

# **ELIMINATION OF CHILD LABOUR**

**Report No. 28**

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# Elimination of Child Labour

## Summary of Recommendations

With the ratification of the UN Convention on the Rights of Child 1989, the Government of Pakistan has committed itself to initiating appropriate legislative, judicial, administrative and social welfare measures for improving the status and conditions of children in the society. The Government is required to take steps for bringing its laws/rules/procedures relating to child care/protection/development in accord with the principles of the Convention and further to ensure their effective enforcement/implementation.

Due to gaps/anomalies/ambiguities in our laws pertaining to child employment as well as their inadequate enforcement, children are exposed to abuse/exploitation. There is thus a pressing need for introducing socio-economic and legal measures to safeguard/protect the rights/interests of children and improve their status/condition in society. The Pakistan Law Commission, therefore, recommends the following measures:

### **A- Legislative Measures**

- (i) Based on realistic assessment of the nature, kind, duration and conditions of work, etc a distinction must be drawn between child work and child labour. In this respect the criterion suggested by the Executive Board of the

UNICEF might be followed which furnishes normative principles and provides useful guidelines for drafting an appropriate definition of child labour. Measures must then be directed towards eliminating child labour.

- (ii) The Convention as well as the Constitution and domestic legislation (Mines Act 1923; the Merchant Shipping Act 1923; the Factories Act 1934; the Shops and Establishments Ordinance 1969; the Employment of Children Act 1991, etc) prohibit the employment of children below a specified age limit in hazardous/harmful occupations/professions. The Employment of Children Act 1991 - the latest statute in the area of child employment, and enacted particularly in the context of enforcing the principles of the Convention - in its Schedule lists certain occupations/processes in which the employment of children below 14 years of age is prohibited. However, certain other equally harmful/injurious occupations/processes, such as employment in a brick-kiln industry, sanitary work and work on farm where child might be exposed to chemical/toxic materials, are not included in the Schedule. These occupations may, therefore, also be added to the Schedule.
- (iii) The Constitution and some statutes prohibit the employment of children below 14 years of age in a factory or mine or any other hazardous occupation. The purpose is to save children from being employed on jobs that might be injurious to their health or detrimental to their moral or psychological development. The age of 14 is too early a stage to let the

tender muscels of children being exposed to the rigours and hardships of labour. It may also deprive children of their right to completing school education. The constitutional limit prescribes a minimum standard and by no means prohibits the fixation of a higher limit. The prescribed 14 years age limit is also incongruous with the international conventions. There also exist clear and categorical injunctions of Islam, which provide for the protection of children against physical harm and abuse or exploitation. Accordingly, the Constitution and other statutes may be suitably amended so that the minimum age limit for employment is raised to 15 years.

## **B- Welfare/Administrative Measures**

- (i) The list of hazardous occupations and other processes (mentioned in the Schedule to the Employment of Children Act 1991) should be periodically reviewed and updated, in keeping with the latest developments and expanding scientific knowledge on the subject. Furthermore, necessary safeguards must be provided to workers in such establishments.
- (ii) The Convention on the Rights of the Child, ILO conventions and the Constitution of Pakistan provide for an absolute prohibition of child employment in any factory or mine and any other hazardous employment/occupation, making no exception for such work being undertaken under a family surrounding. The Merchant Shipping Act 1923 and the Employment of Children Act 1991, however, make such an

exception. In situations when the parents happen to be greedy or callous or ignorant or negligent or not themselves in-charge of the business, such an exception might be exploited to the detriment of working children. However, this is an area where law enforcement would be difficult. Accordingly, the Commission recommends that to start with, a media campaign may be launched for educating parents and others about the negative/adverse affect on child labour.

- (iii) A vast number of children are engaged in domestic service. Children, indeed, due to their manifest vulnerability to exploitation (long working hours, small wages, no paid holidays, etc), are a preferred commodity for domestic service. Chances of abuse/exploitation of children in such service are therefore ever present. At present the services of domestic servants are totally unregulated. The Commission takes the view that due to the prevailing unsatisfactory situation in respect of law enforcement, and the pressing need of the family to supplement its income in order to survive, further consideration of the proposed draft legislation for regulating domestic servants is deferred. The Commission however, would emphasise on socio-economic measures to improve the conditions of children including appropriate incentives for the family to send their children to schools.

- (iv) The Convention as well as the Constitution of Pakistan prohibit the employment of children in hazardous/harmful occupations. The Government may, therefore, devise effective steps with a view to prohibit the employment of children in professions/occupations regarded unsafe for or injurious to health or harmful to the physical/mental/social/spiritual development of children. For this purpose appropriate enforcement/monitoring mechanism should be created/strengthened, authorities/officials designated and procedure devised for entertaining complaints.
- (v) Many children in the urban setting are self-employed, doing odd jobs under extremely difficult conditions. Similarly, many children in the rural setting are employed in agriculture sector, where they may be exposed to chemical/toxic material, injurious to health. Besides suffering in health, such children are also deprived of their right to acquire education. The underlying causes for this state of affairs are numerous, varying from poverty to income-disparity and high rate of unemployment in the society. The Government should, therefore, take appropriate measures aimed at resolving these problems so that reliance on child labour is minimised. Regulatory framework should follow once a favourable climate is created.
- (vi) There is a need for disseminating information regarding the Convention, constitutional provisions and other related legislation pertaining to the rights

of children. Thus, the local government institutions, social/cultural/educational/religious institutions, NGOs and mass media, etc should be associated in the task of mobilising support for the rights and welfare of the children.

- (vii) An essential component of such campaign must be the impartation of training to professionals/officials (police, judicial officers, labour officers, social welfare staff, probation officers, etc) having a role in the enforcement of laws/rules relating to children
- (viii) Legislative measures in order to be effective must be accompanied by a full-fledged mechanism for their enforcement/implementation. Accordingly, the Government should establish/strengthen institutions for the enforcement of relevant laws/rules such as Employment of Children Act 1991 and the Bonded Labour System (Abolition) Act 1992.
- (ix) The present allocation of resources towards child welfare should be enhanced so that their basic needs such as food, nutrition, health care, education, etc are fulfilled.
- (x) The Government may also consider giving appropriate directions to the provincial governments of NWFP, Sindh and Baluchistan to consider enacting legislation (on the pattern of Punjab Compulsory Elementary

Education Act 1995) for introducing compulsory elementary education in their respective jurisdiction. Such law should be duly enforced.

## **Introduction**

In his inaugural address at the Federal Judicial Academy's Workshop on the Convention on the Rights of the Child 1989 (CRC), held from 2-4 May 1995, the then Chairman of Pakistan Law Commission expressed the view that following the ratification of the CRC by the Government of Pakistan, the Commission would examine the relevant laws pertaining to children so as to suggest to the Government appropriate reforms thereof for bringing these laws in conformity with the international norms and principles. He, therefore, directed the Secretariat to present a draft paper on the subject.

Such draft came up for consideration before the Commission in several meetings. It was initially discussed in the meeting on 22 June 1995, and again, came for consideration on 2 November 1996. The Commission constituted a Committee comprising of the Commission members for an in-depth review of the draft paper. The Committee comprised of Mr. Iqbal Ahmed Khan, Justice Abdul Kadir Sheikh, Justice Ali Hussain Qazalbash, Justice Mohammad Arif, Mr. Shahzad Jahangir and Secretary, PLC. The Committee held two meetings, one on 23 November 1996 and the other on 12 December 1996. The Committee, while generally agreeing with the contents of the draft, further recommended as follows:

1. The prevailing gaps/anomalies in laws/rules pertaining to child labour should be removed and the monitoring/implementation mechanism strengthened;

2. The public should be informed/educated regarding the evil effects and harmful consequences of child labour;
3. The Government should devise a scheme of incentives for parents, inducing them to send their children to school;
4. The social issues involved in the problem i.e. poverty, unemployment, etc should also be addressed and resolved; and
5. A copy of the draft should be sent to the Ministry of Labour for their comments; and the Secretary, Labour should be invited to the next meeting of the Committee so as to explain the problems/difficulties confronted by the Government in the full and effective implementation of the provisions of the Convention and domestic laws on child labour.

Accordingly, a copy of the draft was forwarded to the Secretary, Ministry of Labour on 20 January 1997. They referred it to a Tripartite National Committee on the Rights of the Child for consideration. The matter is still pending with the Ministry of Labour as no decision has yet been communicated to the Commission.

The draft on Child Labour again came up for consideration before the Commission in its meeting on 20 June 1998. The Commission discussed in detail the legislative and administrative measures

suggested in the draft. The Commission expressed the view that while suggesting changes/amendments in law, the ground realities prevalent in our society should be taken into consideration. The Commission emphasised that efforts must focus on the protection of children, ensuring that children are not abused or exploited. The Commission further resolved to constitute a new Committee comprising of Mr. Justice (Retd) Shafiur Rehman, Dr S M Zaman and Secretary, PLC for detailed examination of the draft. The said Committee met on 7 October 1998 and resolved as under:

1. The Committee examined the issue of child labour in detail, deliberating upon the conceptual and contextual aspects of the relevant legislation, and observed that while signing or ratifying an international convention/treaty, its domestic implications - including conformity with the injunctions of Islam - should be carefully studied, so as to avoid future complications/embarrassment.
2. Examining the issue of prescribing minimum age-limit for employment, the Committee expressed the view that the present legislation, prescribing different age-limits for different purposes, appears to be somewhat incongruous with the Islamic notion of “puberty”, which also applies for inflicting punishments in Hudood cases. The Committee was of the opinion that the issue of attaining adulthood/majority requires thorough examination by Islamic scholars/experts to try and remove the present anomalies/ambiguities in law.
3. The Committee expressed the view that regulations are essential for good

governance and effecting positive changes in the social milieu of the society, however, in the context of child labour, regulations alone would not resolve the underlying problems, till the socio-economic factors are also addressed. The improvement of socio-economic conditions, it was stressed, must receive due attention and priority, so as to relieve the poor families of the dire need of supplementing income by sending children out to work. The Committee observed that children need protection and care, to ensure their proper upbringing and development - physical, moral and psychological. The Committee thus emphasised upon the need for adequate steps to ensure the fulfilment of child basic rights, particularly the right to education and health care facilities.

4. The Committee further stated that the legislation on prohibition of child employment in hazardous occupations should be strictly enforced; and in the non-hazardous (permissible) occupations/professions, child employment should be allowed only when appropriate arrangements for safety, the maintenance of proper hygienic conditions (including periodic medical check-ups and medication) and educational facilities for the relevant age group are ensured. An employer of children should reasonably ensure their due care, protection and education, for their growth/development and enhancing productivity/income.
5. The Committee was of the view that the list of hazardous occupations should be periodically reviewed and updated, keeping in view the latest developments and expanding scientific knowledge/information on the subject. Such review should be

regular and intensive from our own point of view, regardless of any classification made by any international agency. Furthermore, necessary safeguards as to personal safety and security must be provided to workers in such establishments.

6. The Committee expressed the view that, at times, the industrialised world uses the issue of child labour as a propaganda ploy to prevent the exports of goods from developing nations; thus appropriate steps should be taken to expose such unfair trade practices. Such steps should also include the strict application of labour legislation and improvement in working conditions.
  
7. Due to the prevailing unsatisfactory situation in respect of enforcement/implementation of laws, the Committee thought it appropriate to postpone, for the time being, further consideration of the proposed draft legislation on regulating domestic servants and suggesting any new framework for workers in agriculture. Furthermore, the Committee expressed the view that the relationships between employers and workers in these areas are of such complex nature, and quite often so intimate and close, that regulations may be counter-productive. The Committee, however, underscored the need for taking proper socio-economic measures to improve the conditions of children and ensuring the fulfilment of their basic needs. It recommended the launching of public awareness/education campaign. For this purposes the Government may also avail the services of its departments/institutions, print/electronic media, NGOs, professional groups and the civil society.

8. The Committee laid stress upon the need for effective enforcement of the laws/policies. For this purpose enforcement/monitoring institutions should be created, authorities/officials designated and procedure devised for entertaining complaints/suggestions from the general public. Such procedure should be notified so that the people may know their rights/obligations and become aware of the ways and means to seeking redressal of their grievances.
  
9. The Committee expressed the view that there is a need for enhancing the budgetary allocation towards child welfare; and also the economical and efficient distribution of present resources (manpower and material) for the purpose. It stated that allocation from Zakat Fund and Bait-ul-Mal should be prudently used for child welfare and development schemes. The Committee supported the view of introducing legislation for compulsory elementary education, on the pattern of the Punjab, in the other provinces. Such legislation should be duly enforced and measures introduced to help the poor families and induce them to send their children to schools.

The Report of the Committee came up for consideration before the Commission in its meeting on 19 December 1998. The Commission approved the steps suggested by its Committee. It further examined certain key issues/problems in the area of elimination of child labour. On the issue of enhancing the prescribed age for employment, the Commission stated that rather than suggesting a uniform age limit for all types of work, perhaps a higher limit may be fixed for employment in

processes/occupations that are more straining and stressful. The Commission further resolved that the issue of prescribing minimum age limit for employment should be examined in the context of Islamic concept of 'puberty'. Accordingly, it requested the Committee on Child Labour to examine the issue with a view to suggesting an authoritative definition of child for employment. The Commission desired that two other members from the Council of Islamic Ideology (to be nominated by its Chairman) might also assist the Committee on Child Labour in its task. Accordingly, the Chairman, Council of Islamic Ideology, suggested the names of Dr Mahmood Ahmed Ghazi, Member, Shariat Appellate Bench of the Supreme Court and Maulana Mohammad Rafi Usmani, Mohtamim, Darul Uloom, Korangi, Karachi.

The Commission appreciated the fact that the Government of Pakistan, in collaboration with the International Labour Organisation, has recently carried out a national survey to determine the quantum of child labour in the country. The findings show that the issue of child labour in Pakistan is not as acute as is often projected. It appears that the issue is exploited by the vested interests to gain unfair trade advantages. The Commission, however, laid stress on sustained and concerted efforts for addressing the issue in a serious manner; for evolving proper laws and devising effective implementation procedure for the elimination of child labour. It recommended the strict enforcement of laws for total prohibition of child labour in hazardous/dangerous occupations or any such other employment, which threatens the health or physical or moral or psychological development or educational prospects of the child. It further recommended that, in keeping with modern developments and scientific know-how, the list of hazardous occupations as well as Schedule of Employment of Child Act 1991 should be regularly reviewed and updated. The Commission also emphasised upon the need for coordinated efforts to raising

awareness and educating the public on the negative/injurious effects of the menace of child labour, not only on the working child but also the society-at-large. With these observations, and subject to the recommendations formulated by the Committee on Child Labour in its meeting held on 7 October 1998, the Commission approved the report on Elimination of Child Labour.

The proposal of enhancing the prescribed age limit for child labour again came up for consideration before the Commission in its meeting held on 14 March 1999. The Commission requested its Committee on Child Labour to expedite their deliberations on the subject and submit a report at the earliest. Accordingly, the Committee, comprising of Mr Justice (Retd) Shafiur Rehman, Mr Justice Dr Mahmood Ahmed Ghazi, Maulana Mufti Mohammad Rafi Usmani and Dr Faqir Hussain, Secretary, PLC, met on 30 April 1999, with a view to finalise its report. This Committee had been assigned the task of suggesting an appropriate definition of child for the purpose of work/employment, in keeping with the Islamic doctrine of 'puberty'. After thorough deliberations of the issue, the Committee resolved as follows:

1. Islam contains clear and unambiguous injunctions with regard to child survival, protection, development and welfare. Islamic injunctions stipulate that children must be protected and shielded against any harm to their body, mind or property, and that they should be saved from abuse and exploitation. Islam does not prescribe a uniform age limit for the performance of various duties/responsibilities. Therefore, in keeping with the kind and nature of responsibility/obligation, different age limits may be, and indeed, have been prescribed for different purposes. According to Imam Abu Hanifa, a person aged

25 years shall be treated as adult for exercising financial independence and handling civil or commercial transactions. As per a famous tradition (ascribed to Hazrat Abdullah Bin Umar) the Prophet of Islam declined the request of Hazrat Abdullah to join the battle of Uhad but granted him permission to join the battle of Ditch. According to Hazrat Asbdullah, he was 14 years old at the time of battle of Uhad but was over 15 at the time of the battle of Ditch. This tradition is said to have persuaded Caliph Umar Bin Abdul Aziz to prescribe 15 years as the age for attaining adulthood. Thus, it is permissible for the enhancement of age limit for the purpose of employment from 14 to 15 years.

2. Due to strong emphasis on the welfare and protection of children, appropriate measures may be prescribed for the purpose and such measures shall be legitimate and valid. Different ages might be prescribed for conferring civil rights and fixing criminal liability. It should be ensured that children are not made to work in factories or hazardous occupations or any such employment, which is morally or physically or psychologically inappropriate for children. Thus, the age limit for employment can be enhanced to 15 years.
3. The Pakistan Law Commission may also consider proposing draft legislation for the protection of children in domestic service. In this respect, certain parameters can be fixed and guidelines prescribed for ensuring the formal and religious education of such working children. The term 'factory' and 'hazardous', in various statutes, need to be clearly defined and their parameters specified, in the

light of modern development and scientific know-how. The Commission may further propose an appropriate draft for protecting and safeguarding the property and financial interest of children, ensuring that there is no exploitation or misuse of their property and further that their assets and income are exclusively utilized for their welfare and benefit.

The Commission in its meeting held on 29 May 1999, considered the report of its Committee and approved its recommendations. The Commission recommended that the age limit for employment should be enhanced from 14 to 15 years.

The draft on Child Labour together with the observations/recommendations of the Commission on various issues listed therein, follow.

## **International Law**

Non-observance by State of minimum standard of civilised behaviour in the treatment of humans and the resulting violations of their fundamental rights is recognised as a major cause of international conflicts and tensions. Such conflicts and tensions indeed caused profound loss/destruction of human/material resources, inflicting sorrow and suffering on the human race. Subsequent studies/analyses of these events led to the inescapable conclusion that strife and tensions in international relations were neither divinely ordained nor entirely inevitable; that they were indeed attributable to human conduct, particularly, man's propensity to greed and exploitation of others to enrich himself and advance his own interests at the cost of others.

As civilisation advanced and human consciousness increased, more and more attention was directed towards tackling the underlying factors and currents responsible for the recurring crises and conflicts in the World. The issue of human rights violation, therefore, came to the forefront, and became a focal point of attention for every discourse/conference at national or international level. Consequently, several national and international instruments were formulated which provided for respect for and observance of human rights. Such instruments, inter alia, speak of the rights and welfare of children. Being weak and vulnerable to abuse/exploitation, the instruments recognise the predicament of children and accordingly lay special emphasis on their survival, protection and development.

The Covenant of the League of Nations, taking due notice of the exploitative nature of the then prevailing World economic order, obliged the Member States to strive for creating and maintaining "fair and humane conditions of labour for men, women and children",<sup>i</sup> and demanded of its members to "entrust the League with the general supervision over the execution of agreements with regard to trafficking in women and children".<sup>ii</sup> The Covenant commitment was indeed a reiteration of a similar earlier undertaking, made in the Constitution of the International Labour Organisation, 1919. In the Charter, the peoples of the United Nations reaffirmed their "faith in fundamental human rights, in the dignity of human person and equal rights of men and women"<sup>iii</sup> and obligated the Organisation to work for promoting "respect for human rights and fundamental freedoms without discrimination".<sup>iv</sup>

This general commitment to the preservation and protection of human rights was further augmented by the Universal Declaration of Human Rights 1948, adopted unanimously by the

General Assembly of the United Nations. The Declaration, besides having implicit provisions on the rights and liberties of children, also contains some specific provisions as regards the rights and interests of children. Accordingly, it proclaims that childhood is entitled to "special care and assistance", and that all children without any distinction or discrimination shall enjoy "social protection".<sup>v</sup> The Declaration further reinforces the right of a child to free and compulsory elementary education and enjoins the State Parties to set up appropriate educational institutions for technical, professional and higher education. It also obliges the Parties to ensure equal access to such institutions.<sup>vi</sup>

The Declaration --- an historic document setting the standards for achievements in the field of human rights -- had a wide influence on the global human rights movement and inspired several national as well as regional and international human rights instruments. Such instruments include the two international covenants on human rights i.e. International Covenant on Economic, Social and Cultural Rights 1966 and International Covenant on Civil and Political Rights 1966; the European Convention on Human Rights 1950; the American Convention on Human Rights 1969; and the African Charter on Human and Peoples Rights 1981.

The international covenants contain specific safeguards for the welfare and protection of children. The Covenant on Economic, Social and Cultural Rights 1966 states that State protection and assistance should be provided to the family, particularly parents be assisted in educating their children; and working mothers should be given maternity benefits. The Covenant prohibits the economic and social exploitation of children and forbids their employment in harmful or dangerous professions or occupations. The Covenant further recommends that State Parties should fix a

minimum age below which the employment of children should be prohibited, and such prohibition must be enforced by law.<sup>vii</sup> Similarly, the Covenant on Civil and Political Rights, 1966, besides expressing the need for protection of family by the State and society,<sup>viii</sup> recognises the right of child to have a "name" and "nationality".<sup>ix</sup> The Covenant also emphasises the need for special law and procedure for the trial and rehabilitation of juvenile offenders.<sup>x</sup>

Apart from the enactment of general international human rights instruments, certain other instruments of specialised character, focusing exclusively on child rights, were also adopted. These include the Geneva Declaration of the Rights of Child 1924. This five-point Declaration by the League of Nations affirmed the need for special care with a view to further enlarging its scope and content. The revised draft, called, the Declaration on the Rights of the Child 1959 was unanimously adopted by the General Assembly of the United Nations. Enumerating certain essential rights of the child, the Declaration obliged the family, society and government and non-government organisations to work for the realisation and enforcement of such rights.

## **The Convention**

With a view to focus attention on the problems of neglect, abuse and exploitation of children and in order to mobilise support for taking additional measures for their welfare, the international community observed the year 1979, as the International year of the Child. This year, Poland presented a proposal for a new and more comprehensive international convention on the rights of the child. The proposal received favourable response and soon consultations started for drafting such an instrument. The deliberations stretched over a decade, and after hectic efforts and intricate negotiations a final draft was agreed upon. The draft was presented to the General Assembly and

received its unanimous approval on 20 November 1989. The draft Convention was then put up for ratification. Nine months later, the Convention received the required number (20) of ratification. On 2 September 1990, it came into force. This was the speediest entry into force of any international human rights treaty. This speed and momentum was retained in the subsequent years. Thus, by 30 June 1996, 182 State Parties had ratified the Convention. In terms of number of ratification/accession, the Convention is almost at par with the Charter of the United Nations.<sup>xi</sup>

That the Convention received so overwhelming a response, in such a brief period of time, demonstrates the concern of international community towards the on-going neglect, deprivation and exploitation of children, and reflects its determination to take urgent and effective measures for improving their status and conditions of life. Seen in this context, the Convention is indeed a noble and laudable achievement of mankind, setting worthy principles and ideals to be realised. That Pakistan is an earlier signatory<sup>xii</sup> to the document is a matter of pride and honour, but ratification also entails responsibility. Ratification of an international instrument implies the State Party's solemn commitment to feel bound by its provisions and bring its legislation in conformity with such provisions. It further obliges the State Party to enforce and implement the same. The Government of Pakistan is, therefore, bound to honour and implement the Convention and accordingly, is accountable for any breach/violation of its provisions.

It has been more than 8 years since the Government conveyed its ratification of the Convention to the General Secretary of the United Nations. 8 years may not be a long time for transforming all the principles and rules of the Convention into legislative enactment and policy dictates, bearing in mind the diverse nature of rights and freedoms enumerated therein, and the restraints on our

resources, needed for implementing the same. 8 years however, is sufficient time to gauge the intentions of the government and know the seriousness and earnestness with which the goals and objectives of the Convention are being pursued. This draft presents a comprehensive study of the Convention provisions vis-a-vis national legislation, with a view to pinpoint gaps/anomalies/contradictions in our laws, particularly in the areas of child labour. It analyses the legislation recently enacted, apparently in compliance with the directions stipulated in the Convention, and examines its impact on the life and status of children. It suggests necessary amendments/additions to the national legislation with a view to make it compatible with the Convention. The draft further suggests administrative steps and social measures for eliminating child labour.

## **Scope**

The scope of the Convention is fairly wide and comprehensive. It includes all essential civil, social, educational, economic, health and cultural rights, regarded crucial for a civilised existence. The Convention also guarantees certain essential fundamental freedoms, such as the freedom of conscience, thought, expression, information, association, religion etc, regarded vital for the harmonious development of human personality. The Convention contains safeguards against neglect, discrimination, abuse, deprivation, exploitation, torture, cruelty, maltreatment and other cruel, inhumane or degrading treatment or punishment; and provides for the due care, protection and rehabilitation of the victims of such excesses. The Convention obliges the individuals (parents, guardians), legislative bodies, executive authorities and judicial tribunals, that while taking any action, their primary consideration should be to secure the "best interest of the child".<sup>xiii</sup> An important feature of the Convention is its treatment of the child, not as a dependent entity or

protected/shielded body, but an independent person, possessing a separate identity and individuality. Accordingly, the Convention obliges the State Parties that while deciding upon measures of child welfare, the views of the child must be obtained and given due weight.<sup>xiv</sup>

## **Child Labour**

The convention<sup>xv</sup> obliges the State Parties to take appropriate legislative, administrative, social and educational measures so as to protect children from economic exploitation. It, therefore, prohibits the employment of children in professions/occupations, which are hazardous or interfere with their education or are harmful to their health or physical, mental, spiritual, or social development. As per the Convention and other international human rights instruments, the measures required to be taken include:

- (1) provide for a minimum age or minimum ages for admissions to employment;
- (2) provide for appropriate regulation of the hours and conditions of employment;
- (3) provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article (i.e. Article 32 of the Convention).

The reference to "other international instruments" is significant in that the State Party by ratifying the Convention, impliedly accepts the related provisions in other international instruments; e.g. the relevant ILO conventions. Elsewhere too, the Convention provides that when other higher national or international standards, relevant to the rights of the child, are available, the State Party shall adopt such higher standards.<sup>xvi</sup>

## Domestic Legislation

Both the Constitution and subordinate legislation contain specific provisions, which prohibit child labour, fix minimum age for employment and provide regulatory framework for the working child. Article 3 of the Constitution requires the State to "ensure the elimination of all forms of exploitation and the gradual fulfilment of the fundamental principle, from each according to his ability, to each according to his work". Article 11 prohibits "forced labour" and the employment of children below 14 years of age, in "any factory or mine or any other hazardous employment". The Constitution further compels the State to protect the "child"<sup>xvii</sup> and make provisions for securing "just and humane conditions of work ensuring that children....are not employed in vocations unsuited to their age...."<sup>xviii</sup> Several statutes regulate the conditions of child employment. These include the Mines Act 1923;<sup>xix</sup> the Merchant Shipping Act 1923;<sup>xx</sup> the Factories Act 1934;<sup>xxi</sup> the Shops and Establishments Ordinance 1969<sup>xxii</sup> and the Employment of Children Act 1991,<sup>xxiii</sup> etc.

The legislation, apart from being sketchy and outmoded, contains several loopholes. It also suffers from lack of clarity as to the definition of work/labour. Besides, the supervision/monitoring mechanism and implementation procedures are weak and deficient. Furthermore, the penal provisions are meek and mild, thereby unable to adequately prevent or deter offenders. The laws in their present format and application do not, at all, conform to the standards prescribed by the Convention. There is, therefore, a dire need for reviewing the legislation so as to bring it in conformity with the principles, set by the Convention. Needless to say, there still remains a vast area where labour has not yet been regulated, thereby rendering the working child vulnerable to possible abuse and exploitation. There is, therefore, also a need for considering the possibility of expanding the protective legislation to such uncharted areas.

## **1- Definition of Labour**

Neither the Convention nor domestic legislation adequately distinguishes between child work and child labour. Child work per se is not necessarily exploitative nor is it harmful to the physical growth or mental, moral and social development of the child. It may rather be useful for a balanced development of his character and personality. Helping the family makes the child feel useful, important and productive. Any activity/work, giving such wonderful feelings to a person must be encouraged and not curbed. It is, however, different when the activity/work is of a hazardous nature or is carried out in difficult circumstances. It is such a work, which may appropriately be termed as labour. Similarly, an activity/work may also be characterised as labour when its duration is over-stretched so as to harm the child's health or development or interference with his education. The Executive Board of UNICEF in 1986 devised criterion for distinguishing (child) work from labour. The key element in this criterion was the element of exploitation in any child work/activity. As per this criterion, exploitation may be inferred from the following categories of work:

- (i) full-time work at too early an age;
- (ii) too many hours spent working;
- (iii) work which exerts undue physical, social or psychological stress;
- (iv) work and life on the streets in bad conditions;
- (v) inadequate pay;
- (vi) too much responsibility;
- (vii) work which hampers access to education and is detrimental to full social and psychological development;

- (viii) work that undermines children's dignity and self-esteem, extreme examples of which are contemporary forms of slavery and sexual exploitation.

The Commission approved the view that through an appropriate definition, distinction must be introduced between child work and child labour. Such a distinction, it was stated, is essential in order to ban child labour and effectively enforce such ban. In this respect, the Commission considered and approved the criterion suggested by the Executive Board of the UNICEF. The defining elements in this criterion are prohibition on employment in which there is a possibility of the child being abused or exploited or deprived of education or his social, mental or psychological growth being hampered or too much stress/pressure is exerted on him. It was observed that the UNICEF criterion basically lays normative principles and furnishes useful guidelines for drafting an appropriate definition of child labour. The Commission further observed that while drafting such definition, account must be taken of the conditions of work in various establishments/occupations; and hazardous occupations must be included in the definition of child labour

## **2- Prohibition of Hazardous Work**

Work in a factory or mine and similar other hazardous or harmful occupation and profession is prohibited by the Constitution and such prohibition is duly enforced by law. Children upto certain age limits are debarred from being employed in such occupations/professions. Thus the Factories Act 1934, the Mines Act 1923, the Merchant Shipping Act 1923, the Shops and Establishments Ordinance 1969 and the Employment of Children Act 1991 prohibit the employment of children

below a specified age limit. The employment of children Act 1991 is the latest statute in the area of child employment and was enacted particularly in the context of enforcing the standards prescribed by the Convention. It, thus, prohibits children below 14 years of age to be employed in certain occupations and processes. The list of such occupations and processes is given in the Schedule. This list, however, is not comprehensive enough and certain other equally harmful occupations/processes, such as work in brick-kiln industry, sanitary service or work on farm in which child might be exposed to toxic material are left out. The Commission recommended the addition of the above mentioned harmful occupations namely, work in brick-kiln industry, sanitary work and work on farm where child might be exposed to chemical/toxic material to the Schedule of the Employment of Children Act 1991.

### **3- Minimum Age for Employment**

A striking feature of our domestic legislation is the absence of a uniform minimum age limit for the purpose of entry into service. Different, mostly arbitrary age limits are prescribed by the statutes. The Constitution prescribes 14 years age limit for the purpose of employment in a factory or mine or any other hazardous occupation.<sup>xxiv</sup> This limit has been followed by the Mines Act, Factories Act, the Merchants Shipping Act, the Shops and Establishments Ordinance and the Employment of Children Act. The Mines Act originally fixed the minimum age limit as 15 years, however, through an amendment to it by the Employment of Children Act 1991, it was again reduced to 14.<sup>xxv</sup>

The constitutional limit, it must be clarified is a minimum standard, and higher limit can be fixed, as indeed had been fixed by the Mines Act. The 14 years minimum age limit is incongruous with

the ILO Convention No.59 of 1937 (having binding force in Pakistan) which sets 15 years age limit for employment to industrial undertakings. The same limit was followed by the subsequent ILO Convention No.138 of 1973 which states that the minimum age for admission to employment shall be 15 years or the age of completion of compulsory schooling, whichever is higher.<sup>xxvi</sup> The Convention stipulates that children below 16 years be banned from working in occupations which are likely to jeopardise their health, safety and morals. It appears that on the point of minimum prescribed age for admission to employment, our legislation does not fully comply with the international norms.

The minimum age limit of 14 years may deprive the child of his right to completing his schooling upto matriculation level. This is so because the requisite period for completing matriculation is 15 years viz. 10 years of studies after admission at the age of 5. This factor may well be taken into consideration by the Government in view of its commitment to introduce compulsory elementary education, as a vital component of its Social Action Programme.

On the issue of enhancing the prescribed age for employment, the Commission suggested that rather than suggesting a uniform age limit for all types of work, perhaps a higher limit may be fixed for occupations, which are more straining and stressful. The Commission further agreed that the issue needs to be examined in the context of the Islamic concept of "puberty". Thus, the Committee on Child Labour was entrusted with the task of suggesting an authoritative definition of age for employment.

The Committee examined the issue in the context of international norms, national laws and the Islamic concept of 'puberty'. The Committee resolved that Islam provides for the protection, development and survival of children and abhors their abuse or exploitation. Furthermore, as per the kind and nature of responsibility/obligation, different age limits may be prescribed for different purposes. Accordingly, the Committee recommended the enhancement of age limit from 14 to 15 years. The Commission in its meeting on 29 May 1999 considered the report of the Committee and approved the same. The Commission recommended that through appropriate amendments in the Constitution and other statutes, the prescribed age limit for employment may be enhanced from 14 to 15 years.

#### **4- Work in Family Undertaking**

Both the Convention and the Constitution absolutely prohibit child employment in hazardous or dangerous occupations, making no exception for similar work being carried out in a family surrounding. Certain statutes e.g. the Merchants Shipping Act and the Employment of Children Act, however, make an exception to this effect. The exception is perhaps induced by the presumption that children working in family surroundings will be cared-for/looked-after by the family, hence, the risk to their life/health will be minimal. This presumption, however, is not warranted by the situation on the ground, in that certain occupations/processes are dangerous by their very nature or circumstances or conditions of work. Furthermore, the element of exploitation cannot be ruled out when the parents happen to be greedy or not aware of the risk to the child's health or not themselves in-charge of the business. Such work, therefore, might be harmful for the child. Furthermore, it does interfere with the child's right to education. That is why the ILO Convention No.59 restricts the scope of such exception by banning child work in circumstances,

dangerous to the child's life, health or morals.<sup>xxvii</sup> Later on, the ILO Convention No.138 altogether abolished such exception in specified (dangerous) occupations/processes.<sup>xxviii</sup>

While examining the issue of immunity given to child labour in services/occupations/undertakings under family supervision, the Commission expressed the view that in situations when the parents are greedy or ignorant or negligent or callous or not themselves in-charge of the business, children might be entrusted tasks which are harmful to their safety or security, etc, however, this is an area where law enforcement would be difficult. Accordingly, the Commission recommended that to start with, a media campaign might be launched for educating parents and others about the negative/adverse affects of child labour.

## **5- Work in Informal Sector**

Employment in agriculture and domestic service remains unregulated. The same is true about self-employment. No comprehensive surveys/studies were ever conducted, to know the magnitude of children engaged in these professions. In a sense, children contribution to national development in these sectors go totally unrecognised, besides children being exposed to exploitation. They enjoy no legal protection such as minimum age limit, minimum wages, fixed working hours, leave and other terms and conditions of service.

### **(i) Agriculture**

Half of Pakistan's labour force consists of farm workers.<sup>xxix</sup> No accurate estimates of the number of children (below 14 years) engaged in agriculture are available. However, reportedly children are employed in agriculture. Children so employed do not necessarily

work for salary/wages, the reason being that in the rural settings children are often engaged on farm work for or alongside their family members. Similarly, compensation for work may not be regular and in cash, it may be seasonal and in kind. Such a work, undoubtedly, besides hazardous (children do come in contact with chemicals and toxic materials) is exploitative and interferes with the right to education.

The Commission takes the view that child labour in the informal/unregulated sector is a matter of concern and should be checked, however, such measure, again, would be difficult to enforce. The issue requires further debate. Regulatory legislation alone, may not be an appropriate solution, the reason being that prohibition or regulation will not resolve the endemic problems of rural setting, including poverty, lack of employment opportunities, lack of educational facilities, etc. Therefore, what is required is to address and resolve these underlying problems so that reliance on child work is minimised. It would also be appropriate if greater awareness is created about the negative impact of child labour on the individual child and society-at-large. Furthermore, the benefits of child health and education should be fully explained and emphasised. Regulatory framework should follow once a favourable climate has been created.

## **(ii) Domestic Service**

Domestic service is another area, neglected by regulatory legislation. In this area reliable statistics are not available as to the total number of work force and the percentage of children among them. Again, no comprehensive survey/study was ever carried out to gauge the problems/issues confronted by the domestic servants. Certain NGOs and individuals

have carried out some research projects on the subject but the magnitude of the issues taken up and the universe of such projects were limited/restricted. In the absence of such vital statistics it is hard to visualise the peculiar problems confronted by domestic servants and suggest a proper framework for their welfare. What is obvious though is the dismal plight of domestic servants. Nearly every lower middle class family hires the services of at least one helping hand (full time or part time) to assist it in the domestic chores, such as cleaning, cooking, washing, baby sitting etc. Keeping a servant is a status symbol; and therefore, the higher the economic status of the family, the larger the number of servants it will engage. Quite a large percentage of these servants consist of children. Children, indeed, due to their manifest vulnerability to exploitation (working for longer duration on small wages, etc) are a preferred commodity in such service contracts. Neglected by the State and society and devoid of any legal protection, they are susceptible to abuse and exploitation. They are further deprived of their right to education. Such state of affairs is violative of the safeguards available under the Constitution and international convention, and cannot be countenanced in a civilised society. The Government must, therefore, take appropriate steps to remedy the situation. Such steps must be multi-dimensional; an important component of which should be redressing and resolving the underlying causes of the problem. It must take measures for poverty alleviation, enhancing opportunities for employment, provision of educational facilities and bringing greater awareness about the negative aspects of such labour.

The Commission takes the view that due to the prevailing unsatisfactory situation in respect of law enforcement and the pressing need of the families to supplement their income in

order to survive; further consideration of the proposed draft for regulating domestic servants is differed. The Commission however, would emphasise on socio-economic measures to improve the conditions of children including appropriate incentives for the family to send their children to schools.

### **(iii) Self-employment**

A considerable number of children, some of them very young, are engaged in self-employment; their activities ranging from street vending to shoe shining and car washing. Many of them are vendors cum beggars. Dirty, hungry, fatigued, poorly dressed and treated as untouchables, they live painful and sorrowful life. Neglected by their parents, secluded from their compatriots and out in the harsh and cruel world, they are exposed to abuse, exploitation and prone to criminality and drug-addiction. The plight of this category of children needs urgent attention.

Accordingly, the Commission recommends that appropriate measures must be taken by the Government for alleviating the plight of poor and downtrodden sections of the society. Such measures must include a comprehensive programme of removing income-disparity, poverty alleviation, enhanced employment opportunities, social security and educational facilities. Furthermore, the Government must establish/strengthen the system of juvenile institutions in the country so that such needy and neglected children are housed, catered for, educated and imparted training in trade/craft, so as to rehabilitate and reintegrate them as useful and productive members of the society.

## References

1. Article 23(a)
2. Article 23(c)
3. Preamble
4. Article 1(3) & 62(2)
5. Article 25(2)
6. Article 26(1)
7. Article 10
8. Article 23
9. Article 24
10. Article 14
11. Ratified by 184 States
12. Pakistan ratified the Convention on 12 November 1990
13. Article 3
14. Article 12
15. Article 32
16. Article 41
17. Article 35
18. Article 37(e)
19. Section 3C & 26
20. Section 37B
21. Section 2C & 50
22. Section 2C & 20
23. Section 2(iii) & 3

24. Article 11(3)
25. Section 19 of the Employment of Children Act 1991
26. Article 2
27. Article 2(3)
28. Article 5(3): A complete ban applies in mining and quarrying; manufacturing; construction; electricity/gas and water; sanitary services; transport, storage and communication; and large agricultural undertakings.
29. Workforce Situation report 1991, Pakistan - Netherlands Project on Human Resource, Islamabad, 1992 P 30

## Draft Amendment

An Act further to amend the "Employment of Children Act 1991".

Whereas it is expedient further to amend the Employment of Children Act 1991 for the purpose hereinafter appearing:

It is hereby enacted as follows:-

1. Short title and Commencement.-(1) This Act may be called the Employment of Children (Amendment) Act 1998.  
(2) It shall come into force at once.
2. Amendment in the Schedule: In the Schedule of this Act after S.No14 of Part II, the following shall be added:
  - (15) work in brick-kiln industry;
  - (16) sanitary service; and
  - (17) work on farm where child might be exposed to chemical/toxic material.

### Statement of Objects and Reasons

This amendment of the Pakistan Law Commission seeks to prohibit the employment of children in certain harmful occupations by adding them to the Schedule of the Employment of Children Act 1991.

## **Draft Amendment**

An Act further to amend the "Employment of Children Act 1991".

Whereas it is expedient further to amend the Employment of Children Act 1991 (V of 1991) for the purposes hereinafter appearing:

It is hereby enacted as follows:-

1. Short title and commencement.-(1) This Act may be called the Employment of Children (Amendment) Act 1999.

(2) It shall come into force at once.

2. Amendment in Section 2 (i) of the Act: In Section 2 (i) of the Act, the word "fourteen" shall be substituted by the word "fifteen".

3. Amendment in Section 2 (iii) of the Act: In Section 2 (iii) of the Act, the word "fourteen" shall be substituted by the word "fifteen".

4. Amendment in Section 19 of the Act: In section 19 of the Act, in the last sentence, the words "child and " shall be deleted.

### Statement of Object and Reasons

The Pakistan Law Commission in its meeting held on 29 May 1999 resolved to enhance the present age limit for child work/employment from 14 years to 15 years, to protect him/her against any possible harm to their physique or mental/psychological growth.

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1. Article 23(a)
  2. Article 23(c)
  3. Preamble
  4. Article 1(3) & 62(2)
  5. Article 25(2)
  6. Article 26(1)
  7. Article 10
  8. Article 23
  9. Article 24
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  11. Ratified by 185 States
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  19. Section 3C & 26
  20. Section 37B
  21. Section 2C & 50
  22. Section 2C & 20
  23. Section 2(iii) & 3
  24. Article 11(3)

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25. Section 19 of the Employment of Children Act 1991
  26. Article 2
  27. Article 2(3)
  28. Article 5(3): A complete ban applies in mining and quarrying; manufacturing; construction; electricity/gas and water; sanitary services; transport, storage and communication; and large agricultural undertakings.
  29. Workforce Situation Report 1991, Pakistan - Netherlands Project on Human Resource, Islamabad, 1992 P 30