

TO BAN OR BALANCE: CHILDREN AS 'HANDS' AND POPULAR CINEMA

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Aiming to trace the commonly accepted views on child labour in the country, this paper chooses popular cinema as data set for studying society's perception, utilising the educative power of popular Hindi cinema. The central question to be addressed is whether the problem of child labour in the country can be solved by imposing a blanket ban on the practice or just by balancing the interest of children with that of societal ground realities and regulating the same. In light of popular perceptions, the paper evaluates the relevant provisions of The Child Labour (Prohibition and Regulation) Act, 1986, and The Child and Adolescent Labour (Prohibition and Regulation) Amendment Bill, 2012, to see if a complete ban on the practice of child labour is justified or not, using the Theory of Multiple Equilibria. The researcher, however, wishes to leave the question of a possible alternative policy framework open and hence the same is not covered by this paper.

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1. INTRODUCTION

India is considered to be one of the most regulated economies of the world, with power concentrated in the hands of a few.¹ Owing to the multipart social, political and economic environment, India suffers from an inequity in wealth and welfare distribution and effects thereof have become an accepted norm. Even though the country has secured an impressive growth, the society is still experiencing high levels of poverty and unemployment,² because of this uneven distribution. As a result, an overwhelming majority of children in India have to work for them and their families to subsist.³ The issue of child labour involves a question of survival, and thus requires the formulation of a multi-facet policy which India lacks today.

The principal objective of this study is to contribute towards an analytical basis for answering the policy question of whether and to what extent a partial ban on child labour through the Child Labour (Prohibition and Regulation) Act, 1986⁴ is helpful in diminution of the practice. The study attempts to answer this by considering whether the primary theoretical basis on which the 1986 Act has been formulated is correct and also by determining, if given a choice between a blanket ban and a partial ban on child labour, which would be more suitable in India in the

¹ See *India is most over-regulated country in the world: Survey*, THE ECONOMICS TIMES (January 27, 2011), available at http://articles.economictimes.indiatimes.com/2011-01-27/news/28432561_1_survey-economic-risk-consultancy-bandwidth (The Political and Economic Risk Consultancy Ltd., Hong Kong conducted a survey in 2011 wherein India was ranked number 'over-regulated' economy in the world).

² THE CENTRAL INTELLIGENCE AGENCY WORLD FACT BOOK, (2012) [India has been ranked 72 in the CIA Poverty Index, with a poverty rate of 29.8%; and 93 in the CIA Unemployment Index, with an unemployment rate of 9.8% for the year 2012].

³ Aishwarya Padmanabhan, *India's Child Labour Policies: Its Implementation within the ILO Framework with emphasis on Conventions 138 and 182 and the Multilateral Framework with emphasis on the Social Clause of the WTO*, (2010), available at <http://www.inter-disciplinary.net/wp-content/uploads/2010/06/Padmanabhan-paper.pdf>.

⁴ The Child Labour (Prohibition and Regulation) Act, 1986

context of The Child and Adolescent Labour (Prohibition and Regulation) Amendment Bill, 2012.⁵

The researcher delves into these questions, taking the help of Kaushik Basu's Theory of Multiple Equilibria⁶ to analyse the relevant policy decisions from an economic angle.

A. HYPOTHESIS PROPOSED AND ASSUMPTIONS MADE

The paper proposes a general hypothesis that considering the socio-economic environment in India, a blanket ban on the practice of child labour is unrealistic. However, a stricter regulation as compared to the 1986 Act is welcome.

Before analysing the issue, the paper makes three assumptions: first, child labour is a menace and it is desirable to take steps to eliminate it; second, there are various reasons for child labour like poverty, unemployment, lack of social security etc.; and third, that the policies made by the legislators are implemented completely. Hence, discussion on policy is in isolation to the issue of implementation.

B. CHOICE OF DATA SET

Since Bollywood cinema is considered to be the most powerful means to make and break stereotypes, the paper uses the edifying potential of Indian cinema to formulate the factual basis for the study. Both patent and latent issues involved in a film hold importance and can affect the thought process of the viewers. The author has chosen four feature films - 'Salaam Bombay', 'I Am Kalaam', 'Stanley ka Dabba' and 'Slumdog Millionaire', as the major data set for the purpose. However, relevant instances from other cinematographic work as a part of the data set have also been referred to.

The rationale for zeroing in on these four films is that all these films have very strong central lead characters and their commercial nature attracts a large viewership. Also, these films bring out the issues involved in child labour in a sensitive and novel manner.

⁵ The Child and Adolescent Labour (Prohibition and Regulation) Amendment Bill (introduced in Rajya Sabha on December 4, 2012).

⁶ Kaushik Basu and Pham Hoang Van, *The Economics of Child Labor*, 88(3) THE AMERICAN ECONOMIC REVIEW 412-427, (1998).

While *Salaam Bombay*⁷ (1988) portrays the seedy, dark underbelly of the city of Bombay in a realistic manner and presents a stark picture of the lives of the city's street children from the perspective of the protagonist, Krishna (Shafiq Syed), *I am Kalaam*⁸ (2011) takes one through the story of Chhotu/Kalaam (Harsh Mayar) and how he was destined, after being hit by famine, to work in a dhaba run by Bhaati (Gulshan Grover). Krishna works at a tea stall in Bombay located in the neighbourhood of a brothel whereas Chhotu keeps his zeal to learn alive after getting inspired by Dr. A. P. J. Abdul Kalaam Azad.

Amole Gupte's *Stanley ka Dabba* (2011) showcases the struggle for self-respect of a child, Stanley (Partho Gupte), while he works in a family establishment. It tracks his journey with the greedy Hindi teacher (Amole Gupte) who hawks on students' tiffin boxes, an unimaginative science teacher (Divya Jagdale) who puts an end to use of innovation by students and a loving English teacher (Divya Dutta).⁹ Danny Boyle's *Slumdog Millionaire* (2008) presents the life of young Jamal Malik (Dev Patel), hailing from the slums of Juhu, in a rags to riches story.¹⁰ The paper also borrows from relevant instances of other Bollywood feature films as well (*Break ke Baad* (2010), *Traffic Signal* (2007), *Boot Polish* (1954), *Deewar* (1975), *Chillar*

⁷ Mirabi Films, *SALAAM BOMBAY*, 1988. *Salaam Bombay* is a story of day-to-day life happenings of the characters and their fight for survival. The film touches upon the issues of inadequate Government infrastructure to rehabilitate the street children and insensitivity of law enforcement agencies, when both Krishna and Manju are caught and put into child care centres. The film presents a depressing picture of loss of innocence of childhood, living in the environs of prostitutes and finding friends in drug-peddlers.

⁸ Smile Foundation, *I AM KALAAM*, 2010. The story navigates through the life of *Kalaam*, from the time he starts working at the *dhaba* to the time when he decides to bear the cost of his own education and starts calling himself '*Kalaam*'. He finds a friend in royalty, *Kunwar Ranvijay* (Hussan Saad), to whom he teaches Hindi and learns English from. The film portrays rampant problems of poverty and illiteracy with ease. It also presents a strong metaphor to Dr. Kalaam, with a ray of hope for change.

⁹ Fox STAR Studios, *STANLEY KA DABBA*, 2011.

¹⁰ Fox Searchlight Pictures, *SLUMDOG MILLIONAIRE*, 2008. The movie shows how at the age of eight years, *Jamal* (Ayush Mahesh Khedekar) was forced to beg after being trapped by Maman (Ankur Vikal). He flees with his brother, *Salim* (Azharuddin Mohammed Ismail), and they are compelled to keep shifting jobs, from being shoe thieves to waiters. While *Salim* chooses the life of a gangster after growing up, *Jamal* becomes an assistant in a call centre. He appears on a reality TV show '*Who wants to be a Millionaire?*' and wins it. The film portrays the struggle of life of a slum boy to survive.

Party (2011) and few other short films) to support the arguments made and to get a better hold of the common perceptions on the subject of child labour.

Since, the data set of popular cinema which the author has chosen deals majorly with children working in different sectors, be it a roadside dhaba, a traffic signal, a tea stall, or independently as shoe shiners, the paper will use the term 'child labour' to refer to any child working, whether for money or not. This paper tries to deal with the two separate categories of 'child labour' and 'child work' as a whole, as one of the major aims of the work is to evaluate the viability of the option of withdrawing all children from the market.

II. IF I HAVE ENOUGH MONEY TO EAT, I AM GOOD

A. THE COMMON ACCEPTANCE OF CHILD LABOUR

One example to demonstrate the educating potential of cinema is the case of *Mahesh Bhatt v. Union of India*,¹¹ in which the unwarranted depiction of smoking in Bollywood films was disallowed after a WHO Report was published in 2003¹² arguing that smoking on screen is a form of glamorisation which further encourages the youth to pick up the unhealthy habit. On this rationale, the Delhi High Court cautioned film makers against unwarranted use of smoking on screen.

Even though child labour is a detested concept in a utopian world, the common man finds it tolerable and acceptable in reality, which can be traced throughout popular cinema. Bollywood's portrayal of child labour shows the apathy faced by child labour and raises important issues which go unnoticed.

Salaam Bombay, directorial venture of Mira Nair, navigates through the life of the protagonist, Krishna, a 12 year old boy who does a variety of menial works in Mumbai. With child labour and the struggle for survival as background issues, the film presents a grim picture of the life of the street children of Bombay, working merely for Rs. 5/day as chaiwalas or cleaners of chicken sheds or waiters at weddings or singing on streets. But the harrowing truth that the film softly tries to put forward is that child labour has become a societal more; it is an accepted way of life and hence people don't try to change it. Child labour is not seen as a crisis at all. Similar is the

¹¹ *Mahesh Bhatt v. Union of India*, 156 (2009) DLT 725 (High Court of Delhi).

¹² WHO, *'Bollywood': Victim or ally?*, available at: <http://www.who.int/tobacco/media/en/bollywood-exesum.pdf>.

stand of Nila Madhab Panda, the director of *I am Kalaam*, where the presence of the protagonist (Chhotu/Kalaam) working at a small dhaba in Rajasthan does not bother the visitors at all, even when they cannot miss his keen and optimistic attitude to learn and grow. This indicates how the people at large do not find the concept of child labour incongruous.¹³

Bollywood cinema has been showing this reality through different films in different genres. It is also interesting to note that these characters have gained a lot of popularity through the ages. Modern cinema also brings out cases where cosmopolitan youngsters approve the idea of a boy working at a traffic signal in *Break Ke Baad*; or how a progressive residential society in Mumbai shoulders a child named 'Fatka' washing their cars for money in *Chillar Party*. *Traffic Signal*, by Madhur Bhandarkar, takes no different view on the issue; it presents a megastore where both children and adults work as salesmen. The elites of the society, who passes through the signals, prefer ignoring the existence of the children selling variety of items there.

This popular societal approach of accepting child labour and its invisibility as a part of routine life may be supplemented by a study conducted by Hanumantha Rao and M. Madhusudhana Rao. The study shows that in India, the practice of child labour is highly desirable. Employers argue that they employ children to provide livelihood or to supplement their family income.¹⁴ Also, the children themselves are inclined to work in many cases as they know that they have to do a similar kind of work their entire life. Most of the employers also prefer this kind of labour because it is easily available and involves low maintenance cost.¹⁵

Desirability of child labour is also demonstrated on the part of the State and courts as they give a tacit consent to the practice over time. An instance of this can be found when the State of Karnataka preferred an amendment to the Minimum Wages

¹³ K. Hanumantha Rao and M. Madhusudhana Rao, *Employers' View of Child Labour*, 34(1) INDIAN JOURNAL OF INDUSTRIAL RELATIONS 15, (1998). (In a study conducted, only 44 out of 125 employers found child labour to be undesirable. Employers give various reasons why children should work. Employers suggested that children have low ego, and high discipline; can be controlled and coaxed and do demeaning jobs. Children are usually paid low wages for equal amount of work, and they are highly active, can be easily removed and are not entitled for retirement benefits).

¹⁴ *Id.*, at 18.

¹⁵ *Id.* [The study targeted 125 employers from 5 different unorganised sectors in Vishakhapatnam].

Act to lay down the remuneration due to a child domestic help rather than taking steps to discourage it. A similar desirability was witnessed when in the Child Labour Case,¹⁶ Kania J. and Ranganathan J. propounded the Nimble Finger Theory.¹⁷

B. GAME OF EQUILIBRIUM

Explaining this insensitivity towards child labour, Kaushik Basu argues that since child labour for us is a matter of ‘acquired morality,’ derived from what we do or used to do, we find it acceptable.¹⁸ The extent of acceptance though, may differ because the conception and perimeter of morality changes from society to society. As a solution, Basu suggests breaking this customary practise of child labour by bringing in a policy that bans child labour in toto. This may renovate acquired morality into a customary practice, wherein even if the policy is revoked subsequently, children would not be sent to work, because of the inherent immorality involved.¹⁹

Basu argues that for this renovation, an inclusive ban on child labour is required. Child labour takes birth out of a vicious cycle of poverty. It is usually a question of survival for poor families, adding to the pool of workers available in the market, hence shrinking the wage rates. And when these children grow up, they also prefer to send their children to work and not school²⁰, creating an educational impasse which adds onto the vicious cycle.²¹ For employers who pay low wages and derive more work, investing in new technology is disincentivized,²² creating a

¹⁶ M.C. Mehta v. State of Tamil Nadu, AIR 1991 SC 417 (Supreme Court of India). [Child Labour case I]

¹⁷ [The Government has fixed Rs. 150 per month for washing utensils and Rs. 1,600 per month for washing utensils, clothes, housekeeping and taking care of children. However, the notification does not hold good today because of the 2006 amendment of the 1986 Act. The court in Child Labour Case I, AIR 1991 SC 417, ¶ 7 gave a tacit consent to the idea of child labour, propounding the Nimble Finger Theory, stating “*We take note of the fact that the tender hands of the young workers are more suited to sorting out the manufactured product and process it for the purposes of packing*”]; See Bachpan Bachao v. Union of India, WP (Crl.) No. 82 of 2009 December 24, 2010 (A.K. Sikri and Ajit Bharihoke, JJ.) (High Court of Delhi).

¹⁸ Basu and Van, *supra* note 6.

¹⁹ *Id.*, at 422.

²⁰ Bellettini Giorgio, *et. al.*, *Child Labour and Resistance to Change*, 72(287) *ECONOMICA* 397, (2005).

²¹ Basu and Van, *supra* note 6, at 413.

²² International Labour Organization, *The End Of Child Labour: Within Reach*, (2006), available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/rep-i-b.pdf>.

situation of technical impasse.²³ This situation is considered as equilibrium in the society, as it is catering to their immediate needs.²⁴

In this backdrop, it is interesting that Mira Nair's representation of street children, poverty, and prostitution cannot be limited only to Bombay, but can be extended to any place in the world. However, in the Indian context, the film is detached from reality as usually parents do not abandon their children but consider them as an asset to the family as their labour contributes to the total income of the family²⁵; as is shown in *I am Kalaam*. In India, the issue of survival becomes a big reason for the propagation of the practice of child labour. *Deewar* shows a young boy working for feeding and looking after his younger sister; a similar picture is shown in *Judwaa* where the need is to feed an infant girl.

Why this boy works in a factory? You see, it is a question of survival. Factories give quick returns. Parents should not be forced to send their children to school when we are not able to provide them employment. Children are economic assets to the poor.²⁶

But, in any society, an equilibrium that is achieved by making children toil is not desirable. To change this, Basu proposes a policy to withdraw all the children from the market so as to create a labour deficit. This deficit, will lead to a hike in labour prices for adults.²⁷ Assuming that adult labour is can be substituted for child labour²⁸, the wages of adult labour would rise, increasing the family income in total.²⁹ Also, less supply puts labourers in the driving seat resulting in better negotiations and lesser exploitation.

This position can be explained by taking a very simple example, where a family (father, mother and two children) requires fifty units of money for its monthly

²³ Bellettini, *supra* note 21, at 407.

²⁴ Basu and Van, *supra* note 6, at 417-419.

²⁵ Martha Nussbaum, *Education for Profit, Education for Freedom*, THE HEBREW UNIVERSITY OF JERUSALEM (December 16, 2007), available at http://auroraforum.stanford.edu/files/essays/Nussbaum_Educ_for_Profit_Freedom.pdf.

²⁶ *Id.*, at 2.

²⁷ Basu also argues, "*Since economically well-off families do not send their children to work, a gross rise in the nation's prosperity may lead to decline in instances of child labour, even in absence on any law banning child labour.*"

²⁸ Basu and Van, *supra* note 6, at 416 (Basu refers to this phenomenon as the *Substitution Axiom*).

²⁹ *Id.* (Basu refers to this phenomenon as the *Luxury Axiom*).

expenditure on basic necessities. In a society where child labour is partially allowed, a part of the market would be occupied by the children, assuming that from the prohibited industries, all the children are effectively withdrawn. If all the adults and children are able to find some kind of employment, all of them contribute to the family income. Say, both the adults of the family earn thirty units monthly collectively and children twenty units, fulfilling the need of required family expenditure of fifty units. Here the desirability of employers to employ children, as mentioned earlier instead of adults, also plays a very important role. According to the Theory of Multiple Equilibria, this is also an equilibrium point, as family requirements are being met. Even in case of a street/orphan child, if his monthly expenditure is 50 units (say), he has to earn it himself, hence, reaching at point of equilibrium as well, where his demand is meeting supply.

<i>Wages A/C</i>	<i>Child</i>	<i>Child</i>	<i>Total Expenditure</i>
<i>Adult/ State</i>	30, 20	0, 50	50
<i>Adult/ State</i>	50, 0	40, 10	50

Further presuming that the Government comes with a stricter policy on child labour and withdraws all the children from the market, then, assuming a 100% implementation, the market labour force, which earlier consisted of both adults and children, will now consist only of adults. This will create a space for more adults to be accommodated in place of withdrawn children, resulting in rise in the price for labour due to an increase in demand caused by lack of labour available in the market at a particular point of time and space. Due to these market forces, the contribution of children would be zero and that of adults will get hiked to fifty, fulfilling the need of total expenditure and cutting the need for children to work. In case of street children, the place of adults is taken over by the State, who, with the increase in revenue with

increase in wages and employment, would provide the child with expenditure for basic needs.

If such a policy of ban on child labour is coupled with education and social security provisions, especially in developing countries which are not ready for direct measure of child labour, the delivered results could be surprising.³⁰ The best out of all is to ensure compulsory education for all, which will keep in check the hours, nature and conditions of work.³¹ Once the ban is imposed and education is made compulsory with quality improvements, the demand for education will rise and supply of child labour to market will automatically fall. In this setting, where family income is rising and parents are sending their children to schools, those who don't will face a social disapproval, bringing a new equilibrium where children go to school and adults work. Hence the equilibrium is shifted from children working when wages of the adults are low to children not working when wages of adults increase.³² Sociologically, the second equilibrium point is most desirable as globally efforts are being made to bring down the number of child labourers.

Despite the common acceptance of the phenomenon of child labour in the society, the practise is not desirable from an international perspective. Global efforts are being made to curb the menace of child abuse, and a number of organisations, both governmental and non-governmental, are at work. Shifting the equilibrium of the society by managing a higher wages for the adult labour and withdrawing children from the market, may, to some extent, contribute in reducing child labour in the society.

³⁰ International Labour Organization, *supra* note 23, at 19, 21, 65, 86-87.

³¹ Kiran Bhatta, *Child Labour: Breaking the Vicious Cycle*, 31(7) ECONOMIC AND POLITICAL WEEKLY 385, (1996). (*Historical comparisons with Sri Lanka, Vietnam, Tanzania, Uganda, Zaire, Burma, Kenya, and China' show that even in developing countries the principle of compulsory education, whether sponsored by the state or a religious or social group, can be successfully adopted, with corresponding decreases in child labour*).

³² Basu and Van, *supra* note 6, at 413.

III. BANNING OR BALANCING?

A. WELL BEGUN IS HALF DONE?: DILEMMAS OF CHILD LABOUR

(PROHIBITION AND REGULATION) ACT, 1986

Presently, the Child Labour (Prohibition and Regulation) Act, 1986, prohibits employment of any child below fourteen years of age in a hazardous industry.³³

However, the Act also creates exemptions to this general clause. Any workshop carried on by the owner with the aid of his family or any training school run or established or supported financially by the Government, are out of the purview of the general clause under Section 3 of the Act. The issue here is that workshops which are otherwise considered as hazardous and where the employment of children is prohibited, if qualify this exemption, fall outside the scope of the Act.³⁴ If an employer's children are working beside him, it is enough to take the business outside the purview of the Act.³⁵ Article 24 of the Indian Constitution however seems to be conflicting with this provision of the Act, as it prohibits any kind of hazardous employment of children below the age of fourteen years, without any exception.

The Act creates a milieu of partial ban by its application only to minority of children labouring in the country. Partial prohibition of child labour is argued to make protection of children even more difficult. If on paper, children are not working presumably in a particular establishment; in law little can be done to improve it excluding a set of child labours from trade unions, employment benefits and regulation of conditions like hours of work and levels of wages.³⁶ In most developing

³³ See Sec. 3, Child Labour (Prohibition and Regulation) Act, 1986.

³⁴ Ranjan K. Agarwal, *The Barefoot Lawyers: Prosecuting Child Labour in the Supreme Court of India*, 21(2) ARIZONA JOURNAL OF INTERNATIONAL & COMPARATIVE LAW 683, (2004). (*In Varanasi, there are two hundred government-run carpet weaving training centres. These centres can employ child labourers, but private businesses or even private training centres are prohibited from doing so.*)

³⁵ Sec. 3, Child Labour (Prohibition 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.

³⁶ Umesh Sahoo, *Child Labour and Legislation*, 25(46) ECONOMIC AND POLITICAL WEEKLY 2530 (November 17, 1990).

countries, the minimum legal working age is fourteen years and any child below that age does not get the legal status of worker.³⁷ Thus, such a law seems to be reinforcing protecting the vulnerability of child. However, the laws today have neither been able to eliminate child labour nor have they been able to provide the status to children of workers which has contributed to their exploitation. Evidence of the negative effects of such a stipulation can easily be traced from Karandighi Beedi Binding Factory, where child labourers were working in the disguise of family worker, who could neither be detected nor rehabilitated.³⁸ Even the courts have recognised the fact that small scale industries, household works and agriculture are the sectors which give birth to undetectable child labour.³⁹

Even as per Basu's argument the idea of a partial ban in many ways works to the disadvantage of the subjects of the Act. The protagonist, Stanley, in the film *Stanley ka Dabba* is an orphan who works at a family-run hotel. But he cannot be benefitted under the Act as he is not a formal subject of the Act. Children working in family occupations or households or agriculture are also left uncovered. The rehabilitation and welfare programmes are targeted for only those children withdrawn from the industries notified under the Act.

Consequently, the effect of a partial ban is to prioritise a set of child labourers over others who also require policy and programmatic support from the Government. This does not measure up to a logical solution to the problem. A partial ban actually makes the situation worse as the children who could have worked in the regular organised sector are forced to turn to secretly working in inhumane conditions.⁴⁰ This legislative stand shows that child labour today in some forms is acceptable to us and has not become a customary aversion yet.⁴¹ Another issue of

³⁷ Augendra Bhukuth, *Defining Child Labour: A Controversial Debate*, 18(3) DEVELOPMENT IN PRACTICE 392, (2008).

³⁸ Chandan Roy and Jiten Barman, *Child Labour & Inclusive Education in Backward Districts of India*, 4(4) INTERNATIONAL JOURNAL OF EDUCATION 311, (2012).

³⁹ See *Mangalore Ganesh Beedi Works v. Union of India*, AIR 1974 SC 1832, ¶ 7 (Supreme Court of India).

⁴⁰ The report of the Second National Commission on Labour, 2002, available at: <http://labour.nic.in>. (The Second National Labour Commission Report suggested widening the definition of child labour to solve the problem; to *All out of school children must be treated as child labourers or as those who have the potential to become child labourers...*)

⁴¹ This is evident by the stands of legislations and policies on child labour. For example, as already mentioned the Second Labour Law Commission Report provides for a wider definition of child

concern is that since the wages of children are very less in most cases,⁴² their employment does not cater to total expenditure need of the family and further, the resulting abundance of labour in the market leads to depression of the wages of adults.

**B. ILLUSIONARY YET SPOT ON: THE CHILD AND ADOLESCENT LABOUR
(PROHIBITION AND REGULATION) AMENDMENT BILL, 2012**

As an alternative, the Child Labour (Prohibition and Regulation) Amendment Bill, 2012, aims at a blanket ban on employment of children below fourteen years of age in any hazardous/non-hazardous industries.⁴³ The Bill aims at banning child⁴⁴ labour (below fourteen years) completely and regulating adolescent labour (below eighteen years).⁴⁵ It is not contested that this Bill covers a wider ambit of child labour than the 1986 Act, but even this cannot be considered as a law effecting a complete ban on child labour as it allows children to work in family occupations, home-based work, training workshops and forest gathering, allowing undetectable labour to flourish. The Bill thus excludes a certain set of children from the purview of the Act, not adhering to a 100 per cent ban policy which could allow scope for misuse.

But in a developing country like India, the Bill finds assent from the ILO Minimum Age Convention, 1973,⁴⁶ one of the fundamental documents on child labour, which allows developing countries to enact a child labour prohibition Act banning child labour below the age of compulsory schooling⁴⁷ and excludes family

labour, and not prohibiting the same; Sec. 3 of the Minimum Wages Act, 1948 states that the wages of children and adults may differ, hence, allowing the payment of a lower wage to a child labour for the same work as that of the adult].

⁴²United Nations Children Fund, *Children Pay High Price for Cheap Labour, Child Rights*, THE PROGRESS OF NATIONS, available at <http://www.unicef.org/pon95/chil0016.html>.

⁴³ The long title of the Bill reads “*An Act to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto.*”

⁴⁴ Cl. 2(ii) of the Bill defines ‘child’ as “*A person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more*”; A person from 6 to 14 years of age is the subject matter of RTE Act under Section 2.

⁴⁶ Convention Concerning Minimum Age for Admission to Employment, Minimum Age Convention, No. 138 (Adopted on June 26, 1973).

⁴⁷ See Art. 2(3) and Art. 2(4) of the Convention (The age of compulsory schooling in India is upto 14 years).

and small-scale holdings producing for local consumption and irregularly employing hired workers.⁴⁸ Also, even international organisations tolerate the idea of light work⁴⁹ by children, to the extent that it does not compromise their physical and mental health; especially in the case of developing countries that are finding it untenable to completely ban child labour.

This stand of the Bill addresses the inbuilt limitations of Basu's theory. First, he only talks of children living in a family and working to supplement family income and not street or orphan children who work for their own survival. Second, his theory presupposes that all parents do not want to send their children to work when given a choice, but they are forced to do it due to poverty and unemployment. He does not take into consideration the socio-economic forces that compel parents to utilize their children as economic assets in order to survive. The societal norms which accept child labour as a customary practise have also been ignored. Third, he considers poverty as the major contributor to the practice of child labour, when there are contrary examples and studies available.⁵⁰

It is not denied that there is a strong and direct connection between poverty and child labour, but poverty is not the only reason. Films like *I Am Kalaam*, where the protagonist Kalaam was left at a dhaba for him to earn and send money to family after being hit by famine, provides other reasons for child labour. A similar case has been made out in *Traffic Signal*, where a tsunami hit Tamil Nadu boy migrates to Mumbai and works as a rag picker. *Stanley ka Dabba* very strongly contends that vulnerability of child to enter into labour practices also increases in case of death of both or one parent(s). *Boot Polish* (1954) portrays death of parents and abusive foster parents as reasons for child labour. It is indeed true that socio-economic conditions like poverty, unemployment and illiteracy contribute to child labour in a major way.⁵¹ At the same time, issues of cultural stereotypes draw a distinction...between children as 'hands' and children as 'minds,' that is between the child who must be taught to

⁴⁸ See Art. 5(3) of the Convention.

⁴⁹ Art. 7, of the Convention defines 'light work' as *work that should, (a) not be harmful to a child's health and development and, (b) not prejudice attendance at school and participation in vocational training or the capacity to benefit from the instruction received.*

⁵⁰ See Jens Christopher Andvig, *Family-Controlled Child Labor in Sub-Saharan Africa A Survey of Research*, No. 0122, Social Protection Discussion Paper Series, October, 2001, available at: <http://web.worldbank.org/archive/website01048/WEB/IMAGES/0122.PDF>.

⁵¹ Padmanabhan, *supra* note 3, at 1.

‘work’ and the child who must be taught to ‘learn.’⁵² Poorly trained and overworked labour inspectors who are prone to bribery, bad government infrastructure, and natural disasters⁵³ increase the gravity of the menace by huge margin.

If the policy is worked out with other quality measures for education and social security, it might be able to shift the equilibrium of the society. A partial ban cannot create a labour deficit in the market, but with a multi-faceted policy (the Bill with Right to Free and Compulsory Education Act, 2010 and National Child Labour Policy collectively) a noticeable decrease in child labour and subsequent increase in school enrolments may be witnessed.

IV. EXPANDING GOVERNMENT, CONTRACTING LIVES

The notion of “Development as Freedom” by Amartya Sen⁵⁴ suggests that every policy should aim at removal of major sources of un-freedom such as poverty, tyranny, poor economic opportunities, social deprivation, neglect of public facilities, and once these are assured, the social development is in the hands of people themselves.⁵⁵ But in the Indian context, where there already exists a link between labourers and labour rights and policies for poverty alleviation, right to education and employment guarantee are in place, issues of implementation are daunting. June 12,⁵⁶ a satirical short film, shows the irony of government policies on child labour, where a child is employed to stick posters on walls. He dreams of becoming an important person like the people he sees in the posters of films. But the last poster he sticks (supporting the World Day against Child Labour, June 12) looks drab to him as it has no pictures.

As has been already discussed, many factors contribute to child labour. In cases where children have to work due to reasons other than poverty, even if these children are withdrawn from the market, the State has to perform the function of parents and provide for their basic necessities. The duties of the State in such cases are defined by the doctrine of ‘*parens patriae*’ which marks out the protective role of

⁵² Agarwal, *supra* note 35, at 687.

⁵³ International Labour Organization, *supra* note 23, at 26.

⁵⁴ Amartya Sen, DEVELOPMENT AS FREEDOM 1999.

⁵⁵ Agarwal, *supra* note 35, at 671.

⁵⁶ Ice4mad Films, JUNE 12, 2012.

governments towards the vulnerable groups of the society.⁵⁷ While it is accepted that there are ample schemes, statutes, and programmes on paper which equip the government to rehabilitate or withdraw child, the issue here is that of implementation.

Take, for example, the 'Scheme for Working Children in Need of Care' and Protection for children working as domestic helps, at roadside dhabas and in mechanic shops, which provides for bridging education and vocational training, medicine, food and recreation/sports equipments for the children. Similarly, the 'Integrated Programme for Street Children' supports non-government organizations in running drop-in shelters and providing food, clothing, shelter, non-formal education, recreation, counselling, guidance and referral services to children. The other components of the scheme include enrolment in schools, vocational training, occupational placement, mobilizing preventive health services and reducing incidents of drug and substance abuse, HIV/AIDS etc. It also provided for shelter homes and other provisions for restoration to parents. 'The Integrated Child Development Scheme' (ICDS), launched in 1975, provides an integrated programme for the full-fledged development of children, targeting the children of the age group of 6-11 years, especially of poor families, providing a whole package which ranged from early childhood care to elementary education. The Integrated Child Protection Scheme aims at children in need of care and in conflict or contact of law and provides various kinds of support, including emergency outreach services, shelter, foster-care, special homes, website for missing children and innovative interventions, and provides for setting up of State and District Child Protection Units. However, to what extent these schemes actually support the needy, is a question of debate.

Another problem here is that of defining the beneficiaries under various policies.⁵⁸ The ambiguous definition of subjects often results in a lack of co-

⁵⁷ Brian L. Cutler, *Encyclopaedia Of Law And Psychology*, 536 (2008) (People who cannot provide for their own security and subsistence and who lack social guarantees for both are weak and helpless, against any individual and institution in a position to deprive them of anything else they value by means of threatening their security and subsistence. By this definition of vulnerability, children are obviously weak and helpless and are dependent on their families).

⁵⁸ Indian Policy Makers seem to have been struggling with the definition of the subjects of the huge number of child care and protection policies the country has, since the very inception. The *Immoral Traffic (Prevention) Act, 1956*, defines 'Child' as a person who has not completed the age of eighteen years (Section 2(aa)). *The Women's And Children's Institutions (Licensing) Act, 1956*, takes a

ordination and convergence of child care programmes or services. For example, the United Nations Convention on Rights of the Child (UNCRC) defines a child as “every human being below the age of eighteen years.”⁵⁹ But the local laws of different countries differ largely on this count.⁶⁰ The anti-child labour policies also contradict on the definition of ‘child labour’, adding to the uncertainty.⁶¹

From the perspective of the State, *Salaam Bombay* shows the strained and overcrowded conditions of State Child Care Centres which are always under-budgeted, underpaid and under-staffed. The dismal conditions of State institutions do not allow them to function as an alternative to life on the streets for these children. This brings to our notice the flaws of the State in relation to the children. Also, the State is not concerned about regulating the employers to check labour law violations, exploitation of child-labour and to rehabilitate them. *Salaam Bombay* also shows the authoritative interference of the State in family lives, for the worse. In a sequence, the police pick up Manju (Rekha’s daughter) and Krishna and keep them in Child Care Centres. But the condition in which both the children have to live is not much different from their lives on the street. The detention centres are shown to be full of bullies. They also lack adequate infrastructure, care, and willingness to rehabilitate these children. The shabby maintenance of the Centres affects the emotional side of Manju which changes her carefree personality and allows Krishna to escape easily.

The present legal system promotes the practice of child labour by specifying certain works for which children below fourteen years of age can be employed, as has

similar stand (Section 2(a)). *The Young Persons (Harmful Publications) Act, 1956*, applies to person under the age of twenty years (Section 2(c)). Whereas the *Children’s Act, 1960*, defines ‘Child’ as a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years (Section 2(e)). Interpreting differently, the *Child Labour (Prohibition and Regulation) Act, 1986* defines ‘Child’ as a person who has not completed his fourteenth year of age (Section 2(ii)).

⁵⁹ Art. 1, United Nations Convention on the Rights of the Child 1577 UNTS 3 (Adopted on November 20, 1989).

⁶⁰ See The African Child Policy Forum, Definition of The Child: The International/Regional Legal Framework, available at: http://www.africanchildforum.org/clr/Harmonisation%20of%20Laws%20in%20Africa/other-documents-harmonisation_1_en.pdf; Usang Maria Assim, *Harmonising the definition of Child*, OSISA, July 30, 2012, available at: <http://www.osisa.org/general/blog/hamonising-definition-child>

⁶¹ As per ILO standards, every economically active child earning wages can be considered as child labour, if under the age of 14 years for non-hazardous and 18 years for hazardous industries.

been argued by some.⁶² And the non-implementation of the rest of the provisions makes the situation even worse.⁶³ To exemplify, in Rajasthan, child labour is high in the unorganised sector, where children are made to work for at least ten-sixteen hours a day, which is far more than the prescribed time limit of six hours a day.⁶⁴ Even though the 2006 amendment to the Child Labour Act extended the ban on employment of children below the age of fourteen years as domestic help in dhabas and hospitality sectors, popular cinema kept showcasing the most common form of child labour as working full-time at dhabas or tea stalls. *I am Kalaam* (2011), *Stanley ka Dabba* (2011) and *Slumdog Millionaire* (2008) are some of the films which have easily portrayed many children working on roadside motels without any efforts from the government's side to withdraw them. In case of such unorganised sectors, the biggest problem is that even if children are rescued, the government infrastructure is not adept enough to provide them with even the basic necessities of life, because of which children keep shifting their jobs and become undetectable in most of the cases.

Nothing has been done so far to address the reasons for child labour, to end it from the very root. All the programmes either aim at rehabilitation or provision of food and shelter, which all go in wane. *Traffic Signal* shows the plight of a tsunami hit boy of Tamil Nadu who shifts to Bombay and works as a rag picker. He uses all his money to call up the Tsunami Relief Fund of Tamil Nadu in search of his parents who went missing after the Tsunami, but never gets any satisfactory reply. The Relief Fund Officer later reveals that his parents have already died, but have been put in the list of missing. Therefore, the compensation as was fixed by the Government would not be given to the child. Even in *Slumdog Millionaire* Jamal and Salim lose their mother and home in Bombay riots, and were left with nowhere to go, hence, forced to take up various jobs to survive.

⁶² Deepak Kalra, *Weak Laws allow Child Labour in Organization*, Rajasthan State Commission for Protection of Child Rights (SCPCR), Jaipur (July 25, 2012), available at <http://www.thehindu.com/todays-paper/tp-national/article3680478..>

⁶³ Statistics show the failure of Indian Labour Regulation Machinery to provide for the needed. Based on the 2001 census, 252,000 children are engaged in beedi manufacturing and 208,833 in the construction sector. An estimated 185,595 children are employed as domestic help and in dhabas (small roadside eateries); 49,893 children work in auto-repair workshops.

⁶⁴ *Child labour consistently increasing in unorganised sector*, THE HINDU (July 25, 2012), available at <http://www.thehindu.com/todays-paper/tp-national/article3680478..>

It is not only a matter of reel, but in real life also. NGOs have to come forward to get court orders from the courts to withdraw children detained in circuses or as domestic servants. In *Bachpan Bachao Aandolan v. Union of India*,⁶⁵ Bachpan Bachao Aandolan (an NGO) filed a writ petition under Article 32 of the Indian Constitution seeking issue of the writ of mandamus in the wake of forceful detention of children in circuses in inhumane conditions.⁶⁶ The NGO argued that the fundamental and human rights of the children were being violated. Eventually, the Supreme Court, realising the seriousness of the situation, issued directions for the Government to conduct frequent raids in circuses and issued a notification making employment of children in circuses illegal.⁶⁷

In the *Child Labour Case II*⁶⁸, a writ petition was filed by Shri M.C. Mehta, seeking court orders for violation of fundamental rights of 2,941 child labourers employed in factories of Sivasaki, manufacturing matches and fireworks.⁶⁹ Further a suo moto cognizance was taken by the court in the wake of an accident in one of the Sivakasi cracker factories.⁷⁰ The court recognized poverty as a cause for child labour⁷¹ and gave its tacit approval to child labour.⁷² It tried to ensure social security measures for child labourers so as to give them an opportunity to discontinue working. The court suggested the State ought to make provisions for alternative employment for the parents of the child, and in case it is not available, a sum of Rs. 25,000 must be paid for each child, every month.⁷³ Labour inspectors were given the duty to ensure that the children withdrawn from the work are sent to school.⁷⁴ The work hours were fixed at not exceeding six hours a day and a minimum two hours of education was made compulsory for children working in non-hazardous industries at the cost of the employers.⁷⁵

⁶⁵ *Bachpan Bachao Aandolan v. Union of India*, AIR 2011 SC 3361 (Supreme Court of India).

⁶⁶ *Bachpan Bachao Aandolan*, AIR 2011 SC 3361, ¶ 1.

⁶⁷ *Bachpan Bachao Aandolan*, AIR 2011 SC 3361, ¶ 68.

⁶⁸ *Child Labour Case II*, AIR 1997 SC 699.

⁶⁹ *Child Labour Case II*, AIR 1997 SC 699, ¶ 2.

⁷⁰ *Child Labour Case II*, AIR 1997 SC 699, ¶ 4.

⁷¹ *Child Labour Case II*, AIR 1997 SC 699, ¶¶ 13, 27, 25.

⁷² *Child Labour Case II*, AIR 1997 SC 699, ¶ 31.

⁷³ *Child Labour Case II*, AIR 1997 SC 699, ¶ 31. (The employment given or payment made would cease to be operative if the child would not be sent by the parent/guardian for education).

⁷⁴ *Child Labour Case II*, AIR 1997 SC 699, ¶ 31.

⁷⁵ *Child Labour Case II*, AIR 1997 SC 699, ¶ 31.

However, the directions of the Supreme Court suffered from non-implementation and in 2009 the Delhi High Court in *Court on Its Own Motion v. Government of Delhi, NCT*,⁷⁶ had to issue directions to the Delhi Government to formulate an action plan on the lines of the directions of the Supreme Court in 1997, for the protection of working children.

V. CONCLUSION

India, as a country with the largest number of child labourers has reached a point where an appropriate law to tackle the menace is most desirable. Wide-spread poverty, unemployment, corruption and lack of social security are to be blamed for increase in child labour over the years. Even though the Constitution of the country, under Article 24 prohibits child labour, the same has been honoured more in breach than in observance.

Popular cinema in India, since the very beginning, has been depicting child labour as an accepted practice in the society, which has not witnessed any movement of change. The perception of the society towards the problem has not changed much, and though the policies of the government have, the change has been nevertheless to no one's benefit. The picture of child labour as presented by Indian cinema hits at the root causes and coincides with the idea of necessity more than an evil. Without addressing the root causes of child labour, India cannot bring in a total ban on the practice of child labour. And even if India does, it cannot be enforced as it would directly affect the question of survival for millions of poor people.

A partial ban, as is in place today, raises doubts as to its usefulness and highly suffers from inbuilt deficiencies, and of course, lack of implementation. The result is that children today not only toil in prohibited hazardous industries in great numbers, but also do not get any benefit of labour regulation policies. On a perusal of the 1986 Act, even courts have expressed views that under the Act, only child workers employed in scheduled occupations and processes can be liberated and children employed above the age of fourteen years cannot be rescued.⁷⁷ Also, since the Act only prohibits employment of children in certain scheduled occupations and

⁷⁶ *Court on Its Own Motion v. Government of Delhi, NCT*, WP(C) No. 9767 of 2009, July 15, 2009, (C.J. and Manmohan J.) (High Court of Delhi).

⁷⁷ *Court on Its Own Motion*, WP(C) No. 9767 of 2009, ¶20.

processes, child workers employed in non-hazardous jobs cannot be rescued.⁷⁸ Hence the Act leaves out a large population of child labour from the benefits therein. Even the children, who fall within the purview of the Act, are not bothered to be withdrawn and rehabilitated, Indian cinema contends.

India, being a developing country is considered to be unprepared for direct stringent measures to tackle child labour. Thus the 2012 Bill also leaves scope for working of children, but in a restricted manner work in family occupation, home-based work, training workshops or forest gathering. The Bill does seem to be a better alternative over the 1986 Act, but it is not the niche we should aim at. One common feature in the policies, among the countries with considerable high literacy rates is that they all have made any form of child labour illegal and punishable under law, be it working in factories or as helpers or even working or helping with parents. They have made it mandatory for parents to send their children to school.

At this juncture, what India should aim at is a comprehensive and coherent approach to child labour, which should first address the causes of child labour by providing for poverty reduction, provision of quality education, and social protection measures; followed by a complete ban on child labour and complete implementation of the 'Right to Free and Compulsory Education Act, 2010' to allow everyone equal chance to participate. The intimidating issues of implementation have to be addressed at the earliest to allow current system to work, so that the effects thereof can be assessed and future course of action can be decided.

⁷⁸ Court on Its Own Motion, WP(C) No. 9767 of 2009, ¶ 19.