and it drew from the division of child labour as exploitative and beneficial as given in the *Encyclopaedia of Social Sciences*. For further details of the report, see Government of India (1981)

¹⁴ It is found that the labour of the child is controlled by the parents, very often the male household head and is based on age and gender hierarchy (White, 1985:7). This control is the essential characteristic of the exploitation that happens even within the sanctity of the family.

¹⁵ Under Part II, Section 3 of The Child Labour (Prohibition and Regulation) Act, 1986.

¹⁶ Under Part III, Section 6 to 13 of The Child Labour (Prohibition and Regulation) Act, 1986.

¹⁷ This is referred to in Section 3 and 9(3) of The Child Labour (Prohibition and Regulation) Act, 1986.

¹⁸ A few illustrations of family based establishments where children are engaged in occupations which are 'hazardous' in nature are agarbatti (incense sticks) industry (Krishnakumari, 1985); bidi rolling (EPW, 1981), garment industry (Department of Women and Child Development, 1988), coir industry (Gulati, n.d.) zari industry (Soman, 1992). For further discussion on the gender related exploitation in the home based industry, see Burra (1995).

¹⁹ These components are education, health, nutrition, and poverty-alleviation programmes. The Grants-in-aid scheme also suggests activities on the lines of providing non-formal education, adult education, income and employment generation, special schools, raising public awareness, and stepping up of the enforcement of the child labour laws.

²⁰ This model was described in a discussion with Damodar Acharya, Director, Gramashrama (a rural project of the CWC which has started the Panchayat Toofan Project in Kundapur Taluk).

LIBRARY
NATIONAL LAW SCHOOL OF
INDIA UNIVERSITY
NAGARBHAVI, POST BAG No 720¹
BANGALORE -560 072