Chapter Four

Contemporary Labour Concerns: Child Labour and The Discourse on Child Rights

Much of the recent academic interest in New Social Movements has tended to focus on mobilisations articulating concerns relating to ecology, feminism, sexual minorities and sustainable development. While a strong theoretical case has been made for the reconceptualisation of the basic categories of Marxism, particularly the working class, emergence of mobilisations and movements challenging the conceptual monism of the working class has not attracted the same deal of academic probing as the other NSMs challenging theoretical structuralism. Within such departures from traditional trade unionism, groupings articulating concerns of the women workers or exhibiting broad political aims – like the SEWA or the Chhattisgarh Mines Shramik Sangh – have attracted greater analytical interest.

In contrast mobilisations of working children, a constituency regularly ignored by traditional trade unions due to conceptual inadequacies, trajectory of historical evolution and organic linkages with State structures, has failed to attract the same degree of academic attention. Moreover, whatever academic interest has been generated in the mobilisations of the working children eventually confine themselves to set patterns of analysis on the issue of ‘combating’ child labour. Some writers focus on international and national policy initiatives aimed at ‘weeding out the menace of child labour’, often at the cost of overlooking the progressive and emancipatory potential that is generated by such mobilisations. Concomitantly such an approach, which is called the labour market approach, also considers a blanket legislative ban on child labour as the panacea for the ‘evil’, which disallows children to pursue their ‘development’ fully. Most of the writing within this framework usually sees ‘development’ interchangeably with formal education. Child labour, hence, is considered an ‘evil’ that forces children not to ‘develop’ their full potential and consequently it is imperative on national as well as international institutions
to use legislative, administrative and at times even coercive measures to abolish it.¹ Other writers conceive of child labour as a consequence of underdevelopment. Poverty, according to such an approach, needs to be tackled and eliminated if the child labour is to be abolished. While provision of economic aid combined with administrative mechanisms is favoured to eliminate poverty, the causes of underdevelopment or the development model used by the countries in question is seldom investigated. Such an approach, which is called the human capital approach, inherently favours structured programmes of top-down planned interventions aimed at tackling poverty.² Few others try to situate the issue of child labour within the larger, and invariably inequitable, processes of society while considering child workers as part of disempowered and disadvantaged groups. Such a path, which is called the social responsibility approach, aims at intervening at the level of processes surrounding the issue of child labour. Consequently part of the solution suggested involve strengthening family systems, improved basic services, monitoring of workplaces to identify and remedy abuses, activism to inform and make the governments aware and responsive.³

The common thread running through all the three approaches is a paternalistic, adult-centred outlook that identifies child labour as an issue that needs to be abolished, irrespective of the context and the conditions involved. These approaches do not allow children, who are the main protagonists by virtue of being workers, the space or a role in either defining the issue of child labour or in evolving mechanisms to come to terms with it and then eventually tackle it. The differences in the three approaches are one of degrees and tactics rather than of strategy. This is visible in the policy framework that has evolved on the issue of child labour over a period of time. For instance, while the International Labour Organisation – with its labour market approach – defines child labour as any economic activity that contributes to the Gross Domestic Product, according to the criteria established under the International System of National Accounts⁴, the United States Department of Labour, one of the largest contributors of aid to agencies working to eradicate child labour, defines child labour as any work that prevents a child from going to school or restricts a child from accessing quality schooling.⁵ Most of the literature also gives the impression that child labour is a
phenomenon confined to the developing countries. According to the ILO children also work in countries such as the United States of America, Canada, the United Kingdom and the Netherlands. In UK more than 50 per cent of the children have experienced work before the age of 14.6

In such a scenario most interventions on behalf of children have been paternalistic, be it counselling, care, rescue and rehabilitation or prevention of abuse. Such interventions transform the role of adults into either violators or protectors. Coupled with a lack of acknowledgement that the children are the ones experiencing work and hence are their own first line of defence with the need to organise in order to resist exploitation and fulfil their rights leads to a perception that children are and should be passive recipients. Though many adult-controlled interventions maintain that the participation of children is essential, the degree and the level of participation in what is essentially seen as ‘adult affairs’ depends on the extent the adults enable it and are willing to open up space for children. Children have rarely been perceived as full participants in the process to ‘eradicate child labour’.

Working children have been organising themselves for decades. In 1899, more than a century ago, the newspaper boys known as ‘The Newsies’ in New York fought for and got increased wages. There has been in the eighties and nineties a growing concern among international policymakers with issues of children’s rights. The Convention on the Rights of the Child is a concentrated expression of this and is the first global recognition that children also have the two most fundamental rights – the right to organisation and the right to participation – guaranteed through article 12 and article 15 respectively. The CRC also acknowledges that it is only through the exercising of these two rights that all the other rights promised in the CRC obtain true meaning. But to consider the CRC as a standalone document that evolved in an environment devoid of socio-economic and political context would be an approach deliberately aimed at ignoring the power dynamics – international and institutional – shaping the politics of childhood. But it must be admitted that the CRC’s conceptual framework forces a re-examination of many of the
old assumptions about childhood, children’s roles and development. For instance, the CRC admits that the child cannot be viewed as separate from family and community.

Martin Woodhead in his very interesting participatory study in six countries argues strongly for taking into account children’s perspectives.

Children are important sources of evidence on how work may harm their development and are not passively affected by their work (as is generally thought in terms of being) too young and too innocent to understand what is going on. They are active contributors to their social world, trying to make sense of their present circumstances, the constraints and the opportunities available to them. Listening to children’s perspectives does not undermine efforts to combat child labour that is hazardous and exploitative. It provides a much more sound starting point for intervening in ways that are child-centred, context-appropriate and in the best interests of working children.7

The Paradigms on Child Rights

One of the consequences of the critical analyses of the traditional approaches to the concept of child labour, their mobilisations and forms of organisation has been a felt need for shift in paradigm informing the academic debates on the issues relating to and surrounding child labour. The entire discourse on children’s rights is a discourse constructed, monitored and directed more or less by adults. The need for a paradigm shift is based on the inadequacies of categories of analysis that view the children with pity as passive victims of their situations needing our care and protection, as ‘projects to be acted upon’, the target of politics, advertising and programmes. A logical extension of this need to jettison the perception that children are passive recipients is also the need to redefine the role of the adult in ‘children’s participation’. As such participation – the degree and the kind – in itself is a contested concept and has political overtones. But there are an increasing number of voices that stress the need to approach children, particularly the working children, as protagonists, as active individuals capable of independent decision-making and having the skills to organise themselves to articulate their concerns and act upon them.

A potential effect of increased participation, just now becoming perceptible, is change in the politics of child labour provoked by forcing more accountability on those taking
social decisions. If children have a free voice, it will be increasingly difficult for
governments, international organisations or influential civil society groups to pursue their
own agendas and interests without regard to the children involved. After all how credible
can a protective policy or programme of action be when the very children it is supposed
to protect that it instead tramples their rights and leaves them more vulnerable?9

But many writers necessarily link the participation of children with the facilitation by the
adults, a situation where adults mediate the meanings and the actions of children. While
facilitation opens a space for children’s voices to be heard, it can also act as a barrier
where children are mere testimonies of exploitation, symbols that reinforce the victim
image, while the adults proceed with the ‘real’ deliberations. A South African proverb
illustrates the catch-22 situation working children often find themselves in. “Until the
lions have their historians, history will always be told by the hunters.”9

However, many of the issues surrounding child labour trace their roots to the capitalist-
industrial model of development, which displays a universal streak in its prescriptions for
‘growth’ and ‘progress’. But admitting a linkage with the development model followed
by the majority of the world, dictated by multilateral institutions having organic linkages
with developed countries, is something that many writers are not comfortable with. “It is
almost as though that having failed to deal with the immense problems arising out of the
gigantic macro structures and processes of the modern and post-modern globalised
capitalist world, there is an almost desperate urge to deal with those very problems using
children as an alibi to address the human condition.”10 In fact western literature abounds
in approaches where analysts speak of the ‘death of childhood’ (Jenks, 1996) or the
‘disappearance of childhood’ (Postman 1994).

If... the concept of ‘childhood’ serves to articulate not just the experience and status of
the young within modern society but also the projections, aspirations, longings and
altruism contained within the adult experience then to abandon such a conception is to
erase our final point of stability and attachment to the social bond. In a historical era
during which issues of identity and integration are, perhaps, both more unstable and more
fragile than at any previous time such a loss would impact upon the everyday experience
of societal members with disorienting consequences.11

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The renewed intellectual interest in the west on childhood and the issue of child labour, as a corollary, over the last couple of decades is a consequence of complex intermeshing of various factors at the ideological level and developments at the level of social processes. “...the demographic changes leading to an ageing population has occasioned an increased concern with the idea of the child and childhood; the fragmentation of the family as a unit and its increasing existence as just a coalescence of individuals and the exponential rate of change that affects all aspects of social life.”12 The spurt in interest is also a direct outcome of efforts to popularise the CRC by many NGOs and government and international agencies.

While there has been a general consensus in international fora and among policy-makers and social analysts in the third world countries on the need to focus on issues regarding children, many grey areas and unexamined assumptions of the discourse on child’s rights in general and the CRC in particular remain.

The discourse on child’s rights is taking place in the context of globalisation. In fact, the adoption of Structural Adjustment Programmes in so-called third world countries has resulted in aggravating the condition of the poor in general, and women and children in particular. The marginalisation of the poor is due to rising unemployment in the organised section and the increasing casualisation of labour in the formal section. Coupled with the drastic cuts in government expenditure on the social sector such as services and the poverty alleviation programmes the pressure on the poor has increased while narrowing down their options for survival.

This altered global setting is critical in informing the whole discourse of child’s rights in general, and the CRC in particular. Many feel that is it not by chance that all of a sudden the spotlight is being turned on the problem of child labour. “It is not fortuitous that the whole discourse on child’s rights in general and the passing of the CRC in particular, have taken place at the same time when the problems and consequences of the adoption
of Structural Adjustment Programmes in many third world countries have reached a head.\textsuperscript{13}

Judith Ennew points out a strong correlation between the issues surrounding Brazilian street children, which came to focus during the United Nations year of the children in 1979, and the academic and intellectual interest in child rights and child labour. There are numerous documents, not only of the UN but of various other multilateral institutions, that prove the number of street children went up drastically in Brazil after the government adopted structural adjustment policies suggested by the International Monetary Fund and the World Bank in the late 1970s and the early 80s. Globalisation and the adoption of SAPs by most countries of Asia, Africa, Latin America and eastern Europe has resulted in a drastic restructuring of the economic relationship in these societies with attendant serious political and social consequences.

It is no coincidence..., that the convention on the Rights of the Child was drafted during the same decade as an unprecedented increase in interest in groups of children called 'street children'. Both the convention and a number of initiatives for these children sprang from the same source, in activities connected with the United Nations International Year of the Child in 1979. In the juxtaposition of the convention and the image of the street children the entire discourse on child's rights stands revealed. The convention in the drafting process, the resulting text and in its implementation, takes as its starting point western, modern, childhood, which has been 'globalised' first through colonialism and then through the imperialism of international aid.\textsuperscript{14}

One of the important consequences of globalisation in general and the SAPs in particular has been a virtual paradigm shift in the philosophy of development. Models that emphasised State intervention, import substitution, social security network have been jettisoned in favour of models advocating the predominant role of the market and greater integration with the world economy. An extension of the logic of the market necessarily presupposes a confined role of the State. An important philosophical element of globalisation is an emphasis on the individual, which often takes the form of possessive individualism. The concept of possessive individualism is manifested primarily in the commodification of social processes and the consequent creation of a socio-cultural
environment emphasising and reinforcing the need for a ‘depoliticised’ worldview. Such a cultural environment atomises the individual and alienates him/her from the inherent societal structures with which he is organically connected. The process of globalisation then acts in a dialectical manner, leading to greater integration of certain structures and processes, while triggering off and accentuating the implosion in certain other structures and processes leading to the generation of parcelled meanings. “A global integration of the economy accompanied by a fragmentation of social vision serves to conceal the structural links that bind the different fragments together along with obscuring the basic chasm between the north and the south that persists and is in fact widening.”

Two studies sponsored by the UNICEF – The Impact of World Recession on Children (1984) and Structural Adjustment with a Human Face (1988) – throw light on how the wider socio-economic processes and structures have a direct bearing on issues of child welfare. The two studies also, in a sense, reflect the paradigm shift that had taken place during the intervening period. The authors of the earlier study refer to the central concerns of development literature between the late sixties to the early eighties. Poverty, malnutrition, high infant and overall mortality were seen as primarily resulting from structural causes and progress in human welfare depended more on the pattern rather than the rate of economic growth. While domestic factors such as unequal land distribution, inequitable tenancy arrangements and skewed income distribution have been identified, the authors do not shy away from referring to exogenous factors. “Colonial inheritance, technical and financial dependence structures and chronically deteriorating terms of trade, and more recently heavy indebtedness, have contributed and still do contribute very distinctly and very directly to the impoverishment of large sections of third world populations.”

The later study, though, does not question the logic of the development model being followed, while identifying inequity and adverse socio-economic conditions. The exogenous reasons for the adverse socio-economic condition were not identified, though the authors pinpointed the internal relations of exploitation and subordination. The authors, though admitting that the SAP is inherent difficult and alienating, ironically do not question its logic and the need for countries to adopt it. The SAP is considered inevitable and inexorable, though unpalatable. The emphasis of the entire report was on
softening the blow delivered by the SAP and, so not say, not why such blows are needed in the first place.

While the processes of globalisation provides the immediate context for the western discourse on child’s rights, the framework evolved in the shadow of the development of capitalism on the one hand and the breakdown of the extended family and resultant emergence of the nucleated family on the other. Of late, the breakdown of the nuclear family itself has provided another dimension to the framework.

Conceptions of Childhood and the Convention on the Rights of the Child
The modern western conception of childhood is barely three or four centuries old. Childhood was seen as a distinct and separate phase of life, characterised by innocence and frailty and where children were torn out of the real world of work, sexuality and politics and confined to the classroom. Childhood was then perceived as a period during which the child was to be protected, and his/her growth processes were to be enhanced through schooling. This effectively insulated children from economic and community life. It is this childhood, which has originated in the specific historical context of western capitalism that is now being offered as a model for the rest of the world. But in the last quarter of the 20th century the breakdown of the extended family into nuclear families and the implosion of the nuclear families resulting in atomised individuals with negligible familial roots has changed the character of the western society. The experiences of non-western societies, however, have been different, where the transition from childhood to adulthood was more fluid and less traumatic, where the child’s world and the adult’s world were not so separate and was characterised by greater inter-generational reciprocity. “Play and work were also not such sharply delineated activities and mingled together in a manner that often it was difficult to distinguish the two. More importantly, the child is not viewed as separate from the larger unit, be it family, tribe, clan or community.”

Analysing the divergent perception of the child and childhood in the west and in India, Sudhir Kakar points out that the dominant theme of western scholarship is its depiction of
an enduring ideological conflict between the rejecting and accepting attitudes towards the child. But there a movement in western ideology towards a more humane attitude oriented towards nurturing a child.

From an earlier tolerance of even the worst forms of physical abuse, to a later emphasis on ‘disciplining’ the child, to the more recent stress on fostering and nurturing, there has been a steady movement and one may see the whole discourse on child’s rights, the International Year of the Child and even the CRC, as a manifestation of this evolution. The whole debate on child’s rights in the west even today reflects the conflict between the disciplining and the fostering one.¹⁹

In the whole discourse regarding child’s rights as well as in the CRC, there is an underlying eurocentrism, where the specific historical development of Europe is assumed to be the standard model and forms the basis of prescriptions for the rest of the world. Developments in western jurisprudence based on western perceptions of childhood played a key role in the drafting of the convention. While African and Asian countries were involved in the process, the dominance of the west played a key role in ensuring that concepts familiar to their legal systems were the basis for different articles of the convention.²⁰ The eurocentric thrust of the CRC stimulated efforts to draft regional charters, and the African charter on the Rights and Welfare of the Child in 1990 was drafted in order to address the specific needs of African children.

While those who criticise the CRC for its eurocentric thrust have generally been labelled as supporters of ‘cultural autonomy’ and ‘state sovereignty’, it is readily conceded that it is precisely these that have been undermined by developments in the fields of international law and human rights.³¹

The fact that there is no universal definition of childhood causes problem in defining who constitutes a child. Diverse childhoods, like all social experiences, are social constructs that are the result of a complex interplay of historical, social and cultural factors. While the CRC considers all those below the age of 18 to be children, in most non-western societies they would be young adults having assumed adult responsibilities at a much earlier age. The very concept of adolescence is either absent or relevant only for a thin privileged stratum in these societies. While the preamble to the CRC states, “Taking due
account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child", crucial articles display the eurocentric bias of the overall philosophy informing the document. For instance, two articles of the convention – article 32 which deals with child labour and article 28 which deals with education – have aroused a great deal of attention of policymakers at the international and national level. Article 32 recognises the child’s right "to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education" or "is harmful to the child’s health or physical, mental, spiritual, moral or social development". While the article is quite clear that children have to be protected from certain kinds of work, which are considered ‘harmful’ and ‘exploitative’ to the child, the whole question of what is considered exploitative and harmful remains open. Definitions of ‘exploitation’ and what is ‘harmful’ to the child’s ‘physical, mental, emotional, spiritual or social development’ vary across cultures and societies. Most situations in which children work in the third world, for instance, would be considered ‘harmful’ by standards prevalent in contemporary western societies. But in many third world settings children’s work is considered valuable not merely for the economic contribution they make towards their own and the family’s survival and viability, but also because such work has its own place in integrating children into the family and wider kin and community networks.

In fact, studies conducted of children working in many situations show that working does enhance the self-esteem and self-worth of the children. A study of 36 groups of child workers in Bangladesh, Ethiopia, Guatemala and the Philippines shows that the vast majority identified ‘earning money’ and ‘helping the family’ as good things about work. A significant proportion also identified ‘gaining pride and self-respect’ and ‘strengthening and training’.

Article 28 of the convention, referring to children’s right to education, assumes that the school (primary education to be made free and compulsory) is the only place apart from the home where healthy psycho-social development of the child can be ensured. Once again, this is based on a western experience of childhood socialisation and transition to
adulthood. For a significant majority of children across the world the school is not such a crucial element in socialisation. The family, the extended kin and community are crucial, with the focus being on children learning adult roles in a varied range of work situations, which integrate children into the family and the community.  

But more importantly, education is also about power. Pierre Bourdieu’s concept of cultural capital and Michael Foucault’s thesis on the construction of knowledge systems have laid bare the power dynamic inherent in the process of ‘education’. But the ‘rights discourse’ in advocating the right to education turns a blind eye to this fact. In a situation where the quality of education is poor – as is the case in most third world countries – and where the school system is oppressive and discriminatory, the prospects of healthy psycho-social development are dim and the school can actually be counterproductive.

Studies done on the impact of education on the subaltern communities and marginalised groups in India show that formal education need not necessarily be uniformly beneficial. Saldanha looks at the impact of programmes meant to spread literacy and education among the adivasis of Thane district, Maharashtra and concludes:

In culturally hegemonic and socio-economically polarised contexts, the process of transmission of knowledge in effect becomes an implantation and, thus alienating.

Saldhana also argues that education must be seen as part and parcel of the process where inequitable relations at the economic level are reinforced by a process of cultural hegemony, which results in a gradual destruction of adivasi identity and commercialisation of adivasi culture. Similarly Krishna Kumar analyses the impact of curriculum on the scheduled caste and scheduled tribe children and points to the ‘symbolic violence’ that the prescribed curriculum does to the children of these communities. He argues that the prescribed curriculum is a means of subtle control and emphasises the need to examine it from the point of view of those communities that are either overlooked or ‘manipulated by the curriculum through distorted representation’. Karlekar in his study points out the inherent gender bias in the manner in which girls and
women are portrayed, and at times not portrayed, in school textbooks. He argues quite strongly that such portrayals tend to reinforce stereotypes about women and their roles. Not only the curriculum but the manner in which the school and educational system operates is one wherein girls are expected to study and even to perform well; however, they are not to be excessively competitive or demand freedom of thought and expression that is essential for the development of personhood and not merely womanhood along prescribed lines.27

But both articles 32 and 28 have played an important role in policy formulation at the level of multilateral institutions and at the level of non-governmental bodies. The right to education has been viewed as a major policy instrument to tackle the question of child labour and often cited as the key justification for efforts to abolish it. Policymakers at the international level have generally oscillated between a position of total abolition of child labour on the one hand and a position that emphasises amelioration of the conditions of child labour on the other. But ground realities, which are multiple and context sensitive, have led to a pragmatic strategy of phased abolition of child labour and the International Labour organisation exemplifies it by calling for immediately targeting 'the most intolerable forms of child labour', while retaining the long-term objective of completely abolishing child labour. But quite a few organisations, notably the UNICEF, have taken up a position that the issue of the abolition of child labour is non-negotiable. UNICEF is forceful in advocating that child labour must end even before poverty is eliminated. Such an approach looks at the issue of child labour divorced from the numerous linkages that feed it in the first place. One of the major elements of the UNICEF strategy for the total abolition of child labour is the emphasis on education. But the UNICEF is also constrained to state that strategies complementary to education -- income generation, payment of minimum wages, empowerment of women, law enforcement and convergence of social services on identified families of child labourers -- also need to be 'concurrently implemented'.

But while all tussle between various organisations on the issue of the abolition of child labour is one of degree, the major problem of distinction between child work and child
labour has also of late occupied centre-stage. Many writers have suggested that the concept of work be used to refer to any kind of activity, even if it is in an employment relationship, that may be beneficial to a child, while the concept of labour should be restricted to production and services, which interfere with the normative development of children as defined in the CRC. But such a definition ignores that the nature of the labour relation.

It is our contention that a feasible strategy would have to be based on a recognition of the socially variegated manifestation of the phenomenon of children working. This would involve an acknowledgement of the child work/child labour distinction, the former being characterised by children working in the family/household while the latter category is constituted by children working for wages either in industry or in agriculture. A further distinction would have to be made even amongst the children working for wages and those who are in the most exploitative kinds of situations. Children working in hazardous industries and occupations, bonded child labourers, street children and child prostitutes need urgent attention. Needless to say, policy initiatives will have to focus on the families of child labourers as well. Thus a multi-pronged approach, the core of which would be to address the poverty of the families, along with a package of health and education is called for.

Many aid and voluntary agencies, however, perceive child labour in isolation of its structural linkages, particularly those that generate poverty. Unequal access to resources and assets, more often than not accentuated by the development models followed, are the main sources for excluding specific groups from the production-distribution-consumption chain. Though exclusion – class, caste and community-specific – from economic activity is considered the main source of poverty, many aid and voluntary approach the issue of child labour as a phenomenon that can be tackled and abolished without addressing structural issues first. Such an approach, while recognising that children in families where adults have worked as child labourers also tend to work, glosses over the inextricable link between poverty and unequal and discriminatory access to basic resources and assets.

From such an approach it would seem that it is possible to tackle the problem of child labour without addressing the basic structural questions. Such a viewpoint is gaining
currency despite the fact that most studies on child labour in different industries have emphasised the need for a strategy that addresses the survival questions of the family along with a package of education and health measures. Besides, it is generally overlooked that the overwhelming majority of child labourers come from communities and groups that belong to the lower rungs of the traditional, caste-based social hierarchy. These groups also constitute the bulk of the small and marginal peasantry, landless and agricultural labourers and artisan groups. In these groups questions of livelihood, access to productive assets and resources and services like health and education are part of an integral whole with the family providing the axis around which these questions revolve.

The strategy of compulsory education as the core of policy initiatives to end child labour obfuscates this complex social matrix within which child labour is embedded, reproduced and sustained. This matrix is characterised by stagnation in agriculture and handicrafts, fast-eroding control over the means of livelihood of the mass of peasantry, artisans, fisherfolk and other non-urban, non-commercial communities and a predatory commercialisation of the entire economy that wipes out the basic producers.

Juxtaposed against an international context that is unipolar in its power dynamics and triumphantly corporatist-capitalist in its development doctrine, the decontextualised policy framework regarding child labour is symptomatic of the forgotten structural-causal links that bind the countries of the south to those of the north. One well-documented reason for the insistence of approaching the child labour as a standalone issue and the resultant emphasis on compulsory primary education as a 'cure' is the global competitiveness of small-scale informal sector in many third world countries. The profligate use of child labourers and the exploitation of such workers in particular in this sector are equally well documented. But what is often missed out, at times due to deliberate agendas, are the cost of reproduction of labour power, which is borne by poor families, poor regions and specifically by women and children. The focus on child labour in these sectors tends to ignore the structural linkages both backwards (for instance stagnating agriculture, which ensures a steady supply of child labourers) and forwards
(inherent linkages with the international system that were established during the colonial period).

In India, while the Supreme Court in its landmark judgment of 1997 acknowledges the structural linkages between poverty and child labour, the position of the government, which used to recognise the structural roots of child labour in its pro-active avatar, has undergone a transformation with compulsory primary education being seen as the core strategy to deal with child labour.

One example of the government of India’s ambivalent response to the situation is the seemingly radical but ill-conceived 83rd amendment bill, which attempts to make the right to education a fundamental right. Apart from the fact that the bill leaves out of its ambit the 0-6 age group, (thus going back on the commitments made in article 45 of the Constitution), the bill leaves out of its purview the so-called ‘unaided’ private schools, thereby declaring its unwillingness to halt the juggernaut of privatisation of education. 50

Two of the most hotly debated articles of the CRC are articles 12 and 13, which many writers consider unique as they deal with what have been called ‘participation rights’ for the child workers. Article 12 assures “to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”. Article 13 states that the child shall have the right to freedom of expression, which includes “the freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers... and that the exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary for the respect of the rights of others and for the protection of national security or public order”.

One of problems that arise from these two articles is the lack of sensitivity to the plurality of legal systems at the informal level – customary and personal laws – that exists in many third world countries and the unique relationship they establish between the individual and collectivity. The CRC, while ostensibly clearing a space for operation for the working child, seriously undermines the role of the parents and family in a child’s socialisation.
The concept of participation rights involves a value system on the child’s personal autonomy that has to be worked out within the convention’s perception of the important relationship between the child, the parent and the State.31

The concept of ‘independent individualism’ inherent in the two articles assumes that such a construction of individualism is the norm in all societies and is desirable. By eroding the role of the family, at the conceptual level, the CRC is snatching from the child – supposedly its focus – the biggest support structure available, many times the only one protecting him from broader societal relations of subordination and exploitation. Moreover, the both the articles contradict the preamble of the CRC, which seems to recognise the important role provided by the family. The preamble states: “Convinced that the family, as the fundamental group of society, and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community”.

It cannot be said with confidence that the pattern of socialisation which integrates the individual into the family is necessarily undesirable. Is individualism the accepted ideal in all societies? Is it a universally valid ideal?...If the socialisation process in the family is not in harmony with the ideology of individualism, is it necessarily reprehensible? Do we envisage a family system in which the child’s rights can be protected only against the rights of the family as a whole? How far should we go in visualising the distinction between the two?” (Shah 1991:32).

Critics of the CRC says that the convention attempts to redefine the relationship of the family to the child and of the family to the public sphere, specifically the State and government. “In fact, what the CRC attempts to do is to unsettle at a very fundamental level the complex historically evolved and socio-culturally specific relationships between (a) the individual and the group, (b) the child and the family, and of both to wider social structures of clan, tribe, caste, or the state. An approach which bypasses intermediary institutions and structures and their complex linkages (i.e., that between the child, family, wider kin-structures, community, wider national society) can have serious consequences and will lead to further traumasisation of children and families.”32
Child rights, thus, are put within the analytical framework of individual rights, and at a time when the whole question of individual rights is increasingly being juxtaposed against the question of group rights or rights of collectivities in the west. But merely situating child rights within the framework of individual should be ipso-facto a ground for its rejection. What needs to be incorporated in the current analytical framework is the historical specificity of capitalism, the particular circumstances of the tussle between the church and the secular state, which framed the emergence of the concept of individualism and individual rights. It needs to be underscored that the rights of the individual vis-a-vis society redefined relationship of the individual to the society and the State. The present-day attempt to uphold individual rights is taking place in a drastically changed globalised and corporatised capitalism, whose growth is framed within an all-pervasive social crisis, a breakdown of the family and the extreme atomisation of the individual in the west.

The ideational currents that have accompanied the focus on children and childhood in recent years are... a structural readjustment to time and mortality in the face of quickening social change; a re-evaluation and repositioning of personhood given the disassembly of traditional categories of identity and difference; a search for a moral centre or at least an anchor for trust in response to popular routine cynicism; and an age-old desire to invest in futures now rendered increasingly urgent.33

Societies of the South: Childhood in Perspective

Situating the discourse of child rights and child labour within the broader thrust of globalisation with its emphasis on possessive individual and corporatisation is just one dimension of the debate on child labour. Another dimension of the debate is to situate the discourse within the plural intellectual and philosophical traditions of the third world – Hinduism, Islam and Buddhism. All three philosophies have recognised the importance of the individual in different ways. Both Hindu and Buddhist philosophy and social practice have upheld the right of an individual to seek his/her own salvation through renunciation; and this is true of both the great and the little traditions. Similarly Islam has also valued personal autonomy and individual endeavour.

The puberty option in Islam is a recognition of the right of a person who has come of age to reject the decision made by adult guardians. There are texts in Islamic law which
indicate that parental authority with regard to the marriage of a daughter did not permit complete disregard of the child’s welfare. This is reflected in the concept of bride price in Arabian custom modified by Islamic law in the concept of ‘mahr’. Islam accepted both the requirement of obtaining a child’s consent to marriage and the concept of an ‘option of puberty’ based on the right to repudiate a marriage contracted by guardians. The ‘option of puberty’ was available to girls only. In fact it has been pointed out by some scholars that the very concept that children possess rights has a longer tradition in Islamic law than in present-day international law where the notion did not emerge until the 20th century.\textsuperscript{34}

Moreover, Islamic law is sensitive to the different learning and intellectual capacities of a child and consequently does not allow any child the legal capacity or ‘aql’ (reason) till such time there can be no act, which carries with it legal consequences. The age at which the child is deemed to have acquired capacity varies in different schools of Islamic law and a kind of empirical test is adopted to verify such capacity. Islamic law in general visualises the child’s development in a series of steps. According to Hanafi law, which is commonly followed in the subcontinent, the child is considered totally incapable till the age of seven. Above that age, he can participate in legal acts with the interdiction of the guardian or ‘wali’ to ensure the interests of the minor child. After a certain age even interdiction is no longer possible. The child in Islamic law had rights of maintenance, to custody to shelter, religious education and a fixed share of inheritance and it was the duty of parents to ensure that the child’s needs were satisfied.

While such references to traditional laws and philosophies have an inherent tendency to lead to the path of romanticism and an approach rejecting all forms of secular progress, the point here is to emphasise the differences between the societies of the South and those of the West. Combined with a long history of colonialism, the countries of the South have a unique quadrangular relationship between the State, society, community and the individual.

In India, as in the case of many third world countries, the civil society is deeply fragmented and divided with regard to the manner in which general rights of individuals.
communities and people are to be realised. And unlike recent theorisations in the West, the civil society in India and the third world, more often than not, are sites of exploitative relationships and subordination and not sites of democratic emergences. Similarly, while the State as concept might have seen to have lost its relevance in the post-industrial societies of the West, in India and the third world the State is often an important instrument acting against the exploitative relationships situated at the level of civil society. There are also numerous contestations at the civil society and at many levels usually centred on issues of access to resources, power and the right to decide the future. These societies are also sites of flux involving questioning and redefinition of tradition, critical exploration of a colonial inheritance and of course the role of the State and its relationship to the civil society. Combined with attempts to evolve alternative routes to modernity and intense struggles between classes, groups, and worldviews, most of the third world societies are a complex intermesh of forces, at times competing and at times converging together.

Many writers, in such a wideranging context, locate the discourse on child’s rights and specifically the CRC as one more hegemonising thrust insofar as it erodes efforts at autonomy and agency to national societies and groups within these societies.

In fact the CRC is part of a larger thrust to develop a ‘global ethic’, and the similarity between this and earlier colonial interventions in both law and society is indeed disquieting. The whole area of child’s rights cannot be isolated from the developments in the field of international law. International law has become crucial to the present phase of globalised capitalism, its rationale being to set in place a legal and institutional framework, which would be favourable to the accumulation of capital in the era of globalisation. While a series of international agreements have already come into being to ensure the economic interests of powerful transnational companies, the IMF and the World Bank, there is a parallel move to prescribe ‘global standards’ whether in the field of human rights or child’s rights. There is a seemingly radical rhetoric to this insistence on ‘global’ standards, which conceals the persistence and even intensification of uneven development between the metropolitan countries and those in the periphery.35
The attempt of the CRC to arrive at a ‘universal’ definition of child rights ignores the multiple realities residing in the societies of the South and the specific historical conditions that have led to growth – social, political and economic – that is unique as much as it is retarded.

**Indian Context**

From a historical point of view Indian perceptions of childhood has to be juxtaposed against the multiple traditions emanating from within the major religions on one hand and the numerous strands of tribal and ethnic cultures on the other. While classical Hindu texts written by Manu do locate children in the hierarchical caste structure – essentially in the lower rung -- the treatment that is prescribed to be meted out to them is very different than the treatment prescribed for the lower castes.

The child belongs to the bottom of the social order along with low castes, slaves and servants, the old and the sick, newly married and pregnant women. But all those at the bottom of the social order were not to be dealt with alike. While lower castes and all those who violated caste rules and norms were to be meted out harsh punishments, children, pregnant women and the sick and the aged were to be protected.\(^{36}\)

But it must be kept in mind that the brahmanical-sanskritic texts had only the boy child as its reference point. The patriarchal basis of the sanskritic tradition is evident from the decisive importance attributed to the male ‘seed’ in the formation of the child (son’s) personality. The metaphor of the earth (womb) and the seed (semen) is only too well known. But tribal and ethnic cultures, in sharp contrast to this, not only value the birth of the girl child, as in the case of the Garos but also privilege it over that of the boy child. Crucially, the Garos also do not have any notions of illegitimacy with regard to the birth of children, and paternity is entirely social and not a biological one. The birth of a girl child is crucial to ensure the continuity of the household, and in the event of no girl child in the family there is provision for the adoption of one for the continuity and perpetuating of the household.\(^{37}\) Goonesekeere, while dealing with south Asian situation, points out that the concept of illegitimacy of a non-marital child is a colonial construct except in Islam, though the Hanafi school of Islamic law acknowledges that a child born out of wedlock has some legal relationship to the mother.\(^{38}\)
The divergent perspectives on childhood and socialisation arising out its varied locations in Indian social structure is an important context for the varied analyses of different contemporary studies. Lois Barclay Murphy was one of the first academic professionals to conduct a study on social tensions with emphasis on the multiple realities facing the children. Her study has been considered a benchmark against which the changes that have occurred in the lives of Indian children can be examined. One major observation stemming from the study emphasises adult-child relations and the continuity that is characteristic of it. The weak adult-child differentiation, expressed in the sharing of the same spaces was common to both the rural sections and the urban educated middle classes. She observes that "...children in India are given a comfortable, satisfying start in life which would contribute to a feeling of being able to count on people." She observes that on the whole the predominant experience is of constantly being with the family. Corresponding to this continuity and lack of sharp difference between the worlds of adults and children, Murphy notes a relative lack of emphasis on the peer group and activities undertaken with the peer group. She also observes a certain sense of gloom that characterises adolescence. However, her observations regarding the lack of the importance of the peer group does not hold for the tribal youth dormitories where peer group interaction and activities formed the core of social life.

The study of two artisan communities – the Chippa Namdev Vamshis of the city of Sanganer and the Momim Ansaris of the city of Varanasi – by Ananthalakshmy and Bajaj is an interesting documentation of one set of realities facing children transcending from childhood to adulthood. Their study showed the typical stages in a child's life that western scholars considered problematic were not given with such significance by the mothers. Thus feeding, or weaning or even toilet training were not so important as the concern for the child's future and his means of livelihood. Socialisation emphasised those qualities and values that the culture, community and family considered necessary for transition to adulthood. Both the groups/communities had been weavers for many centuries and derived a certain pride in the historicity of the craft and the aesthetic fulfilment that it afforded. Needless to say the fact that the craft had prospered and
contributed to the economic stability of the family was an additional factor. There were
certain important aspects of childhood and child socialisation among these artisan
communities, which not only underscores the diversity of childhoods prevalent but also
the holistic nature of these communities and the integral role of children in them.

The most important mode of learning was by imitation. While individualism as
understood by western social norms was not prevalent yet the fact that each child was
born to his/her own destiny and special abilities were recognised. Maturation was a more
relaxed and leisurely process. "Childhood it was agreed, was a time for play, fun and
laughter, but when the family's survival needs had to be met, even children had to
work."42

Ananthalakshmy and Bajaj's study are symptomatic of the traits that were encouraged
and developed in a large extended family, where resources were commonly shared,
people closely bound by kinship ties and the survival of the individual totally dependent
on the large kin-group. A complete contrast to the kind of socialisation process a child
undergoes in a nuclear family. Individualism in such a group could actually be
dysfunctional. Qualities that emphasised inter-dependence, consensus within the group
and general compliance were considered essential for the maintenance of group
solidarity. It was the group, in this case caste group and family that provided the identity
to the individual, adult or child.

While the same studies could be cited to defend and justify the logic of the caste system,
the idea here is throw light on the multiple levels of socialisation that a child in a
traditional matrix experience. Juxtaposed with the Western experience of the childhood in
general, and the universalisation project of the CRC in particular, the complex realities of
the societies of the South acquire a different and a larger meaning.

While frequent and periodic references to the plurality of the societies of the South and
India can sound like romanticising diversity, a parallel reference to hierarchy restores the
balance. The diversity and plurality of Indian society could not have been better captured than by the massive ethnographic mapping conducted by the People of India (POI) project. According to POI, there are about 4,735 peoples/communities that constitute the mosaic of India. The project enumerates the immense cultural, social and linguistic diversity of India, along with the great mingling of peoples, cultures, religions and ways of life that have historically occurred and that continue till today. Juxtaposed along a traditional social hierarchy determined by the caste system, the socio-cultural and economic inequalities become stark. Adding a dimension of gender to the inequalities shifts the spotlight to the fact that the suppression of women was essential to the maintenance of the caste hierarchy.

The higher the location in the hierarchy the greater were the controls on the women. While patriarchal ideology is strongest in the dominant groups, it holds sway over the entire society with even originally matrilineal groups succumbing to its hegemony. The consequence of this has been the extremely vulnerable status of Indian women, though gender oppression and discrimination are mediated through caste, class, ethnicity and religion.43

Development policies since Independence have persistently marginalised those who have historically occupied the lower rungs of the social hierarchy. In fact, many argue that the marginalisation of these groups is an integral part of the development strategy pursued so far. They point to the fact that the overwhelming majority of those below the poverty line are those from the scheduled castes, scheduled tribes, the other backward classes and religious minority groups. This fact, they say, illustrates the dominance of a thin upper caste stratum both in administration and modern industry.

The Indian child is therefore at the intersection of anthropology, history and current politics. Thus in discussing the Indian child the question of location is very important. The starkest example of the importance of location is provided by looking at the life chances in a literal sense of children belonging to the bottom most rungs of Indian society, the scheduled castes and scheduled tribes who constitute one-quarter of the Indian population.44
The significant difference between the infant mortality rates of different caste groups is a case in point of the how the fruits of development have not been distributed evenly. While the overall IMR for the country as a whole is 74 per 1,000, the IMR for the scheduled castes was the highest in both the rural (131.7) and the urban (92.9) areas, which combine to a staggering 126.5. The scheduled tribes do better than the non-scheduled castes in the rural areas with an IMR of 103.2 as opposed to 110, but fare worse in the urban areas with an IMR of 67.7 against 62.5.\(^{45}\)

The fact that women are at the receiving end of this exploitative development paradigm is brought out starkly by a study conducted by the Centre for Women’s Development Studies for the Ministry of Social Welfare. Identifying the 50 most backward districts across 15 major Indian states, study points out that the female-male ratios, juvenile sex ratios and the sex ratio among the scheduled castes in these districts are alarming. Sex-ratios range from a high of 856 (Kinnaur district of Himachal Pradesh) to a low of 786 (Dholpur, Rajasthan); juvenile sex ratios range from 897 (Kheda) to a low of 821 (Salem, Tamil Nadu) and sex ratios among the scheduled castes starting from a high of 854 (Tikamgarh, Madhya Pradesh) to a low of 779 (Dholpur, Rajasthan). These declining sex-ratios have a direct bearing on the life chances of children in general and the girl child in particular.\(^{46}\)

Out of the 30 million children born each year in India up to one-third of them are low birth weight babies -- below 2.5 kilos with another one-third with a birth weight barely above the minimum standard. The mean birth weight of the 30 million babies born every year is estimated at 2.6 to 2.7 kilos.)\(^{t}\) needs to be noted that low birth weight in full term infants is a direct reflection of retarded growth during pregnancy due to impaired maternal health and nutrition. Moreover, these two indices -- the high proportion of children with low birth weight -- have not changed much through the 50 years of freedom. Over 50 per cent of India’s children under five are substantially stunted or wasted and suffer malnutrition ranging from severe to moderate degrees. This accounts for 60 million malnourished children under five. These are the children of mothers who have to work for their survival.\(^{47}\)
The nutritional status of the children cannot be seen in isolation from the nutritional status of the family. Data from countrywide diet surveys carried out by the National Nutrition Monitoring Bureau (NNMB) show that diets in nearly half the households surveyed in different states of the country were deficient even on the basis of the lowered yardsticks of adequacy adopted by the NNMB since 1976. 

Even on the basis of these lowered yardsticks for assessing malnutrition only less than 15 per cent of children below five years of age could be considered as being in a normal state of nutrition, the rest suffering from various degrees of under-nutrition.48

Widespread infant mortality and inadequate nutritional requirement, obviously, retards the experience of childhood in India. The health and nutritional status of children have an obvious impact on their general performance levels in education as well, or for that matter in their very going to school.

Hunger and malnutrition are not easy to ascertain with the help of surveys. They tend to form a chronic cycle in which disease and routine illness emerge as a cover. Children who get trapped in this cycle stop coming to school, and it looks so ‘natural’ when they do that no one feels bothered. Once they stop attending school they just hang around and slip into some little responsibility or the other the parents given them. This is hardly a decision on the part of parents...49

It is difficult to discuss or analyse the educational status of Indian children without considering the general and pervasive bias of the educational system against the majority of Indian children who are located at the lower rungs of the social hierarchy.

Government statistics have over recent years shown a hundred per cent enrolment at the primary school level whereas the reality is that approximately 50 per cent of those enrolled drop out. The percentage of dropouts between Class I-V is 46.87 per cent for boys and 51.17 per cent for girls. This shoots up to 61.44 per cent for boys and 70.16 per cent for girls between Class VI-VIII. Needless to say enrolment and dropout rates vary according to gender, rural and urban areas, region, caste and community. Children from the lower castes, particularly the SCs and STs, religious minorities (particularly Muslims) have consistently lower enrolment rates and high drop-out rates. What is worse is that primary stage enrolment rate has been declining over the past five decades with the decline being sharp during the last two decades from 5 per cent per annum during the
seventies to 2.6 per cent per annum during the 1980s and further to 0.67 per cent per annum between 1993-94 and 1996-97.50

The unbridled thrust of globalisation and a meek acceptance of the logic of the Structural Adjustment Programme have only made the situation of the vast majority of Indian children even more vulnerable, given that there has been reduced budgetary allocations to the social sector, particularly health and education. The overall thrust towards privatisation in health and education only drastically reduces the access to affordable health care and education by the poor. Coupled with the broad range of economic policies that have been part of the package there has been a general increase in social and economic insecurity for the vast majority of families.
References


21 *Ibid*.
30 *Ibid*.
44 Ibid.