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Issues and Solutions of Child Labour – An Analytical Study of National Policy

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Abstract: It is since ages that India had continued to give legal protection to the Child labour from exploitation at work through its various labour laws. There are specific provisions both in the Directive Principles of State Policy and in the Articles relating to the Fundamental Rights guaranteed by the Constitution of India. During the 1980's, the Government of India initiated several action oriented rehabilitation programmes to withdraw children from work and prevent them from entering the labour markets. The most significant step in this direction was the adoption of National Child Labour Policy in 1987. The Writer of this paper seeks to study various issues and solutions of child labour in the light of the National Policy.

Keywords: Child labour, Rehabilitation, Protection, Legislative action plan Development Programmes, employment generation

1. Introduction

Every child while in mother's womb and ever since its birth and entry into this mundane world requires constant and continuous care and concern in terms of food, health care, proper upbringing and education. However, children belonging to families living under Below Poverty Line are forced to work as labours in houses, market places, industrial and commercial houses where by they are denied their right to education.

Any child below 14 years of age engaged to work is called child labour. Labour becomes an absolute evil in the case of the child when he is required to work beyond his physical capacity, when hours of employment interfere with his education, recreation and rest, when his wages are not commensurate with the quantum of work done, and when the occupation he is engaged in, endangers his health and safety. All these things constitute themselves to be exploitation of child labour.

As a possible solution to the issue of child labour, the National Child Labour Policy aims at successfully rehabilating child labour withdrawn from employment and to reduce the incidence of child labour progressively through a number of measures. This policy consists of three main components:

- ➤ Legislative Action Plan
- Focus on General Development Programmes.
- Project based Plan of Action

2. National Child Labour Policy, 1987

Introduction

The Constitution of India, both in the Directive Principles of State Policy and as a part of the Fundamental Rights, has laid down that the State shall direct its policy towards securing that health and strength of workers, men and women, and the tender age of children are not abused, and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength, and that children, particularly, are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. Childhood and youth are to be protected against exploitation, and

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no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

The National Policy for Children Resolution, adopted in August 1974, further developed the above ideas and set out a policy framework and measures aimed at providing adequate services for children. These were to form a prominent part of the nation's plan for development of human resources. Free and compulsory education for all children upto the age of 14, provisions of health and nutritional programmes and services, providing alternative forms of education for children unable to take full advantage of formal school education for whatever reasons and measures for protecting children against neglect, cruelty and exploitation form part of the National Policy for Children. The Policy also provides, as one of its objectives, that no child under the age of 14 years shall be permitted to be engaged in hazardous occupations or to be made to undertake heavy work.

The Committee on Child Labour (Gurupadaswamy Committee), which submitted its report in December 1979, examined the problems of child labour in detail. India is one of the countries where the problems of child labour are quite openly manifest and widespread existence has been viewed by the Government of India. The Gurupadaswamy Committee recognised that a distinction had to be made between child labour and the exploitation of child labour. It had underlined that in all future action dealing with child labour this basic aspect would have to be taken note of i.e., that "labour becomes an absolute evil in the case of the child when he is required to work beyond his physical capacity, when hours of an employment interfere with his education, recreation and rest, when his wages are not commensurate with the quantum of work done, and when the occupation he is engaged in, endangers his health and safety" i.e. when he is exploited.

Government has given consideration to these aspects of the problems of child labour, i.e. the need to protect child labour from exploitation or from being subjected to work in hazardous conditions which endanger such children's physical and mental development; the need to ensure safety and health at their working places; that they should be protected from excessively long working hours and from night work; and that there should be regulated work even in non-hazardous occupations, and that all working children have to be provided with sufficient weekly rest periods and holidays in their employments.

The recently enacted Child Labour (Prohibition and Regulation) Act, 1986, is the culmination of the process of consideration, that, Government has been giving to this pervasive problem figuring in the economic and social landscape in the country. Both in enacting the legislation, and thereafter in proceeding to lay down the policy and the outline of the programme of action, Government have had to keep in mind the economic and social aspects of child labour in the country, For example, with substantial portions of Gross Domestic Product (GDP) coming from the agricultural sector, from rural industries or from artisan's workshops, or from small scale services, often children work as an essential part of a farm household, or as part of the working family, assisting parents in ancillary tasks. In such working activities by children in farm and field, in artisan households or in small family-centred trade or services establishments, children most often acquire the skills, which enable them to become full-fledged workers in farming households, family establishments or trades. While work of such kinds has its problems, it is more essential at the present stage of our national development to concentrate in those sectors or establishments where children are deployed on wage or quasi-wage employment, outside the family, where the possibility of children being subjected to exploitation is greater.

The national anti-poverty policies, the national education policy, the national policy on health for all and on nutrition, as also the generally stepped-up provisions in social services in national plan outlays, are all geared to tackle the problems like poverty, where too often the origins and compulsions of child labour rest. The general raising of large number of the people above the poverty line, or the provision of the entire spectrum of improved social services in the areas above mentioned will, it is hoped, lead to progressive elimination of poverty, and consequently of the phenomena of children being put out for wage employment or quasi-wage employment at unsuitable ages. The measures to promote employment-oriented development both in rural and in urban areas, and the all-round development and extension of adequate facilities for both formal and non-formal education, vocational education and training, and in the coverage and extension of social security and family welfare measures would all go a long way to tackle the basic and root causes of child labour.

This action programme, therefore, has to be viewed against the above background. Specifically, the attempt is to deal with a situation where children work, or are compelled to work, on a regular or a continuous basis to earn a living for themselves and/or for their family, and where their conditions of work result in their being severely disadvantaged and exploited, and where abuses connected with such factors impacting on wage-employed children need to be given close attention by the State for rectification, amelioration and regulation through specific legal and administrative instruments and measures.

The future action programme is set out under the following three heads:

- I. The legislative Action Plan;
- II. The focusing of general development programmes, for benefiting child labour wherever possible; and
- III. Project-based Plan of Action in areas of high concentration of child labour engaged in wage/quasi-wage employment.

3. HISTORY OF LEGISLATION RELATING TO CHILD LABOUR: A RESUME

1881 to 1954 The Factories Act, 1948 replaced the Factories Act, 1881

The Factories Act, 1881 provided prohibition of employment of children of minimum age of seven years. In 1891 the age was increased to nine years and further raised to fifteen years in 1948.

The Act of 1881 provided prohibition of successive employment in two factories on the same day.

The Act of 1881 provided maximum working hours of nine hours a day with at least four holidays in a month. In 1891, working hours were reduced to seven hours with prohibition of work at night between 8 p.m. and 5 a.m. In 1911, prohibition of work at night was modified between 7 p.m. and 5.30 a.m. In 1922, working hours was further reduced to 6 hours and also added an interval of half an hour if children are employed for more than 51/2 hours in a day.

The Factory Act, 1881 was applicable to factories employing 100 or more persons. In 1922 it was brought down to establishments employing 20 or more persons with mechanical processes. Power vested with local governments to exclude the application of provisions to premises employing 10 or more persons. In 1948, the Act was made applicable to factories employing 10 or more persons with the aid of power and for employing 20 or more persons without the aid of power.

In 1911, it provided prohibition of employment of children for work in certain dangerous process. In 1922, it provided prohibition of employment of children below 18 and women in certain processes. In 1934, elaborate provisions were added for regulating the employment of children of various groups in the factories, such as:

- Children under 12 & 15 years employment generally prohibited in certain areas;
- Children under 12 & 1 5 years employment restricted to 5 hours a day in other areas;
- Children between 1 5 and 1 7 years certain restrictions were imposed;

In 1911, requirement of certificate of age and fitness was added. In 1922 provision for medical certificate and also certificate of re-examination for continuing work was made.

In 1 926 a provision was added for imposition of certain penalties on the parents and guardians for allowing their children to work in two separate factories on the same day.

In 1954, a provision was added for prohibition of employment of persons under 17 years at night ("Night" was defined as a period of 12 consecutive hours and which included hours between 10 pm and 7 am)

1901 to 1952: The Mines Act, 1 952 replaced the Mines Act, 1901

The Act of 1901 prohibited employment of children less than 12 years of age. In 1923, age was raised to 13 years. In 1935, it was further raised to 15 years.

It further provided permission of employment of persons between 1 5 ai^y.7 years only on production of certificate of physiqalifitness granted by a qualified medical practitioner;

Working time was restricted to maximum of 10 hours a day and 54 hours a week for work above the ground and 9 hours a day underground.

The Act of 1952 stipulated two conditions for underground work in a mine-

Requirement to have completed 16 years of age and,

Requirement to obtain a certificate of physical fitness from a surgeon.

1931: The Indian Ports (Amendment) Act 1931

Laid down 12 years as the Minimum age that could be prescribed for handling goods in ports. The Report of the Royal Commission on Labour (1931) had an impact on legislation pertaining to Child Labour during the period between 1 93 1 and 1949.

1932: The Tea Districts' (Emigrant Labour) Act 1932

Was passed to check migration of labour to Assam. It provided that no under -age child is employed or allowed to migrate unless the child was accompanied by his or her parents or adults on whom the child was dependent.

1933: The Children (Pledging of Labour) Act 1933

Prohibited pledging of children - i.e. taking of advances by parents and guardians in return for bonds, pledging the labour of their children - a system akin to the bonded labour system. The Royal Commission noticed this practice of pledging the labour of their children in carpet and bidi factories, in areas such as Amritsar, Allahabad, Madras, etc.. The children in these situations were found to be working under extremely unsatisfactory conditions.

1938: The Employment of Children Act 1938

Was passed to implement the convention adopted by the 23rd session of ILO (1937), which inserted a special article on India:

Children under the age of 13 years shall not be employed or work in the transport of passengers, or goods or mails, by rail, or in the handling of goods at docks, ' ^ quays of wharves, but excluding transport by hand. Children under the age of 15 years shall not be employed or work.... in occupations to which this Article applies which are scheduled as dangerous or unhealthy by the competent authority.

This Act:

Prohibited the employment of children under 15 years in occupations connected with transport of goods, passengers, mails on railways;

Raised the minimum age for handling goods on docks from 12 to 14 years; (iii) Provided for the requirement of a certification of age.

In 1951, a provision was added for prohibition the employment of the children between 15 and 17 years at night in railways and ports and also provided for requirement of maintaining register for children less than 17 years.

In 1978, a provision was added for prohibition employment of a child below 15 years in occupations in railway premises such as cinder-picking or cleaning of ash pit or building operations, in catering establishment and in any other work which is carried on in close proximity to or between the railway lines.

1951: Plantations Labour Act 1951

Prohibited the employment of children less than 12 years in plantation.

1958: The Merchant Shipping Act 1958

Prohibits children under 15, to be engaged to work in any capacity in any ship, except in certain specified cases.

1961: The Motor Transport Worker Act 1961

Prohibits the employment of children under 15 years in any motor transport undertaking.

The Apprentices Act 1961

Prohibits the apprenticeship/training of a person under 14 years.

1966: The Beedi and Cigar Workers (Conditions of Employment) Act 1966 prohibits:

The employment of children under 14 years in any industrial premises manufacturing bidis or cigars;

Persons between 14 and 18 years to work at night between 7 pm and 6 am. 1986: The Child Labour (Prohibition and Regulation) Act

Bans the employment of children, i.e. those who have not completed their fourteenth year, in specified occupation and processes;

Lays down a procedure to decide modifications to the Schedule of banned occupations or processes;

Regulates the conditions of work of children in employment where they are not prohibited from working;

Lays down enhanced penalties for employment of children in violation of the provisions of this Act, and other Acts which forbid the employment of children;

It also intends to obtain uniformity in the definition of "child" in the related laws.

4. THE CHILD LABOUR (PROHIBITION & REGULATION) ACT, 1986

Summary

The Child Labour (Prohibition & Regulation) Act, 1986 was the culmination of efforts and ideas that emerged from the deliberations and recommendations of various committees on child labour. Significant among them are the National Commission on Labour (1966-69), Gurupadaswamy Committee on Child Labour (1979), Sanat Mehta Committee (1984) and others. The basic objective of the Child Labour (Prohibition & Regulation) Act, 1986 is to ban employment of children below the age of 14 years in factories, mines and hazardous employments and to regulate the working conditions of children in other employment.

Bans the employment of children - i.e. those who have not completed their 14th year, in specified occupations and processes;

Lays down a procedure to decide modifications to the schedule of banned occupations or processes;

This act regulates the conditions of work of children in employment where they are not prohibited from working;

It also lays down enhanced penalties for the employment of children in violation of the previous of this act, and other acts which forbid the employment of children; and

The act brings about uniformity in the definition of "child in related laws".

The Act prohibits employment of children below 14 years of age in occupations and processes listed in Part A and Part B of the Schedule to the Act. Through a Notification dated 26.5.1993, the working conditions of children have been regulated in all employments, which are not prohibited under the Child Labour (Prohibition & Regulation) Act, 1986. Through a Notification dated 10.5.2000 the schedule has been modified by adding six more processes, thereby bringing the total to 13 occupations and 57 processes Section 5 of the Child Labour of Child Labour (Prohibition & Regulation) Act, 1986 provides for the constitution of a Child Labour Technical Advisory Committee to advise/ the Central Government for the purpose of addition of the schedule of the Act.

THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

(Act No. 61 of 1986)

[23rd December, 1986]

An Act to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments

Be it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:

Comment

Social and beneficial legislation - Social legislation is designed to protect the interest of a class of society who, because of their economic conditions, deserves such protection. With a view to pass the test of reasonable classification there must exist intelligible differential between persons or things grouped together from those who have been left out and there must be a reasonable nexus with the object to be achieved by the legislation.

The Court must strive to so interpret the statute as to protect and advance the object and purpose of the enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The Court must, therefore, keep the legislative policy in mind in applying the provisions of the Act to the facts of the case.

National Projects on Child Labour

The National Child Labour Policy was adopted in 1987 and the policy was translated into action by the National Child Labour projects. The main components of the National Child Labour projects are awareness generation, survey for identification of child labour, running special schools, non-formal education, mainstreaming of child labour, enforcement of child labour laws and income and employment generation in the child labour concentration areas. The Projects are area specific, time bound, and participative in as much as they involve government and non-government agencies and the community in an integrated manner. Though these projects recognize the desirability of simultaneous withdrawal and rehabilitation of all working children, due to various administrative, logistic and financial reasons, a gradual and progressive approach has been adopted. This approach places priority on withdrawal and rehabilitation of children engaged in hazardous employments.

The main strategies of the Projects are Rehabilitation of Children withdrawn from Work; Prevention of Entry of Children into Work; and Convergence of Services. In some Districts, the Project Society itself directly execute some of the programme activities, in some other, they involve suitable voluntary organizations in the implementation of the project. The eligibility of non governmental organizations for taking up activities under the project is that it should be a Society under the Societies Registration Act, 1860 or a Public Trust registered under any law for the time being in force, or a registered Trade Union, or a Charitable Company licensed under Section 25 of the Companies Act, or Universities/institutions of higher learning.

The organization should be such that its welfare and other programme relating to child labour are accessible to the target group without any distinction of caste, religion or language and should be in a sound financial position and it should have the capability of executing programmes effectively and smoothly.

Since the National Child Labour Projects are demonstrative projects, which cover limited number of working children, the State Governments are expected to find ways and means for rehabilitating other working children either through the enrolment of children in the formal system or through any other methods deemed appropriate. They are also expected to take steps with regard to Finalization of uniform, curriculum, course content and textual material for the special schools through involvement of Department of Education, SCERT, etc.

At the national level, the programme is carried out under the auspices of the Ministry of Labour. A Central Monitoring Committee has been set up for overall supervision and evaluation of various child labour projects under the National Child Labour Policy. Representatives of concerned Central Ministries/State Governments and Projects are included in the committee. Since the projects have been taken up in the Central Sector, the entire funding is done by the Central Government - Ministry of Labour, Government of India. Funds are released to the concerned Project Societies, voluntary organizations etc. depending upon the progress of the project expenditure incurred.

A project level society is constituted for each project and the major Activities of the Projects are implemented through District Project Society with District Collector as the Chairperson and other members comprising representatives of Departments concerned with programmes of non-formal education, vocational training, health etc. and suitable voluntary organizations as required. The execution of the project is entrusted to a Project Director, who is assisted by Field Officers or Social Workers and other support staff. The Society is a registered body and has a distinct legal status. The other staff including teachers is engaged either by the voluntary agency or by the Project Society. In the Special schools, the non-formal education and vocational training are imparted along with

provision of supplementary nutrition and health care services. In addition, stipend is paid to children withdrawn from the employment. Stepping up of their enforcement is an essential component of the project activities and special responsibility is cast on the labour enforcement staff available in the project areas.

5. WORST FORMS OF CHILD LABOUR CONVENTION 182, 1999

Convention 182

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour, and

Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996, and

Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education, and

Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, and

Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, and

Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention; adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention, 1999.

Article 1

Each Member who ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

Article 2

For the purposes of this Convention, the term child shall apply to all persons under the age of 18.

Article 3

For the purposes of this Convention, the term the worst forms of child labour comprises:

All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

Work, which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Article 4

The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.

The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.

The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

Article 5

Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

Article 6

Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.

Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

Article 7

Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.

Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

- Prevent the engagement of children in the worst forms of child labour;
- Provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
- Ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
- Identify and reach out to children at special risk; and
- Take account of the special situation of girls.

Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

Article 8

Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

Article 9

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 10

This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.

Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

A Member that has ratified this Convention may denounce it after the expiration often years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

Each Member which has ratified this Convention and which does not, within the year following the expiration of the period often years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period often years under the terms provided for in this Article.

Article 12

The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.

When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 13

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 14

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15

Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides —

The ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, not with standing the provisions of Article 11 above, if and when the new revising Convention shall have come into force;

As from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

This Convention shall in any case remain in force in its actual form and content for those Members, which have ratified it but have not ratified the revising Convention.

Article 16

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention unanimously adopted by the General Conference of the International Labour Organisation during its Eighty-Seventh Session which was held at Geneva and declared closed on 17 June 1999.

IN FAITH WHEREOF we have appended our signatures this day of June 1999.

The President of the Conference,

The Director-General of the International Labour Office,

6. RESULT AND DISCUSSION

Among Children coming from families engaged in vocations like scavenging, flaying and taming, match box manufacturing, diamond polishing, gem cutting, glass manufacturing, brassware manufacturing, carpet industry, lock-making industry, slate industry, the prevalence of child labour is rampant. So the child labour involved in these industries spread over geographical areas ranging from North to South require immediate attention as the work carried out by child labour is likely to affect the child's well being, health and education in particular.

7. CONCLUSION

The problem of child labour is universal. As a possible solution to this chronic problem the Government at the Center and the respective Governments in States will have to evolve and implement still more effective plan of action under the guidance and supervision of the International Labour Organization, a body of United Nations Organization.

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