

## CHAPTER III

### PERFORMANCE REVIEWS

This chapter contains five performance reviews, Implementation of Child Labour (Prohibition & Regulation) Act, 1986, National Aids Control Programme, Indian System of Medicine, Working of Minor Irrigation Department and Pradhan Mantri Gram Sadak Yojana.

### LABOUR DEPARTMENT

#### 3.1 Implementation of Child Labour (Prohibition and Regulation) Act, 1986

##### Highlights

*The Child Labour (Prohibition and Regulation) Act, 1986 seeks to achieve the basic objective of banning employment of all children below the age of 14 years in factories, mines and hazardous occupations and processes and to regulate the working conditions of children in other employments. The Act does not envisage complete elimination of child labour and many employers escape penal provisions under the guise of family activities. The implementation of the Act was not effective in the State. There was no systematic survey for identification of child labour. The National Child Labour Projects (NCLPs) did not function satisfactorily due to inadequate infrastructure in the special schools. Families of child workers withdrawn from hazardous industries were not assisted from the Corpus Fund as envisaged. About 17 per cent of children enrolled in special schools were not mainstreamed into formal education. Several NGOs selected to run NCLP special schools discontinued to work after receiving grants-in-aid.*

➤ **Cases involving penalty of Rs.7.28 crore for employing child labour in hazardous industries were either withdrawn or cancelled by the Labour Department and Rs.14.20 crore were due for recovery (December 2004).**

[Paragraph: 3.1.8]

➤ **The data on child labour in the State was grossly understated at 0.66 lakh as of March 2004 against 19.28 lakh working children according to Census 2001.**

[Paragraph: 3.1.10]

➤ **Out of 55510 child workers enrolled in special schools up to March 2004, only 9469 children were mainstreamed (17per cent).**

[Paragraph: 3.1.11]

➤ **Rs.49.59 lakh earned as interest on the Corpus Fund was not utilised for providing relief to families of the children withdrawn from hazardous industries.**

[Paragraph: 3.1.13]

- **Non-appointment of full time Project Directors and vacancies of teachers and instructors affected the quality of implementation of the projects adversely.**

[Paragraph: 3.1.14]

### **3.1.1. Introduction**

The Child Labour (Prohibition and Regulation) Act was notified in the State in 1986 and the Rules in 1995. Besides this Act, the other Acts which prohibit employment of children under 14 years of age are the Factories Act, 1948, Plantation Labour Act, 1951, Mines Act, 1952, Motor Transport Workers Act, 1961 and Merchant Shipping Act, 1958. Child labour in the State is employed in lock making, manufacturing bangle and other glass products, carpet making, etc. Eleven NCLPs<sup>1</sup> with 530 special schools were sanctioned for the State as of March 2004. Thirty-nine non-Government organizations (NGOs) were associated with the programme during 1999-2004. Out of 530 special schools sanctioned, only 496 were functioning in the State (March 2004) which included 266 schools run by NGOs. About 19.28 lakh working children were in the State according to the census 2001.

### **3.1.2 Objectives**

The objectives of the Child Labour (Prohibition and Regulation) Act, 1986 are:

- To ban employment of all children below the age of 14 years in hazardous occupations and processes.
- To regulate the working conditions viz, hours of work, health and safety of children in other employments.
- To withdraw children working in hazardous occupations and rehabilitate them in special schools run by the NCLPs to mainstream them to formal education.

### **3.1.3 Organisational Setup**

The Principal Secretary/ Secretary Labour and Employment Department is responsible for enforcement of the provisions of the Act. The Directorate of Labour headed by the Labour Commissioner (LC) at the State level, Deputy/ Assistant Labour Commissioners (DLC/ ALC) and area-wise Labour Enforcement Officers (LEOs) at district level are responsible for enforcement and administration of the Act.

National child labour projects are operationalised by a registered society named National Child Labour Project Society (NCLPS) in each district. The concerned District Magistrate functions as the chairperson of the District Project Society (DPS).

### **3.1.4 Audit objectives**

The objectives of audit examination were to assess:

- Quality and extent of the implementation of the Act.
- Rehabilitation of child labour under NCLPs.

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<sup>1</sup> Aligarh, Azamgarh, Firozabad, Moradabad, Varanasi, Saharanpur, Allhabad, Khurja-Bulandsahar, Mirzapur, Kanpur-nagar and Bhadohi

- Performance of the NGOs.
- Compliance with Supreme Court directions
- Adequacy of manpower for implementing the Act
- Monitoring of the programme.

### 3.1.5 Audit Coverage

Implementation of the Act during the period 1999-2004 was reviewed through test check of records of the office of the Labour Commissioner and nine<sup>2</sup> district level projects(out of 11 NCLPs functioning in the state) during June-August 2004. The results of which are brought out in the following paragraphs.

### 3.1.6 Financial outlay and expenditure

The Government of India, Ministry of Labour (MOL) finances the National Child Labour Projects. The amount of grants released to NCLP schools and the expenditure during 1999-00 to 2003-04 were as under:

(Rupees in crore)		
Year	GOI releases	Expenditure
1999-2000	4.41	2.67
2000-2001	3.81	3.32
2001-2002	7.87	6.86
2002-2003	8.29	7.80
2003-2004	7.64	8.54
<b>Total</b>	<b>31.74</b>	<b>29.21</b>

Audit analysis revealed that shortfall in utilisation of funds was due to non-filling up of the vacant posts of teachers and instructors, non-payment of their salaries and stipend to children.

### 3.1.7 Difficulties in implementation of the Act and Rules

Section 3 of the Act debar employment of children in any occupation or workshop wherein any of the processes set forth in the Act is carried on. This does not apply to schools aided, recognized or run by the Government or to any workshop wherein any process is carried on by the ‘occupier’<sup>3</sup> with the aid of his family.

Manufacturing of locks in Aligarh is organized so that one or more processes are contracted or sub-contracted to an ‘occupier’ and children are employed in production processes carried out at the household premises of the contractors. Children were also employed in several prohibited processes like making of glass bangles and other glass items under the guise of household work. Again in the Mirzapur--Bhadohi belt and in Allahabad district carpet weaving was carried on by the ‘occupiers’ at their household premises. In all the above-mentioned cases it was difficult to monitor the employment of child labour as the premises where processes were carried out were exempt from inspection under Section 3 of the Act.

<sup>2</sup> Aligarh, Allahabad, Azamgarh, Khurja-Bulandsahar, Firozabad, Kanpur-nagar, Mirzapur, Varanasi and Bhadohi.

<sup>3</sup> The ‘Occupier’ in relation to an establishment or a workshop means the person who has the ultimate control over the affairs of the establishment or workshop.

In the event of dispute on the age of any child worker, medical examination for determination of the age is dependent upon the defaulting employer depositing the medical charges. It was noticed during audit at Saharanpur that out of 143 cases of age dispute referred to the medical authorities during 1999-2004, 66 (46 *per cent*) cases were unsettled. Government replied (January 2005) that the onus of proof regarding the age of the concerned child labour was on the employer if he contested the age of the children under his employment and the employer delayed medical examination by not depositing the requisite charges.

### **3.1.8 Prohibitory functions under the Act**

According to Section 14 of the Child Labour Act, whoever employs any child labour in contravention of the provision of Section 3 of the Act shall be punishable with imprisonment for a term ranging from three months to one year or fine ranging from Rs.10000 to Rs 20,000 or both. Any employer of child labour found guilty under the provisions of various Acts, should be prosecuted as per the provisions of Section 14 the Child Labour Act. Inspectors appointed under Section 17 of the Act were to recover compensation of Rs.20,000 per child from the offending employer for each child employed on hazardous jobs.

Scrutiny of records of the office of the Labour Commissioner revealed that out of the claim of Rs 32.34 crore for recovery by the Department, recovery of Rs 9.86 crore was stayed by the Courts, cases involving an amount of Rs 7.28 crore were either withdrawn or cancelled by the department and Rs 1 crore were recovered leaving Rs 14.20 crore outstanding on 31 December 2004.

Withdrawal of cases for Rs.7.28 crore and court stay in cases involving Rs.9.86 crore indicated inadequate or defective documentation of cases for initiating legal action and recovery of penalty. The position of recovery of penalty in case of nine test-checked districts was as detailed below:

Project unit/ district	Number of child labour identified	Compensation from defaulters		
		Demand	Recovery	Balance
		(Rs. in crore)		
Aligarh	614	0.33	0.02	0.31
Allahabad	7007	0.56	0.03	0.53
Azamgarh	814	0.26	--	0.26
Bulandsahar	288	0.37	0.04	0.33
Firozabad	1772	6.09	0.01	6.08
Kanpur Nagar	161	0.17	0.09	0.08
Mirzapur	151	0.09	--	0.09
Bhadohi	672	0.34	0.02	0.32
Varanasi	1703	1.51	0.04	1.47
<b>Total</b>	<b>13180</b>	<b>9.72</b>	<b>0.25</b>	<b>9.47</b>

It emerges from the table that recovery was not pursued as it constituted only about three *per cent* (Rs.0.25 crore out of Rs.9.72 crore) of the compensation demand raised rendering the prohibitory provisions of the Act ineffective.

### **Regulatory functions under the Act**

The Act permitted employment of children below age of 14 in certain occupations and processes, which were not considered hazardous. The working hours of such children were to be regulated as per Section 7 of the Act to ensure that their working hours were restricted to four to six hours and

the children received education for at least two hours each day at the cost of the employer.

### **3.1.9 Restriction on inspections**

In August 2003 Government restricted inspection of factories and industrial premises by Labour Enforcement Officers (LEO). In partial relaxation of these orders, Government decided (December 2003) that LEO or any other officer of the department could conduct joint inspections with the permission of the competent authority (next higher authority). This impeded the momentum of inspections as provided in the Act and as required under the directives of the Supreme Court in regard to regulatory measures. Thus, the system of inspection, identification and detection of child labour and check over the employers was diluted, retarding the process of timely identification and rehabilitation of child labour, especially those working in hazardous occupations and processes. This point was acknowledged by the Government at the time of discussion (December 2004) of the draft audit review.

### **3.1.10 Inaccurate and inadequate survey**

The Supreme Court of India directed (December 1996) survey for identification of child labourers, their withdrawal from hazardous occupations/processes and rehabilitation. In compliance with the directives of the Supreme Court, the State Government ordered (February 1997) a survey of children working in hazardous and non-hazardous occupations and processes in rural as well as in urban areas. The survey identified 0.30 lakh children in hazardous and 0.36 lakh children in non-hazardous occupations and processes.

However, according to the census 2001, 19.28 lakh working children were identified in the State. Thus, the figures of the children engaged in hazardous and non-hazardous occupations as identified in these surveys were not reliable

### **Rehabilitation of child labour under NCLPs**

National Child Labour Policy (August 1987) envisaged, *inter alia*, withdrawal of child labourers from hazardous employment and their rehabilitation. To achieve the said policy provided for establishing NCLPs in child labour endemic districts. Special schools were to be set up under each project to provide supplementary nutrition, stipend and health care services in addition to non-formal education. As of March 2004, 496 special schools with a capacity of 50 children each against the sanctioned 530 schools were functioning in the State under NCLPs. The district project societies were running 230 schools (46 *per cent*) directly and 266 special schools (54 *per cent*) were run by NGOs.

### **3.1.11 Non-rehabilitation of children withdrawn from hazardous occupations**

The rehabilitation of children withdrawn from working in hazardous occupations / processes involves (i) providing them non-formal education of primary level in a period of three years, followed by putting them in mainstream school of formal education, (ii) providing financial assistance to their parents / family so that they do not revert to such employment due to financial distress and (iii) provision for employment for one member of his family to fill up the financial gap created by withdrawal of the child.

Out of 55,510 child workers enrolled in special schools up to March 2004, only 9469 were mainstreamed (17 per cent). Year-wise break-up of mainstreamed child workers was not maintained.

### **3.1.12 Deficiencies in health check up in NCLP Schools**

Health check up of the children enrolled in the special schools was an important component of the scheme. A health card was required to be maintained for each child. Scrutiny revealed that in none of the schools, health cards were maintained. It was stated that in case of necessity, assistance of Government doctors was taken. In all the projects a framework for regular medical check up was missing. Government replied (January 2005) that such doctors are being appointed now for the health check up of the children. The state Government further stated that instructions would be issued to all project societies to maintain health cards.

### **3.1.13 Non-compliance of Supreme Court directions regarding withdrawal of children from hazardous jobs**

The Supreme Court directed (December 1996/ May 1997) creation of a Corpus Fund for rehabilitation of the child labour liberated from hazardous occupations. The employer of child labours was to pay Rs 20,000 for each withdrawn child labour which was deposited into this Fund. The State Government was also to ensure that an adult member of the family of each child labour got a job or in lieu contribute Rs.5000 in respect of each child. The amounts released were to be credited to the "Child Labour Rehabilitation-cum-Welfare Fund" (Corpus Fund) created district wise and the interest earned thereon was to be spent on the child on whose behalf it was paid.

The State Government deposited Rupees one crore in the 'Corpus Fund' during 1997-99. A further amount of Rs.1.15 crore was subsequently added during 1999-2004. The Corpus Fund earned an interest of Rs.51.91 lakh as of March 2004. Audit scrutiny revealed that out of Rs.51.91 lakh Rs.2.32 only lakh were utilized on the specified purpose and Rs.49.59 lakh remained unspent (March 2004). The Government replied (January 2005) that income earned on Corpus Fund could not be utilized due to non-availability of addresses of families of child labour and due to the children crossing the age of 14. The reply of the Government was not tenable as the Department was to maintain the individual profile of the children in special schools.

### **3.1.14 Deficiencies in manpower management**

Out of eleven projects, only DPS Firozabad had a full time Project Director. In the remaining 10 NCLPs officers from the Labour department held additional charge. Further, against a total number of 1488 teachers and instructors required only 1276 were available leaving 212 posts vacant. There were also 160 vacancies in non-teaching, clerical and group 'D' cadres. Large number of vacancies in teaching cadres affected the quality of education imparted. The Government did not offer any reply on the large number of posts remaining vacant.

### **3.1.15 Monitoring and evaluation**

Monitoring of the child labour projects at the State level was to be done by the Labour department. The State Government was to oversee the enforcement of

protective legal provisions and act as a focal point for child labour issues. Scrutiny of the records of various projects revealed that the Government did not exercise adequate control or issue directions in execution of the projects in the State.

A committee under the overall supervision and control of the District Magistrate as chairperson was to meet every quarter to review the project. Scrutiny revealed that such meetings were either held once in a year or not held at all as against stipulated four meetings in a year. As a result of poor monitoring, shortcomings at project or school levels were not addressed in time.

### 3.3.16 valuation of NCLP

The facilities / infrastructure available in the Special Schools were evaluated (2001) against the parameters developed by V. V. Giri National Labour Institute and the findings were as follows:-

Special schools parameters	Ideal position	Findings
Infrastructure	2-3 rooms are available in more than 50 <i>per cent</i> of schools in the district.	The requirement was fulfilled in more than 50 <i>per cent</i> schools.
Drinking water and toilet facilities	Available in more than 50 <i>per cent</i> of schools in the district.	Nearby facilities of drinking water existed in more than 50 <i>per cent</i> of schools; whereas toilet facilities did not exist.
Furniture	Basic furniture for the children are available in more than 50 <i>per cent</i> of schools in the district.	Basic furniture for the children was not available in schools. Only teachers were provided with chairs and a few tables.
Mainstreaming	More than 30 <i>per cent</i> of the children have been mainstreamed	Mainstreaming of the Class V passed children up to the required level have been ignored in more than 50 <i>per cent</i> projects.
Training of teachers	More than 50 <i>per cent</i> of the teachers have been trained at least once.	Teachers have been trained through DIET by organising short term courses.
Teaching and learning aids	Given more than once in a year	Given once in a year.
Vocational training	Imparted in more than 50 <i>per cent</i> of the schools.	Imparted in more than 50 <i>per cent</i> of the schools.
Background of children (Target group)	More than 50 <i>per cent</i> of the children enrolled were those who were withdrawn from hazardous occupations and processes.	After 1999-2000, about 85 <i>per cent</i> children are from non-hazardous occupations who have been admitted directly by school teachers/ NGOs.
Convergence with health care services.	Visits by the government Medical Officers.to schools for general health check up	No such arrangements were made.

No follow up action was taken by the project societies to remedy the situation.

### 3.1.17 Conclusion

From a number of surveys conducted in the State since 1997, it appeared that the number of child labour in the State was only around 67,000, but the 2001 census showed the figure to be as high as 19.28 lakh indicating that even the size of the problem was not clear to the Government for any remedial action to

be planned and executed. The prohibitory and regulatory aspects of the Act were not implemented effectively in as much as only a small fraction of the fines imposed on offending employers could be realised. Inspection of factory and industrial premises was restricted and there were difficulties in proving the culpability of offending employers in the Courts of Law. Rehabilitation of children was not effective; only 9469 children being mainstreamed in the formal education up to March 2004. Some of the NGOs running special schools under NCLP did not discharge their responsibilities faithfully. The special schools also ran short of teachers and instructors. Many NCLPs did not have full time Project Directors.

**Recommendations:**

- There should be systematic and comprehensive surveys conducted by reputed expert organisations to identify child labour in the State.
- Legal and administrative machinery to implement the prohibitory and regulatory aspects of the Act need to be strengthened and their activities monitored closely by the Government.
- NCLP run schools are required to be strengthened and their activities monitored and controlled meticulously to ensure achievement of their objectives.

The matter was referred to Government (November 2004). During discussions (December 2004) facts and figures were confirmed. Final reply of the Government was also received (January 2005) and has also been incorporated wherever required.