

Work, labour two different things – II

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Definition of labour: Neither the convention nor domestic legislation adequately distinguish between (child) work and labour. Child work 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 work which may appropriately be termed as labour. Similarly, an activity/work may also be characterised as labour when its duration is overstretched so also to harm the child's health or development or interferes with his education. The Executive Board of UNICEF in 1986 devised a criterion for distinguishing (child) work from labour.

The key element in this criterion was the element of exploitation in any child work/activity. According to 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.

Based on a realistic assessment of the nature, kind, duration and conditions of work, a distinction must be introduced which separates (child) work from labour. The UNICEF criterion will help in devising such a distinction. Thereafter efforts must be targeted at eliminating/curbing child labour.

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 up to a certain

age limit 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/processes, given in the schedule, is however, not comprehensive enough and certain other equally harmful occupations/processes, such as work in brick kiln, sanitary service, or work on farm are left out. There is, thus, a need for including the above-mentioned and similar other hazardous/harmful occupations/services in the schedule.

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 pre-

scribes 14 years age limit for the purpose of employment in a factory, mine or any other hazardous occupation. This limit has been followed by the Factories Act, the Merchants Shipping Act, the Shops and Establishments Ordinance and the Employment of Children Act. The Mines Act, however, raises the minimum age limit to 15 years. The constitutional limit, it must be clarified, is a minimum standard, and higher limit can be fixed as indeed has been fixed by the Mines Act. The 14-year 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 in 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. 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 is in breach of international conventions. The minimum age limit of 14 years cannot be

justified in view of the fact that it is too tender an age for employment. Again, this low limit deprives the child of his right to complete his schooling (10 years for studying upto matriculation, provided that the child is admitted at the age of 5)- a factor that may well be taken into consideration by the government because of its commitment to introduce compulsory elementary education, as a vital component of its Social Action Programme. It is, therefore, suggested that the Constitution and other statutes may be suitably amended, so that the minimum age limit for employment is raised to 15 years.

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 minimum. 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 unaware of risk to the child's health or development or when they are 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. Later on, the ILO Convention No. 138 altogether abolished such exception in specified (dangerous) occupations/processes.

Therefore, in order to harmonise our legislation with the constitutional mandate and the standards set by the international instruments children should be forbidden from working in family undertakings in the areas of mining and quarrying, manufacturing, construction, electricity, gas, transport, storage, communication, fireworks, carpet weaving, brick-kiln, and farming, involving the use of chemicals/toxic materials.

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