

Bringing Children Back to School

Perspectives from Education Policies and Child Labour Laws

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Abstract

If education is to be considered as a capability, then child labour, which either forces the children to quit the schooling or keeps them away from schools, leads to capability deprivation rendering the out of school children as impoverished. The paper presents the need for widening the definition of 'child labour' in consonance with Article 32 of the Convention on the Rights of Children, 1989 to include children who though are not employed in any hazardous occupations or perform any activities listed under Schedule 1 of the Child Labour (Protection and Regulation) Act, 1986 yet are denied education. The paper also argues for vocational, life-skill and craft-based education in elementary level so as to create interest in education besides equipping the schools with basic facilities and creating a healthy environment for approaching 'disinterest in studies' as a cause for huge number of children being 'out of school'.

Introduction

Education is empowering, as it is instrumental in building central human capabilities like practical reason, control over one's environment through association and participation besides shaping one's thought and imagination.¹ Child labour is a clog in capability building as it hinders unfettered completion of basic education besides

affecting bodily health. It will be argued that child labour must not be looked only from the lens of exploitation in hazardous employments only but must also include all compulsions that hinder his/her education attainment and development. There exists a correlation between low enrolment, poor retention and child labour and the incidence of poverty because all these aspects leave the

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¹ Nussbaum, Martha, *Frontiers of Justice*, 2006, 2nd year, 4th Semester, Law and Poverty reading material compiled by Prof. Amita Dhanda, p. 15.

capabilities, the substantive freedoms an individual enjoys to lead the kind of life s/he values,² underdeveloped which further hampers functioning. Sen argues that capability improvement may lead to greater earning power. Thus, basic education may not only improve the quality of one's life directly but may also increase an individual's ability to earn which may also check child labour too as the economic interest in learning is created.

The Universal Declaration of Human Rights states that everyone has a right to education and at least elementary education should be compulsory and free while ICESCR makes it obligatory for the nations to devise an action plan for its implementation.³ India, with the 86th Amendment to its Constitution inserted Article 21A⁴ which made free and compulsory elementary education a fundamental right.

'Out of school children' include both the children who have dropped out of the schools and those who have never

attended the school yet. With Gross Enrolment Ratios nearing 100% level⁵, the attention must shift to a large share of children who fail to complete basic education failing which the productivity of the labour force, the potential for knowledge-driven development, and the reservoir of human potential from which society and the economy can draw, are all fundamentally constrained.⁶ Thus, the focus is shifting from universal primary education (enrolment) to the unfettered universal primary completion.⁷

Education as Right and What it Entails

As mentioned earlier, right to education is now a fundamental right under Article 21A. At this juncture, it is important to know what this right means for the recipients and the co-relative duties of the State for ensuring the enjoyment of this right. In this, it is explained that child labour policies and education policies relating to retention in elementary education must operate in tandem.

² Sen, Amartya, *Development as Freedom*, 1999, p. 87, 88 cited in 2nd year, 4th semester, Law and Poverty reading material compiled by Prof. Amita Dhanda, pp. 10, 11

³ Article 26, Universal Declaration of Human Rights, 1948 and Article 14, International Covenant on Economic, Social and Cultural Rights, 1966 (ratified by India on July 10, 1979)

⁴ **Art. 21A, Constitution of India:** The State shall provide *free and compulsory education* to all children of the *age of six to fourteen years* in such *manner* as the State may, *by law*, determine. (Italics supplied). The Article provides that manner for carrying out this task will be determined by the State made law. The Right to Education Bill tabled in the Parliament in 2005 has not yet been passed to have a force of law.

⁵ **Gross Enrolment Ratio** basically measures the enrolment to the estimated child population in that age bracket. However, while measuring this ratio, enrolment in these stages includes under-aged and over-aged children giving us the inflated figures.

⁶ Bruns, Barbara, Mingat, Alain and Rakotomalala, Ramahatra, *Achieving Universal Primary Education by 2015: A Chance for Every Child*, 2003, p. 27

⁷ Second goal in the list of eight **Millennium Development Goals:** Ensure that all boys and girls *complete a full course* of primary schooling. (italics supplied)

Henry Shue averred that a right provides a rational basis for justified demand that the *actual enjoyment of the substance* be socially guaranteed against the standard threats.⁸ It implies that the right to full and free elementary education is by itself a good justification for the demands for associated infrastructure (like schools, basic facilities in schools, transport, stationery, etc., to name a few) and productive pedagogy⁹, from the society along with the protection from obstacles such as child labour, household work requirements (which it is argued is a form of child labour even though law chooses to ignore it!), and other factors causing disinterest towards education etc., which hinder the *actual enjoyment of the substance* of this right and either keeps the children out of the schools or compels them to leave their elementary education unfinished and dropout.

However, it is also submitted that in the context of globalisation and need for specialisation, the skill-based education, even if not as basic as security or subsistence rights, as Shue argues¹⁰, right to education, which largely is a positive right, must not be reduced to a minor right as it is to some extent

cardinal to the constitutional ideals of securing justice, liberty, equality and promoting fraternity among the people of India. The Supreme Court in *Mohini Jain*¹¹ held that education is basic to the dignified enjoyment of life. Thus, unless the 'right to education' is made a reality, the fundamental rights will practically remain beyond the reach of a large majority; child labour, right to education and dignified life can not co-exist except in a paradox.

Shue (*supra*) expressed that mere declaration of the existence of particular right does not guarantee its 'actual enjoyment of the substance of right'. It is important to know what the contents of this right are. At a very basic level initial education should equip one with core competencies (include 3R's i.e., reading, writing and numeracy), knowledge, skills and attitude that lays the foundation for an individual's life-long learning.¹² The apex court in *Unni Krishnan*¹³ observed every child has the fundamental right to free education until s/he completes the age of fourteen years which, perhaps, in light of right-based jurisprudence for elementary education developing globally fructified into the insertion of Article 21A (however, it

⁸ Shue, H., *Basic Rights: Subsistence Affluence and US Foreign Policy*, 1980, p 13 cited in 2nd year, 4th Semester, Law and Poverty reading material, compiled by Prof. Amita Dhanda, p. 140

⁹ By productive pedagogy, life-skills and employment oriented education system is implied here.

¹⁰ *Supra* n. 24, *ibid.* at p. 20. However, he agrees with that enjoyment of right to education is much greater, richer and perhaps more distinctively human than merely going through life without ever being assaulted.

¹¹ *Ms. Mohini Jain Vs. State of Karnataka*, (1992) 3 SCC 666, (678-680, paras 8-14) though this case basically dealt with higher education (which is beyond the scope of the paper), yet the judicial dicta on education as a right and jurisprudence behind it is vital.

¹² Bajpai, Asha, 'Right to Development' in *Child Rights in India: Law, Policy and Practice*, 2003, p. 328.

¹³ *Unni Krishnan, J.P. Vs. State of A.P.*, (1993) 1 SCC 645 (730-736, paras 171-175)

covered the age group of 6-14 years only). Herein, the issue of enjoyment of this right free from exploitation must not lose sight.

Gravity of the Problem

India has improved upon the primary completion rate over a period of time yet the number of children out of school remains alarmingly high. According to the government estimates (criticised as gross under-estimation; CRY an NGO on Child Rights puts the number at about 4 crore in 2006) the number of out-of-school children in the country is 1,34,59,734 comprising 6.94% of the total children in 6-14 years age bracket.¹⁴ 'Out of school children' includes dropouts and the children who have never attended the school and incidentally the latter are more in numbers. Its proportion tends to be higher in the rural areas than the urban areas where also the difference between primary education completion between girls and boys is more pronounced. These children are doing some work which might be exploitative but unprotected by the Child Labour (Prohibition and Regulation) Act, 1986 or even if such works are banned by law, legal loopholes permit them. Nevertheless, this is child labour and

violates the child's right to a life with dignity in a smuch as it interferes with education and is harmful for child's physical, mental, spiritual, educational and social development.¹⁵

The provisional statistics for 2004-05 puts dropout rate at 29% for the primary level but it shoots up to 50.48% in elementary level which is a matter of concern. In that it is, 50.49% in case of boys and 51.28% for girls.¹⁶ This should however be seen in relation with dropouts at the primary level, wherein in case of boys it is 31.81% and in the case of girls it is 25.42%. It can be said that there is a sharp rise in the girls' dropout rate not to leave a significant rise in boys' dropout too around primary level,¹⁷ an age when the child can be put to work in employments and homes. Hence, dropouts at primary stage need to be controlled as an essential first step for securing the aim of complete elementary education and eradicating child labour.

Having discussed the right to education and dropout as a detriment to actual enjoyment of this right along with statistics (which though are suggestive but not revealing!) expressing the gravity of the problem in numbers, it would be opportune to understand the causes

¹⁴All India Sample Survey on 'Out of School Children' in the age group 6-13, 2005 under *Sarva Shiksha Abhiyan*, Ministry of Human Resource Development, India, p. 1.

¹⁵**Article 32, Convention on Rights of Child, 1989:** States Parties recognise the right of the child to be protected from economic exploitation and from performing *any work* that is likely to be hazardous *or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.*

¹⁶**Source:** *Selected Educational Statistics 2004-05* as on 30th September 2004, released in 2007, p. XXI

¹⁷However, in the hindsight it must be kept in mind that dropout would tend to be low if the percentage of 'out of school' children is high since the larger chunk of this number would have never attended the school which is, if not more, equally problematic.

behind dropouts which is partly revealed by the statistics before scrutinising the policies and schemes adopted by the Government of India to tackle the dropouts.

Causes of Dropouts

The active participation of children in primary education hinges on a plethora of factors physical access being one of them. Once children reach school variety of factors determine whether they will continue or dropout and if children dropout rigid gender roles and other socio-economic factors besides presence or absence of any scheme to bring them back determine whether they can get back to school or not. If the schemes are in place, then the moot question is whether they are arresting the causes or merely erasing the consequences, i.e. how deeply and with what perspectives they look into the problem. The edifice of the policies rests on the bedrock of assumptions like: child labour-a 'harsh reality', an element of the 'culture of poverty' which overlooks the dynamics of wants in changing times (taking cue from Baxi's argument for 'impoverishment' for 'poverty',¹⁸ the essence being bringing an attitudinal change to policy making) and differentiating between child work and child labour which exemplifies the aforementioned assumption for example non-formal education customised to the needs of the working children.

National Sample Survey Organisation's (NSSO's) recent survey as reported in the Times of India¹⁹ probed into the high dropout rates in girls especially after primary level highlighted two major causes for the dropout among girls, viz. first, to take care of the household chores and secondly, educating girls not being considered as necessary.

In case of males, the survey points out, the need for augmenting the family income compels them to quit education midway. Related to employment is the age at which the child starts his/her school. The later the start, the likelier it is that the child would quit education when s/he becomes capable for labour. Looking at the education profile of the child labourers most of them, it seems, have either received no education or only the primary education. Interestingly, the modal age of employment is around 9-12 years.²⁰

National Health and Family Survey (NHFS)-II conducted in 1999, threw some light on the causes of the dropouts. A significant finding recorded is that a high percentage of pupils in both urban and rural areas dropout because of lack of interest in studies.²¹ However, it may be argued that the lack of interest in education can be attributed to the stultifying education system which had hitherto neglected the significance of vocational, craft-based and employment oriented education and to the systemic

¹⁸ Baxi, U., 'Introduction' in Baxi, U. (ed.), *Law and Poverty: Critical Essays*, 1988, pp. vi-x. cited in 2nd year, 4th semester, Law and Poverty reading material, compiled by Prof. Amita Dhandra, p.133-4

¹⁹ *For girls, raw deal begins at home*, The Sunday TIMES OF INDIA, March 9, 2008, p. 15

²⁰ Child Labour at Work: A Case Study in Mehta, P.L. and Jaswal, S.S., *Child Labour and the Law*, reprint, 2001, pp. 106-7.

²¹ Ramchandran, Vimala (ed.), *Gender and Social Equity in Primary Education*, 2004, p. 44

issues such as dysfunctional schools, unfamiliar medium of instructions, lack in motivation and commitment of teachers, quality of schools, etc. Other factors instrumental in the dropout amongst girls, that the survey points out, are requirement for household work or work outside home, lack of proper school facilities (e.g. lack of proper building, boundary walls, toilets, drinking water, etc.), lack of adequate transport when schools are too far from the homes and early marriages.

Education attainment levels of parents are often related with the child's own participation in schooling which is accentuated by a report from UNESCO on out of school children. It said that in India, the primary school-age children whose mothers have had no education are 3.3 times more likely to be 'out of school' than those whose mothers have some education.²² The probability increases when the student is a girl, finds the report prepared by Pratham an NGO.²³

In nutshell, the factors, thus, for exclusion in elementary level, broadly may be age, gender, income and educational status of the household, place of residence (urban-rural divide and higher share of rural out of school population), *inter alia*, other socio-economic determinants endemic to certain groups and locations. The undercurrent beneath these statistics is

that all these factors are mediated by the social and gender relations in the community, poverty and conception and prevalence of child labour. Whether laws and policies address these undercurrents is the question of the hour.

Education Policies: A Bird's Eye View

From above discourse few causes of dropout appear quite centrally namely: (i) 'Child labour (banned by law) (ii) household chores performed by girls, 'child labour unpaid' (not recognised by laws and policies)²⁴ (iii) child labour legitimised by law from the loopholes it carries, and (iv) disinterest towards education, the fourth not being unrelated to above three. With the passage of time it has been realised that the government now lacks the capacity to work simultaneously on several fronts like: access, quality and relevance.

'Relevance' of education is an important issue as it, to some extent underlies all the causes mentioned above and also perhaps answers the disinterest factor that keeps the children out of the schools or compels them to quit midway, a little more closely. At very basic level problem comes when the core competencies are poorly taught and what is taught is of little or no value.

Gandhi stressing on harmonising the intellectual with the manual opined that knowledge imparted should be of some use in practical life at least up to the

²² *Children out of School; Measuring Exclusion from Primary Education*, 2005, pp. 44-46.

²³ *Annual Status of Education Report 2006*, January 2007, p. 32.

²⁴ Collections of water, fuel, maintenance of the house, taking care of younger siblings, preparing meals, etc. constitute important elements of a girl's domestic life especially in villages. While many of these activities do not necessarily fall under definition of hazardous work, inasmuch as they interfere with the normal development of the child and his/her education, they constitute exploitation of the child and hence must be seen as child labour. These factors as explained before pull out, especially the girls out of education.

elementary level. He advocated that skill-based and self-supportive education should be provided to the students which hence will inculcate self-respect amongst them besides opening job avenues.²⁵ Education then will not be irrelevant to the masses and families who will see the interest in educating the children. Skill learning in schools that augurs a productive future, it is believed, is itself an incentive for sending children there.

However, post independence, science, technology and scientific research and moral education received much emphasis and it seems that the free, compulsory and skilled based elementary education did not get due deliberation from the policy framers.²⁶ Not before 1968, the first education policy was formulated. It focussed on free and compulsory education to all children up to 14 years but provided for vocational education only at secondary and university level.²⁷

The New Education Policy of 1986 adopted a child-centred approach for elementary education. It proposed a programme of non-formal education catering to the primary school dropouts; working children and girls who may not be able attend the whole day of school. It should only be a temporary measure in the long run because it instead of providing for a solution to the problem of

child labour interfering with the child's education, in effect provides for a system of child education which does not interfere with child labour. It also called for 'Operation Blackboard' for improving school facilities and creating requisite infrastructure for primary level.²⁸ The policy was modified in 1992 which besides enrolment and retention, emphasised on 'universal access' in elementary education and strengthening the non-formal education by equipping it with technological aid.²⁹ Quite evidently what was envisaged was not achieved not surprisingly questions were raised about the efficacy and implementation of these guidelines.

It must be noted that no policy concerned with eradicating child labour which as has been discussed is a clog in educational attainment. Moreover, no attempt has been reflected in policy to introduce vocational and life-skill teaching in elementary education. Government of India launched an ambitious project of *Sarva Shiksha Abhiyan* in 2001 with the objective that all children complete five years of primary schooling by 2007 besides the mission of universal retention by 2010. Its implementation was termed inept by the Comptroller and Auditor General Report of 2006. The goals set out by the project became distant dreams due to

²⁵ Gist taken from *The Collected Works of Mahatma Gandhi*, Vol. 13, reprint, 1995, pp. 298-300, 358-9, 462 and Volume 37, pp. 111-2, 301-302.

²⁶ Immediately after the independence special committees formed dedicated to secondary and university education like University Education Committee (1948-49), Secondary Education Committee (1952-53). Only the Kothari Commission on Education (1964-66) gave some space to elementary education.

²⁷ National Policy on Education, 1968, pp. 1-8.

²⁸ National Policy on Education, 1986, pp. 9-12.

²⁹ National Policy on Education, 1986 (as modified in 1992), pp. 13-5.

continuous under-funding and deficient interventions by the project implementing agencies.³⁰

Bringing Child Labourers to Schools

The point emphasised here is that education policy and child labour policy must operate in tandem and present cogent connections while also looking at wiping the notion of non-usefulness of education for certain group of children (mostly the girls). Looking at law, the Supreme Court directed the government to persuade the workmen to send their children to nearby schools and it must arrange for schools and strive to provide books and other facilities free of charge.³¹ The Court has directed the Government to convene meetings of different ministries and departments and take requisite steps to bring the children working in hazardous employments to the schools.³² It also considered that basic employment-oriented vocational education should be imparted to the children so as to empower them; to

retrieve them from poverty; develop basic abilities, skills and capabilities to live a meaningful life and economic and social empowerment.

However, it seems that laws and courts have considered child labour only from the perspectives of hazardous employment in factories and industries and not from the labour in private spheres (like families) which has passively received legitimisation; the roles have been fixed and stereotyped. The spread of education is facing an ominous roadblock. The Child Labour (Protection and Regulation) Act, 1986 has more of a regulatory stance than prohibitive inasmuch as it prohibits child labour only in certain sectors elucidated in Part A and B of the Schedule and specifically keeps itself away from homes and families³³ thereby excluding from its purview huge number of children working with their families in agriculture, dairy and other family concerns. Article 32 of the UN Convention on the Rights of the Child,

³⁰ CAG terms *Sarva Shiksha Abhiyan* implementation 'inept', The HINDU Businessline, August 20, 2006 (e-paper link: <http://www.thehindubusinessline.com/2006/08/20/stories/2006082002220500.htm>). For example: The revised target of SSA to enrol all children in schools, education guarantee scheme, alternative schools, back to school camps by 2005 was not achieved, as there were still about 40 per cent children out of school in the 6-14 age group.

³¹ *Labourers Working on Salal Hydro-Project Vs. State of J&K*, AIR 1984 SC 177, *ibid.* at 183.

³² *Bandhua Mukti Morcha Vs. Union of India*, (1997) 10 SCC 549 (Mirzapur carpet industries), *M.C. Mehta Vs. State of Tamil Nadu*, AIR 1997 SC 699 (Sivakasi crackers factory).

³³ **Section 3, Child Labour (Protection and Regulation) Act, 1986: 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: *Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.* (The Government itself has proceeded on the assumption that child labour cannot be eliminated completely and that certain forms of child labour are inevitable.)

1989 though leans towards 'hazardous employment' perspective, yet it contains right of the child to be protected from any work that interferes with the child's education and development. In this light the domestic/household chores performed by the girls that forces them to remain out of schools is child labour and infringement of her right under Article 32 of the Convention which however, is seemed to have been overlooked by the lawmakers and the courts. UNICEF has called it as 'unpaid and invisible' child work.³⁴ Thus, there is a case for expanding the application of the term child-labour by assuming that a person below fourteen years of age away from school or basic primary education is a child labourer.

The observations of UNESCO and ASER (*Pratham* Publication) report that when the mothers are not educated it is likelier that the children (even more likely in girls) would either remain out of school or will dropout before completing the basic education. This must be kept in mind while formulating the girls' education schemes and female adult education for fighting exploitation caused due to the stereotyping of roles in the households on gender lines and sending the message across that this stereotyping is nothing but child labour and an infringement of the child's rights. Therefore, while educating girls, adult education of women in this light (even if it be seen as a temporary measure in the

long run) is paramount to create a home that is conducive for education.

Appraisal

The primordial concern is to bring child labourers back to schools and this requires the adoption of Article 32 of the Convention on the Rights of the Child in its true spirit and the recognition of the fact that any non school-going child is an exploited child. A great departure from the existing policies is not suggested, rather it should be appreciated that programmes like *Sarva Shiksha Abhiyan* and the schemes enabling it are powerful means to bring the dropouts back to the schools.³⁵ What is suggested is an attitudinal change in setting priorities and appreciating that the ultimate goal of education policies for tackling dropouts and child labour laws is the same, i.e. holistic development of a child. In that regard, as discussed before, education system must insist for productive pedagogy and relevant curriculum.

For this it is essential to have children and the community in confidence by spreading awareness about the meaning and ills of child labour and the benefits of education. Simultaneously, steps for improving the quality of education must always be considered. Inside the schools, the following should be observed: if they are equipped with basic facilities; the treatment meted out to the children;

³⁴ Dak, T.M. (ed.), *Child Labour in India*, 2002, p. 13.

³⁵ Enrolment, particularly amongst the girls has substantially increased after 2001; Gender Parity Index has improved; Dropout has declined significantly from over 40% in 2001 to about 29% in 2004 besides the growth noticed in recruitment of teachers and infrastructure. **Source:** *Selected Educational Statistics 2004-05* as on 30th September 2004, released in 2007.

activities performed by them and their learning thereof and accountability of the administration, thereby, focussing on both the pull and push factors³⁶ affecting the access and retention of children in schools. Also it should be ensured that while the education is relevant to the needs and schools are equipped with facilities for preventing the children quitting education or parents withdrawing their admissions due to unhealthy school environment and disinterest in studies. The success of MV Foundation (R.R. District, Andhra Pradesh) in eradicating child labour and mainstreaming the 'out of school' children into the formal schools through bridge courses, camps, helplines, etc. is an example.³⁷ Its 'spiral' (phenomenon explained by Glover wherein an individual's efforts, when replicated by others can effect a significant change to arrest an insurmountable problem)³⁸ is reflected in the experience of *Baljyothi* which started 250 schools in the slum areas of Hyderabad with the community support. On similar lines, CINI ASHA with community-support and help from other NGOs and municipalities in Kolkata, works to educate children living on the streets, railway platforms, slums, squatter settlements and the children of sex workers. Several activities were undertaken specifically to win the

children's trust and help them face their everyday problems before introducing them to formal education.³⁹

While NGOs have been reasonably successful in bringing back dropouts and 'out of school children' to the schools, the Government responded by spreading awareness about the importance of schools and education through the schemes under the *Sarva Shiksha Abhiyan*. However, the State must realise that compulsory elementary education is primarily its responsibility and it must not detract from it by calling it an 'unfinished agenda' and 'passing the buck' to the NGOs (as Sainath calls it.⁴⁰ The researcher would, however, resist from calling these NGOs as money making industries).

Moreover, the State has not quite appreciated the idea that the policies regarding eradication of child labour and bringing 'out of school' children to schools must be complimentary to each other with case studies, research, statistics and opinions echoing the same. It has not enacted the Right to Education Bill tabled in Parliament in 2005, which is vital for realising the Right to Education under Article 21A. Considering this indifference, the State has not given an evidence of the political will for the compulsory elementary education of all children.

³⁶ Ramchandran, Vimala (ed.), *Getting Children Back to School*, 2003, Sage Publications, New Delhi, p. 8.

³⁷ *Mainstreaming Out of School Children: MV Foundation Experience*, case study, (2000)

³⁸ Glover, J., 'It Makes No Difference whether or not I Do it' in Singer P. (ed.), *Applied Ethics*, 1975, pp. 133-5 cited in 2nd year, 4th Semester, Law and Poverty reading material, compiled by Prof. Amita Dhanda, pp. 53-4.

³⁹ Case studies from Ramchandran, Vimala (ed.), *Getting Children Back to School*, 2003.

⁴⁰ Sainath, P., *Everybody Loves a Good Drought*, 1996, pp. 424-34 cited in 2nd year, 4th Semester, Law and Poverty reading material, compiled by Prof. Amita Dhanda, pp. 117-21.