CHAPTER - V

NATIONAL SAFEGUARDS AGAINST CHILD LABOUR

Attempts were made at national level to eradicate child labour. The Constitution of India is also intended to promote the welfare of children. Laws were enacted to give effect to the Constitutional mandates and also to the International instruments aimed at to put an end to the employment of children. The present chapter deals with the Constitutional and statutory framework to protect the interests of children. It also deals with the national policies pertaining to eradication of child labour and welfare of children.

5.1. CONSTITUTIONAL SAFEGUARDS:

The attainment of social justice is one of the objectives of the Constitution. Fundamental rights and Directive principles of State Policy are intended to ensure socio-economic justice to all. They are also intended to protect the interests of children who are more prone for exploitation. Particularly, some provisions relating to children have been incorporated in part III and part IV dealing with Fundamental Rights and Directive Principles of State Policy.

5.1.1. Fundamental Rights relating to Children:

Part III of the Constitution of India contains a long list of Fundamental Rights. This part has been described as the Magnacarta of India. These rights are regarded as fundamental because, they are most essential of the individual for the development of his full intellectual, moral and spiritual potentialities. The declaration of the Fundamental Rights in the Constitution limits the range of government activity in appropriate direction in the interest of the liberty of the citizens. The children have rights to enjoy all fundamental rights which are guaranteed to the citizens of India, because the children of India are also citizens of India. However, the following are some fundamental rights expressly provided for children:

5.1.1.1. Article 15 of the Constitution of India prohibits discrimination on the ground of religion, race, caste, sex, place of birth. And the State is enabled under Article 15 (3) to make special provisions in its laws for favourable treatment of children and women. This preferential
treatment is permitted on considerations of inherent weakness. It is thus clear that the parliament, State Legislature and Executive are enabled to make special provisions or to take special measures for children, even if such measures would discriminate between child and adult.

Referring to a High Court Judgement in Anjali v. West Bengal, dealing with this provision which is an exception to Article 15(1) which prohibits discrimination on grounds of religion, race, caste, sex, or place of birth or any of them, H.M. Seervai, observed that it is unnecessary as Article 15(1) does not prohibit discrimination on the ground of age. In this context, it is submitted that a specific provision serves the purpose of avoiding controversy and demonstrates the intention of concern, however inadequate, of the framers of the Constitution that the State shall strive for the protection of the children.

5.1.1.2. Article 21 of the Constitution provides that “no person shall be deprived of his life or personal liberty except according to procedure established by law”. Recently, the Indian Supreme Court has held that right to education flows from the right to life and if properly read in the light of Article 45 of the Constitution where in the State is obligated to provide free and compulsory education up to 14 years of age within a prescribed time of 10 years and when even after expiry of 47 years of the commencement of the Constitution of India nothing is done or very little is done by the State.

The right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of the Articles 39 and 41 & 42 and at the least, therefore, it must include protection of health and strength of workers, men and women, and of the tender age of the children against abuse, opportunities and facilities of the children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and human conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity. Having regard to the fundamental significance of education, to the life of an individual and the nation, the Constitutional Bench of the Indian Supreme Court held that right to education is implicit in and flows from the right of life guaranteed by Article 21 of the Constitution.

5.1.1.3. **Article 23** of the Constitution of India⁴, explicitly prohibits traffic in human beings and forced labour and exploitation. Although this Article does not speak particularly about children, it applies to them and perhaps it is more relevant in their case. Innocent and helpless children are most exploited section of the people. They cannot even speak about it. It can be said that they are sometimes exploited even by parents and in their absence by close relatives, whenever, they are deprived of education and excess work is extracted from them than permissible for the development of their personality.

In number of cases in rural areas children are virtually made slaves by the landlords as full-time or part-time servants looking after both domestic chores as well as agricultural operations. This situation is aggravated in all cases of bonded labour where the child is lost for ever to himself. In urban areas also, exploitation of children in myriad occupations and forms is common feature and goes unnoticed, being common work in the capacity of helpers for artisans and skilled workers and mechanics and also domestic servants. Hence, millions of children are exploited every day in violation of this Constitution Provision.

In case of children, the meaning of the word "begar" can be considered as wider in connotation. Total absence of the payment is not necessary to constitute begar or exploitation in the absence of the definition of begar or exploitation in the Constitution. In all cases there is exploitation whenever adequate payment is not made and also damage to the personality is involved⁵.

5.1.1.4. **Article 24** of the Constitution provides that "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". This Article does not create an absolute bar to the employment of children. Their employment is prohibited only in a factory or mine or in any other hazardous employment. Incidentally, the Constitution of India does not define the term hazardous. Therefore, until very recently, the Indian Child Labour Law does not prohibit the employment of children in building construction work, glass work, etc. Some other hazardous employments are not included in the Child Labour Prohibition Act.

Article 24 prohibits the employment of children in factories, but not in cottage industries, family households, restaurants or in agriculture. Indeed, government officials do not regard

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⁴ Article 23 of the India Constitution provides that, "Traffic in human being and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law".

⁵ Seervai, H.M., op.cit., 563.
the employment of children in cottage industries as child labour, though working conditions in these shops are often inferior to those of the large factories, said the Director of the Ministry of Labour, "in Sivakasi (the site of India's match and fire cracker industries where 45,000 children are employed), we understand that child labour in factories has gone down. They have in fact, gone to the smaller units, the cottage type small units which are not covered by the Factories Act. This is bound to happen. This a positive sign. It is a move towards reduction and abolishment of child labour". This is the perspective of the Indian government towards child labour.

5.1.2. Directive Principles and Child Welfare:

The scope of the child welfare measures under the Directive Principles of state Policy is co-related with the scope of the enforcement and implementation of the Directive Principles as such. However, Article 37 of the Indian constitution deals with the problem of application of the principles contained in part IV and as originally enacted this Article points out that the provisions contained in that part shall not be enforceable by any court but at the same time it asserts that the principles therein laid down are nevertheless, fundamental in the governance of the country and it shall be the duty of the State to Apply these principles in making law. These Directives contain certain political ideals, economic objectives and social goals. They embody the aims and objects of the State under the Republican Constitution and are as such a mirror to understand the nature of the Indian Polity. The following are the express Directives relating to child welfare:

5.1.2.1. Article 39 (e) of the constitution of India provides that "the State shall in particular direct its policy towards securing that the health and strength of workers, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength"

5.1.2.2. Article 39 (f) provides that "the state shall in particular direct its policy towards securing, that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment". Thus any occupation that stunts a child's mental or

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physical growth is hazardous. Since employment at early age prevents such child from going to school, is hazardous for children.

5.1.2.3. **Article 45** provides that the state shall endeavour to provide, within a period of 10 years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of 14 years. Though forty five years have passed since the Indian Constitution went into effect, “the goal of Universal primary education remains as elusive as ever before. The result is that the India is the largest single producer of the world’s illiterates7. The 1981 census reported that 82.2 million of India’s 158.8 million children ages 6 to 14 did not attend school. Only 52.2 million of India’s 123.7 million rural children ages 6 to 14 were in school, i.e., 34.4 million boys and 17.8 million girls8. Most recent data from the census of India 1991, indicate that there were 150 million children between 6 to 14 years of age. Out of 150 million children ages 6 to 14 years, over 99 million children were enrolled in primary schools in 1990-91. Only 52 percent children of them completed Grade V. In other words only 51.45 million children, Outof 150 million have recieve primary education. In primary schools, the student - teacher ratio has worsened over the years from 35.7 in 1950-51 to 60.5 in 1990-919.

The Supreme Court in *Unnikrishnan*10 held that. Article 45 of the Constitution cannot be permitted to remain a pious wish or a fond hope and therefore, it held that if endeavour has not been made till now to make this Article reverberate with life and articulate with meaning, the state can be obligated to ensure right to free education of every child upto the age of 14 years. In the context of democratic form of Government which depends for its substance upon the enlightenment of the populace, education is at once a social and political necessity. Universal primary education is a desideratum for national progress, Educational Institutions are seedbeds of culture where children in whose hands quiver the destinies of the future are trained. From their ranks will come out when they grow up, statesmen and soldiers, patriots and philosophers who will determine the progress of the land.

Fundamental rights and Directive Principles are supplementary and complementary to each other. It is recognised that the Directive Principles of State Policy should not be permitted to

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which had become a mere rope of sand. If the State fails to create conditions in which the fundamental freedom of the few will be at the mercy of the many and then all freedoms will vanish. Consistent with these principles the Indian Supreme court found that the right to life guaranteed by Article 21 of the Constitution does take in its sweep educational facilities. Having regard to the fundamental significance of education, to the life of an individual and the nation, the Constitutional Bench of the Supreme court of India held that the right to education is implicit in and flows from the right to life guaranteed by Article 21 of the Constitution.

A large number of Indian children do not attend schools. Neglected more so are the rural sectors and weaker sections of the society. Though more importance ought to have been attached to the primary education, so that the children are not denied the benefit of primary education. It is found in the reality that major portion of the budgetary provision is being utilised for higher education. The Supreme Court has noticed, that allocation of available funds to different sectors of education in India discloses an inversion of priorities indicated by the Constitution. More money is spent and more attention is directed to higher education than to, and at the cost of primary education.

Recently, the Government of India has moved away from its earlier objective of establishing elementary education and removing all children from the labour force; The labour Ministry has indicated that “despite the provisions of restrictive labour laws, the practice of child labour continues unabated because exploitation of children is of financial advantage to employers and an economic compulsion to parents. The Government, therefore, accepts Child labour as a harsh reality and proposes that measures be taken to improve the working conditions of children rather than to remove them from the work force.”

The new policies were initially put forth by the Ministry of Labour and by the Development commissioner of small-scale industries in presentations to the Committee on child labour. The type of education that is now being imparted in schools, said by the Development commissioner, “makes it completely unattractive to the parents of children, particularly in rural areas, where children are considered an economic asset. In the circumstances prevailing in our country, it would be unrealistic not to expect that children who are capable of working would be put to work.”

11. Ibid., 2180
12. Ibid., 53
14. Ibid., 54
A similar position was taken by India’s Education Ministry, which stated, “should not force poor parents to send their children to school when it cannot provide employment for all adults. Children are an economic asset to the poor. The income they bring in and the work they do may be small, but parents close to subsistence need their help”. The Ministry of Education concluded that in lieu of compulsion, alternative voluntary, non-formal education should be provided to Working children. Substantial funding was provided for part-time education in the sixth, seventh, and eighth five year plans.

Government officials assert that they have not given up the long-term goals of ending child labour and implementing compulsory primary education. The new policies they argue, simply reflect their judgement that existing legislation cannot be implemented at this time because of prevailing social and economic conditions. Legislation is weak, they say, because of the impediments that lie within society: Chronic poverty forces poor parents to put their children into the labour force; parents do not believe that they or their children would benefit economically if their children were in school; and children acquire skills through employment not through formal education. They also point to opposition by employers to the enforcement of child labour legislation: employers prefer children to adults because they are more pliable, work for lower wages, are not unionized, have supple fingers that enable them to work in many crafts more effectively than adults, and the low wages paid to children enable some industries to survive that might otherwise not be able to compete either in domestic or international markets. There is a normative dimension to these arguments: the state, it is argued, ought not to intervene since poor parents need the income of their children. It is thus a matter of social justice that the children of the poor be allowed to work. And there is a political element to these arguments: powerful employer interests impede the implementation of child labour legislation or any measures that would remove children from the labour force. Thus the State ought not to act, and it cannot act. Non-action has both a moral and a practical rational.

India is a significant exception to the global trend towards the removal of children from the labour force and the establishment of compulsory, universal primary school education. Poverty has not prevented governments of other developing countries from expanding mass education or making primary education compulsory. Many countries of Africa with income levels lower than India have expanded mass education with impressive increases in literacy. Botswana, Cameroons, Equatorial Guinea, Gabon, Gambia, Ghana, Ivory coast, Lesotho, Libya, Madagascar, Mauritius, Rounion, Rwanda, Zambia, Zimbabwe have literacy rates in the 50 to 75 per cent range. China

an illiteracy rate comparable to that of India forty years ago, now has half the illiteracy rate of India. South Korea and Taiwan, both poor countries with high illiteracy rates a generation'were close to that of India. Adult literacy rates in both of these countries are now over 90 per cent 17. In contrast, India's adult literacy rate in 1991 was 52.11 per cent 18.

Among contemporary developing countries there is no clear relationship between literacy and per capita income. India had an adult literacy rate of 40.8 per cent in 1981, while in China it was 72.6 per cent, Burman, 78.5 per cent; Indonesia, 74.1 per cent; Tanzania 85 per cent; Srilanka, 86.1 per cent; and Philippines, 88.7 per cent 19. And while literacy for India as a whole is low, the state of Kerala, with a per capita income no different than that of the rest of the country, has a literacy rate of 90.59 per cent 20.

A number of Asian countries experienced spectacular primary school attendance rates prior to their rapid economic growth. In the short space of 30 years, between 1873 and 1903, the Japanese government increased elementary school attendance from 28 per cent to 94 per cent. By 1913, 98 per cent of the age group was attending school. South Korea, with only a third of its children in primary schools in 1941, universalised primary education by the early 1970's. Its literacy rate increased from 55 per cent in 1944 to 90 per cent. In China primary school education expanded rapidly after 1949. In 1979, China enrolled close to 147 million children in 920,000 formal schools, an enrolment ratio of 93 per cent, compared with 25 per cent in 1949. The literacy rate among the population aged fifteen and above is 72.6 per cent, an increase of 52 per centage points since 1949 21.

Nor do resource constraints explain the differences in educational performance between India and other countries. India spends 3.6 per cent of its Gross National Product on education which is less than Kenya (6.7 per cent), Malaysia (7.8 per cent) or Tanzania (4.3 per cent), but more than Burma (1.6 per cent), Srilanka (3.5 per cent) and Indonesia (2.0 per cent). Compared to these other countries, moreover, a large portion of India's education budget is spent on higher education 22.

20. Supra, Note 24. p. 3
Thus there is historical and comparative evidence to suggest that the major obstacles to the achievement of Universal primary education and the abolition of child labour are not the level of industrialisation, per capita income and the socio-economic conditions of families, the level of overall government expenditures in education, nor the demographic consequences of a rapid expansion in the number of school age children. India has made less an effort to move children out of the labour force and out of their countries not for economic or demographic reasons but because of the attitudes of government officials, politicians, trade union leaders, workers in voluntary agencies, religious figures, intellectuals and the influential middle class toward child labour and compulsory Primary school education of particular importance, are the attitudes of officialdom itself, especially officials of the State and Central education and labour departments and ministers. The desires of low income parents to send their children to work or to employ them at home, and of employers who seek low wage, pliable, non-unionised labour, is of secondary importance because elsewhere in the world a large proportion of parents and employers have also supported child labour and opposed compulsory education. It is the absence of strong support for governmental intervention from within the state apparatus itself and the absence of a political coalition outside the state apparatus pressing for government intervention that explains Indian policy official declarations from government and statements by politicians, officials, educators and social activists notwithstanding, there is very little political support in India for compulsory education or for the enforcement of laws banning the employment of children.

5.1.2.4. Article 51 (e) of the Constitution of India provides that the state shall to foster respect for international treaty obligations. India, being a member-state of the United Nations organisation, has to abide by the Declarations and conventions adopted by the UNO and ILO to protect the rights of children in India.

5.2. LEGISLATIVE SAFEGUARDS FOR CHILD LABOUR:

Many legislations relating to child labour have been passed by India during the last century. To improve the conditions of working children and to minimise the exploitation of this most vulnerable group of the society these laws have been amended, repealed and revised from time to time. These legislations are discussed below in chronological order. The need for such protective measures was felt when the Industrial Revolution started.
5.2.1 Pre-Independent Legislative Framework:

(i). In 1850, an Act was passed regarding Apprentice contractors, according to which any child would be bound as an apprentice for learning trade, craft or for employment upto a maximum of seven years.\(^{23}\)

(ii). The Indian Factories Act, 1881 prohibits (a) the employment of children below 7 years in any factory. (b) the employment in two factories on the same day. (c) working period exceeding 9 hours a day. The Act also stated that at least four holidays should be provided in a month. This Act covered only those factories which employed 100 or more persons.\(^ {24}\)

(iii). In 1891, the Factories Act was revised. The new Act raised the minimum age for work to 9 years and reduced the working period to 7 hours in a day with the prohibition of work at night between 8.00 P.M. and 5.00 A.M.\(^ {25}\).

(iv). In 1901 the Mines Act was passed, which prohibited the employment of children under 12 years in mines as it was dangerous to their health and Safety.\(^ {26}\)

(v). The Factories Act of 1911 prohibited the work by children in factories (a) between 7 P.M and 5.30 A.M. (b) in certain dangerous processes. According to this Act the certificate of age and medical fitness for the employment of children was also required.\(^ {27}\)

(vi). In 1922, the Factories Amendment Act was passed, which (a) raised the minimum age to 15 years in general. (b) fixed the working hours to a maximum of 6 hours and an interval of half an hour in between, (c) Prohibited the employment of children below 18 years in certain process. The scope of this Act was extended to establishments employing 20 or more persons with mechanical power.\(^ {28}\)

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23. Central Act 9 of 1850
24. Central Act 15 of 1881
25. Central Act 11 of 1891
26. Central Act 8 of 1901
27. Central Act 12 of 1911
28. Central Act 2 of 1922, Amending Act 12 of 1911
(vii). The Indian Mines Act, 1923, raised the minimum age of employment from 12 to 13 years in mines. 

(viii). The Factories (Amendment) Act 1926, imposed certain penalties on the parents and guardians for allowing their children to work in two separate factories on the same day.

(ix). The Indian ports (Amendment) Act, 1931 laid 12 years as the minimum age for handling goods in ports. The Report of the Royal commission on labour (1930) had an impact on legislation pertaining to child labour during the period 1931 to 1949.

(x). The Tea District’s Emigrant Labour Act, 1932 was passed to check migration of labourers to districts like Assam. It provided that no under-aged child employed or allowed to migrate unless the child was accompanied by his or her parents or adults on whom the child was dependent.

(xi). The Children (Pledging of Labour) Act, 1933 prohibits the making of agreements to pledge the labour of children and the employment of children whose labour has been pledged under such an agreement. The act extends to the whole of India. A ‘child’ under the Act means a person who is under the age of 15 years. An agreement to pledge the labour of a child is void. However, agreement made without detriment to a child and not made in consideration of any benefit other than reasonable wages to be paid for the child’s services, and terminable at not more than a week’s notice does not amount to an agreement to pledge the labour of a child. A parent or a guardian making an agreement to pledge the labour of a child is punishable with fine which may extend to fifty rupees. Making with a parent or guardian, an agreement to ‘pledge the labour’ of a child is also punishable with fine which may extend to two hundred rupees. This Act was enacted by following the recommendations of the Royal commission on labour.

29. Central Act 4 of 1923
30. Central Act 26 of 1926
31. Central Act 11 of 1931
33. Central Act 2 of 1933
(xii). The Factories Act, 1934 made elaborate arrangements regarding the employment of children. The employment of children was prohibited under 12 years of age and restricted to only 5 hours a day for children between 12 to 15 years.

(xiii). The Indian Mines (Amendment) Act, 1935 *inter alia* prohibited the employment of children in mines below 15 years of age.

(xiv). In 1938 the Employment of Children Act was passed by the Indian government. This act regulates the employment of children in certain industrial employments. It extends to the whole of India. The provisions of this Act are related to the age group and are expressed so as to apply to (a) a child below 14 years; (b) a child below 15 years; (c) a child between the age of 15 and 17 years.

This Act provides that a child who has not completed his 15th year shall not be employed or permitted to work in any occupation:

(a) connected with the transport of passengers, good or mails by railway; or (b) connected with cinder-picking, clearing of ash pit or building operation, in the railway premises; or
(c) connected with the work in a catering establishment at a railway station, involving the movement of vendors or any other employee of the establishment from one platform to another or into or out of a moving train; or
(d) connected with the work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines or (e) connected with a port authority within the limits of any port.

A child who has completed his 15th year of age but has not completed his 17th year cannot be employed or permitted to work in any occupation referred to in section 3(1), unless the periods of work of such child for any day are so fixed as to allow an interval of rest for at least twelve consecutive hours between 10 p.m and 7 a.m as may be prescribed by rules made by the government. This position shall not, however, apply to any child employed or permitted to work in prescribed circumstances and in accordance with prescribed conditions in any occupation aforesaid, either as an apprentice or for the purpose of receiving vocational training therein. This provision also do not apply if the “competent authority” is of opinion that an emergency has arisen.

34. Central Act of 1934
35. Central Act 5 of 1935, Amending Act 4 of 1923
36. Section 3 (1) of the Employment of Children Act, 1938.
and such authority declares, by notifications in the Official Gazzette, that in the public interest the provisions of the said subsection shall not be in operation for such period as may be specified in the notification.

A child who has not completed his fourteenth year shall not be employed or permitted to work, in any workshop wherein any of the processes set forth in the schedule in carried on. The processes are:

(a) Bidi making.
(b) Carpet weaving,
(c) Cement manufacturing, including bagging of cement,
(d) Cloth printing, dyeing and weaving,
(e) Manufacturing of matches, explosives and fireworks,
(f) Mica cutting and splitting
(g) Shellac manufacture,
(h) Soap manufacture,
(i) Tanning, and
(j) Wool cleaning.

The provisions of the sub-section shall not apply (a) to any workshop wherein any process is carried on by the occupier with the aid of his family only and without employing hired labour, or (b) to any school established by, or receiving assistance or recognition from a State Government.

For contravention of the provision of this Act, the punishment is simple imprisonment which may extend to one month with fine which may extend to five hundred rupees or with both.

37. Ibid., Section 3(2).
38. Ibid, Section 3 (3)
39. Ibid., Section 4.
5.2.2. Post - Independent Legislative Framework:

At the time of Independence, Constitutional provisions were made to protect the rights of the child in India. Articles 15(3), 24, 39(e)&(f), & 45 specifically protect the rights of children in India. Apart from that, various Acts have laid down provisions to provide legal protection to working children. These Acts enacted chronologically, are as follows:

5.2.2.1. The Minimum Wages Act, 1948: This is an Act to provide for fixing of maximum rates of Wages in certain establishments. This Act does not seem to contain any important prohibition or regulatory provision specifically for child labour, except that some of its provisions refer to children. This Act defines an ‘adolescent’ as a person who has completed his 15th year, a ‘child’ as a person who has not completed his fifteenth year.

This Act provides that different minimum rates of wages may be fixed for adults, adolescents, children, etc. Further, Rule 34 of Minimum wages (central) Rules, 1950, provides that the number of hours which shall constitute a ‘normal working day’ in the case of a child shall be four and half hour. In effect, this prohibits the employment of children for more than four and half hours for any day in the employments to which the Minimum Wages Act, 1948 applies. Any employer who contravenes any provision of this Act or of any rule or order made thereunder shall if no penalty is provided for such contravention by this Act, be punishable with fine which may extend to Rs.500.

5.2.2.2. The Factories Act 1948: This act is the main instrument to protect children against exploitation. This Act consolidates and amends, the law relating to labour in Factories. The expression ‘factory’ is defined as meaning any premises, including the precincts thereof, wherein the strength of workers is above ten in case where a manufacturing process is being carried on with the aid of power, and above twenty where such process is being carried on without the aid of power.

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40. Central Act 11 of 1948, Section 2(a)
41. Ibid., Section 3(3)(a)(iii).
42. Ibid., 22 A
43. Central Act 63 of 1948, Section 2(m)
According to section 67 of this Act, no child who has not completed his 14th year shall be allowed to work in any factory. It further states that a child between the age of 14 and 15 cannot be employed for more than four and half hours a day and cannot be employed in more than one shift or more than one factory in a day. Section 27 of this Act lays, no child shall be employed in any part of a factory for pressing cotton which cotton opener is at work, provided that the feed-end of the cotton opener is in a room separated from the delivery end by partition extending to the roof. According to section 34(2) of the Act, the State Government make rules prescribing the maximum weights which may be lifted, carried or moved by children employed in factories or any class or description of factories or in carrying on any specified process. This Act also prohibits the employment of children in a factory during night i.e. between 7 p.m and 6 a.m.

5.2.2.3. The Plantations Labour Act, 1951: This Act considers a child as a person who has not completed his 15th year, and it covers all tea, coffee, rubber, cinchona, etc., plantations, which use a minimum of 10 hectares of area or in which more than 30 persons are employed. Section 24 of this Act lays down "no child, who has not completed his 12th year, shall be required or allowed to work in any plantation". Section 25 provides that a child above 12 years of age cannot be employed in any plantation otherwise than between 6 A.M. and 7 P.M. section 19 of the Act prohibits the children employed in plantation to work for more than 40 hours a week. According to section 26, every child above 12 years of age and every adolescent that is to say a person who has completed 15 years but has not completed 18 years may be in a plantation provided they obtained a certificate of fitness from a certifying surgeon. The certificate is valid for one year at a time.

where children between the ages of 6 and 12 of workers employed in any plantation exceed 25 in numbers, the Act casts an obligation on the State government to make rules requiring the employer to provide educational facilities for children.

5.2.2.4. The Mines Act, 1952: This Act amends and consolidates the law relating to the regulation of labour and safety in mines. It covers the excavation sites where mining operation is going on. The minimum age for employment in mines above ground is 15 years. A young person who has not completed the age of 16 years can not be allowed to work in any part of a mine which is below ground. An adolescent, a person who has completed 15 years of age but has not completed 18 years,

44. Ibid., Section 71
46. Ibid., Section 14.
is allowed to work in any part of a mine which is below ground, if he had a medical certificate from a certifying surgeon certifying that he is fit for work as adult. An adolescent to who such certificate is given shall not however be employed in any mine except between the hours of 6 A.M. and 6 P.M. An adolescent who does not posses a certificate of fitness may work in mine above ground for not more than four and half hours in a day but shall not be employed between the hours of 6 P.M. and 6 A.M. Any employer contravening the provisions of child labour in punishable with imprisonment upto three months or with a fine upto Rs.1,000 or with both.

5.2.2.5. The Merchant Shipping Act, 1958: This Act is the principal legislative measure dealing with merchant shipping. The Act applies to the sea-going ships which are registered in India. According to section 109 of this Act, no person under 15 years of age shall be engaged or carried to sea to work in any capacity in any ship, except (a) in a school ship or training ship, in accordance with the prescribed conditions; or (b) in a ship in which all persons employed are members of one family; or (c) in a home made ship of 200 tons gross; or (d) where such person is to be employed on nominal wages and will be in the charge of his father or other adult male relative.

5.2.2.6. The Motor Transport Workers Act, 1961: This Act covers the motor transport undertakings which employs, five or more transport workers. Under section 21 of this Act, no child who has not completed his fifteenth year shall be required or allowed to work in any capacity in the motor transport undertakings. An adolescent, i.e. a person who has completed 15 years but not completed 18 years of age is allowed to work as a motor transport worker provided he has obtained a certificate of fitness. No adolescent shall be employed or required to work as a motor transport worker for more than 6 hours a day including rest interval of half an hour and between 10 P.M and 6 A.M.

5.2.2.7 The Apprentices Act 1961: This Act provides the regulations and controls of training of apprentices in trade and industry. Under section 3 (a) of this Act, a person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training unless he is not less than 14 years of age. This Act deals with matters like qualification for being engaged as apprentice, contract

47. Central Act 35 of 1952, Section 73.
49. Central Act, 27 of 1961, Section 22
50. Ibid., Section 14
period of apprentices, obligations, of employees and apprentices, payment, and hours of work, health, safety and welfare of apprentice\textsuperscript{51}.

5.2.2.8. The Beedi and Cigar Workers (Conditions of Employment) Act, 1996: This Act provides for the welfare of the workers in beedi establishments and regulates the conditions of their work and for matters connected there with. The Act applies to industrial premises connected there with. The Act applies to industrial premises where any manufacturing process connected with the making of beedi or cigar or both is being or is ordinarily, carried on with or without the aid of power\textsuperscript{52}. Section 24 provides that a child who has not completed his 14 years of age, shall not be required or allowed to work in any industrial premises. Section 25 provides that a young person that is to say a person who has completed his 14 years of age and not completed 18 years of age shall not be required or allowed to work in any industrial premises except between 6 A.M. and 7 P.M. Overtime work by young person is prohibited\textsuperscript{53}.

5.2.2.9. State Shops and Commercial Establishments Acts: The establishments where Factories Act, dose not apply, like shops, restaurants and hotels and places of amusement in urban areas are covered under this Act, whose statutes vary from state to state. The minimum age for employment in shops and other commercial establishments is 12 years in Bihar, Gujarat, Jammu and Kashmir, Madhya Pradesh, Karnataka, Orissa, Rajasthan, Tripura, Uttar Pradesh, West Bengal, Goa, Daman and Diu, and Manipur; and 14 years in Andhra Pradesh, Assam, Haryana, Himachal Pradesh, Kerala, Tamilnadu, Punjab, Delhi, Chandigarh, Pondichery and Meghalaya. The minimum age for employment is 15 years in Maharashtra. There are no separate Acts for shops and commercial establishments in the rest of the states and union territories. The daily working hours for adolescents vary from 5 to 7 hours in between 6 A.M. and 7 P.M.\textsuperscript{54}.

5.2.2.10. National Policy on Children, 1974: It shall be the policy of the state to provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental, and social development. The state shall progressively increase the scope of such services so that, within a reasonable time, all children in the country enjoy optimum

\textsuperscript{51} Central Act 52 of 1961.
\textsuperscript{52} Central Act 32 of 1966 Section 2(1).
\textsuperscript{53} Ibid., Section 17
\textsuperscript{54} The Shops and Establishments Acts in Various States and Union Territories in India.
conditions for their balanced growth. In particular, the following measures shall be adopted towards the attainment of these objectives.

(1) All children shall be covered by a comprehensive health programme.

(2) The state shall take steps to provide free and compulsory education for all children up to the age of 14 for which a time-bound programme will be drawn up consistent with the availability of resources. Special efforts will be made to reduce the prevailing wastage and stagnation in schools, particularly in the case of the society. The programme of informal education for pre-school children form such sections will also be taken up.

(3) Children who are not able to take full advantage of formal education, should be provided.

(4) To ensure equal opportunity, special assistance shall be provided to all children belonging to the weaker sections of the society.

(5) Children shall be protected against neglect, cruelty and exploitation.

(6) No child under 14 years shall be permitted to be engaged in any hazardous occupation or to be made to undertake heavy work.

(7) In organising services for children, efforts would be directed to strengthen family ties, so that full potentialities of growth of children are realised within the normal family, neighbourhood and community environment.

5.2.2.11. The Employment of Children (Amendment) Act, 1978: In November, 1978 was amended and inserted some new clauses. The Act prohibits the employment of a child below 15 years in occupations in railway premises such as cinder-picking or clearing of ash pit or building operation, in catering establishment and in any other work which is carried on close proximity to or between the railway lines. One salient feature of this Act is that every rule made by the central Government, under this Act will be applicable as soon as it is formed and passed. Any modification or amendment shall be without prejudice to the validity of any thing previously done under that rule.

55. Resolution No. 1-14/74-CDD
National Committee on Child Labour, 1979: In response to a United Nations General Assembly resolution proclaiming 1979 as the International year of the child, the Government of India appointed the Committee on child labour under the chairmanship of M.S Gurupada Swamy, to review existing legislation. The Committee in an exceptionally frank statement in its report agreed that most of the existing legislation was not enforced. It was found that existing legal framework for employment of children in India is rather dispersed and patchy. Some of the laws also suffer from certain internal contradictions on issues like minimum age for employing children, working hours, medical examination minimum wages and penalties to offences etc. In the course of its spot inspections and discussions, the Committee got a clear impression of several inadequacies in the existing administrative setup for the implementation of various laws. The Jurisdiction of individual inspectors was too extensive for them to keep a regular watch on activities within their preview. In several states one inspector was required to cover a group of several districts. He was also burdened with very wide range of responsibilities pertaining to labour legislation. The results of this situation were apparent. There were practically no prosecutions of existing laws pertaining to child labour. In one of the states it was pointed out with pride that the first prosecution ever launched by them was only in the International Year of the child. The Committee itself during spot inspections noticed children of very tender age working in certain factory premises in total disregard of the statutory provisions. In the course of the discussions with different interests, including officials of labour departments, it was pointed out that the entire situation was being overlooked because of certain inherent factors. There was, in fact, a vicious circle. The labour Inspector, whenever he got a chance to book any violation, had difficulties in collecting evidence for proper prosecution. The fact of employment of a child against a law was denied both by the employer and the parents of the children. Social acquiescence in the existing conditions also made it difficult to enlist support of other independent witness. A general sympathy was prevalent among people towards any one employed. It was also argued that if the child was not so employed, he would really be in the streets and thus become a more dangerous hazard for the community at large. By keeping child occupied, he was kept away from becoming a vagabond.

The Committee nonetheless urged the government to strengthen its enforcement machinery and to make use of voluntary organisations and trade unions. The Committee noted that the elimination of child labour would benefit employment of those in the age group of 15-59. The Committee pressed for the enforcement of minimum wage land for adults. If parents earnings

increase they would be less inclined to allow their children into service. The Committee strongly recommended for free and compulsory primary education for all children. But, it repeated the familiar argument that serious doubts are raised about the usefulness of the present system of education, which does not prepare them for future occupations. In fact, it raises amongst children aspirations and hopes only for white collared jobs. The educational curriculum must be geared to bring the maximum of skill and competence in the child keeping in view the environment in which he is living.

The Committee called for a strengthening of non-formal education facilities for working children. Employers should be urged to include education as one of the necessary ingredients of labour welfare measures in their establishment. It would also be worth while in the view of the Committee, to impose a cess on industry to raise funds for this purpose; or alternatively to allow concessions in taxes, etc., to employers who undertake to implement educational schemes.

The Committee was strongly of the view that there was a paramount need for an urgent action on the part of the government to bring the law relating to employment of children into a proper focus. To avoid ambiguity in respect of the basic objectives in this directing it was necessary to consolidate the existing laws relating to prohibition of employment of children into a single comprehensive law. The Committee also recommended that the minimum age for entry into any employment should be fifteen years. However the Government rejected the recommendation that the minimum age of entry into employment be 15 years, but agreed with those recommendations aimed at improving conditions for working children.

In its Annual Report (1983-1984) the Ministry of Labour, Government of India, said that the government had accepted child labour as a harsh reality and that it was neither “feasible nor opportune” to prevent stage of economic development. The Seventh Five Year Plan(1985-1990), approved by the National Development Council, said that “since it is not feasible to eradicate child labour, the government should try to make the conditions for working children more acceptable”. The Plan proposed a greater role for voluntary agencies in providing child workers with health care, nutrition and education. The abolition of child labour, it said, could only be achieved where there is

58. Ibid., 42
59. Ibid., p44
60. Ibid., p49
sufficient improvement in the conditions of the families whose children are compelled to work.

5.2.2.13. The Child Labour (Prohibition and Regulation) Act, 1986 :- The official expression of the new child labour policy is the Child Labour (Prohibition and Regulation) Act, enacted by the Indian parliament in December, 1986 (hereafter called the Act). The Act repealed the Employment of children Act, 1938. The provisions of the Act override the provisions in all other Acts relating to child labour. Its objectives include obtaining the uniformity in the definition of the child for various laws relating to child labour, prohibiting the employment of children in certain occupations and processes and regulating the conditions of work in certain permissible occupations.

The Act consists of four parts. Part 1 contains definitions. Part 2 deals with prohibition of employment of children in certain occupations and processes specified in the Schedule of the Act. Part 3 of the Act regulates child labour in those establishments where children under 14 years of age may be permitted to work, namely those establishments where none of the occupations or processes of part A and part B of the schedule are carried on. Part 4 lists the penalties for the violation of the Act. The Act under section 3 prohibits the employment of children, those who have not completed their 14th year in specified occupations and processes mentioned in part A and part B of the Schedule of the Act.

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61. Section 22 of the Act.
62. Schedule of the Act:

Part - A

Occupations: Any occupation connected with -

1. Transport of passengers, goods, or mails by railway;
2. Cinder picking, cleaning of an ash pit or building operation in the railway premises;
3. Work in a catering establishment or a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train;
4. Work relating to construction of a railway station or with any other work where such work is done in close proximity of or between the railway lines;
5. A part authority within the limits of any port;
6. Work relating to selling of crackers and fire-works in shops with temporary licences;
7. Abattoirs

Part - B

Processes:

1. Bidi making,
2. Carpet Weaving,
3. Cement Manufacture, including bagging of Cement,
4. Cloth printing, dyeing and weaving,
5. Manufacture of matches, explosives and fireworks,
6. Mica - cutting and splitting,
7. Shellac Manufacture,
8. Tanning,
9. Wool - cleaning,
10. Building and construction industry,
11. Manufacture of Slate Pencils, including packing,
12. Manufacture of products from agate,
13. Manufacture processes using toxic metals and substances such as Lead, Mercury, Manganese, Chromium, Cadmium, Benzene, Pesticides and Asbestos,
14. Cashew and cashewnut descaling and processing,
15. Soldering process in electronic industries.
The Central government can add to the list of hazardous occupations and processes upon the advice of the Child Labour Technical Advisory Committee.63

The Act provides for the protection of working children employed in permissible occupations. It sets limits on the number of hours children can work continuously, according to which a child can work 6 hours in a day with an interval for rest of at least one hour after 3 hours of work. The Act limits the number of days of employment. Every child employed in an establishment shall be allowed in each week, a holiday of one whole day. The Act also restricts the times of work, i.e. "no child shall be permitted or required to work between 7 p.m. and 8 a.m. Employers are required to maintain a register with the names and birth dates of all children they employ. Under the Act, any citizen may file a complaint with the local court if he or she believe that children under fourteen are being employed in prohibited occupations and process.64 Section 14 of the Act provides punishment for the violation of the Act, with a minimum of fine Rs.10,000 and which may extended to Rs.20,000 or imprisonment for a minimum period of 3 months and which may extend to one year or with both

Limitations of the Act:

(1). No fundamental changes have been incorporated in the 1986 and in most essential matters it is a replicate of the Employment of Children Act, 1938.

(2). By defining child as a person who has not completed his 14th year of age in Section 2(ii), the Act replaces definitions of child in the Minimum wages Act, 1948. Merchant Shipping Act 1958 and the Motor Transport Act, 1961. By lowering the age for the definition of a child from 15 to 14 the constitutional bench mark of 14 years was used to lower the age from the higher age for the protection of the child. This permits more children to be employed in the area of Merchant shipping and motor transport. Here constitution has been used by the parliament to take away the protection of children between 14 and 15 years of age.

(3). By this Act, Indian Government had legalised child labour. The Act imposes no age limit on the employment of children in permissible occupations. So, a child as young as 4 or 5 years could be employed in any permitted occupations.

63. Section 4 of the Act,
64. Part III of the Act,
(4). Along with the prohibited occupations and processes which the 1938 Act listed out, the 1986 Act includes prohibition of work in the building and construction industry after the Supreme Court order in 1982.

Work relating to the selling of crackers and fire works in shops with temporary licences was added in the list of occupations and manufacture of slate pencils (including packing), manufacture of products from agate and manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos were inserted in the list of hazardous processes respectively by Notification No. s.o.404(E) dated the fifth June, 1989 published in the official Gazette of India.

However, the Act covered only 10 per cent of the total working children in India. Children working in unorganised sector are not protected by the Act. The Act does not include balloon factories and other works where children are forced to work with fire and dangerous chemicals. Garbage Picking (commonly described in India as Ragpicking), is not classified as hazardous though thousands of children collecting scraps of iron glass, paper and rags often pick up bits of food to eat and are prone to tetanus and skin diseases. The Act is also silent on children working in agricultural sector which constitute 80 per cent of child employment. These children appear to be outside the regulatory reach of the Act.

(5). The Act does not ban child labour absolutely even in hazardous occupations and processes specified in Part-A and Part-B of the Schedule of the Act. The Act exempts processes carried on by the occupier with the aid of his family or any schools established by or receiving assistance or recognition from the government. The only difference in the Act restricts the definition of the ‘family’ to include only the parents and children, brother and sister in section 2(v) as against the much broader definition in section 3(iii) of the Employment children Act 1938.

However the word ‘occupier’ in section 2(vi) of the Act is not clearly defined and therefore it may not have check on the employers, agents and the contractors, who play a vital role in the employment of children.

65. People’s Union for Democratic Rights v. Union of India, AIR 1982, SC. 1473
67. Section 2(vi) of the Child Labour (Prohibition and Regulation) Act, 1986, defines, ‘occupier’, in relation to an establishment of workshop, means the person who has the ultimate control over the affairs of the establishment of workshop.
The provision in Section 3 of the Act keeps any occupation, a work or process i.e. carried on by the occupier with the aid of his family out of the preview of the Act. This provision has offered protection to several match manufacturing units. Carpet manufacturing units, glass units, bidi manufacturing units to continue the exploitation under the umbrella of the family. Therefore, there is a need to add the provision that it shall be presumed that occupier is also the employer for the purpose of the Act and shall be liable for prosecution. The onus to prove that the child is a member of his or her family would rest on the occupier.

Though the proviso attached to Section 3 of the Act says that nothing in this Section shall apply to any workshop wherein any process carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from government, when certain occupations and processes are harmful for the health of the children work as part of family entrepreneurial enterprises, state managed or established or aided or recognised schools. Once the occupations or processes have been identified as a hazardous for the employment of children, any exemption made thereof is to the detriment of the children, can there be any justification for the such exemption.

(6) Even the regulations pertaining to conditions of work are circumscribed with the same qualification that none of these restrictions shall apply to any establishment wherein any process is carried on by the occupier with the aid of his family or to any school established by or receiving assistance or recognition from the government. This phrase exempts government run apprenticeship programmes to teach children carpet weaving.

(7) The definition of “Establishment” in section 2(iv) lacks clarity if the term includes or would include in the course of time, some of the activities in which the child labour need to be protected. The present definition is likely to pave way for the organised sector or units to deploy children at sub-human conditions. For instance, a literal interpretation of the word “establishment” would obviously preclude child labour employed in homes from being notified by provisions of part III of the Act.

(8) The Word hazardous is not clearly defined in the Act and it is left to Technical Advisory Committee to define hazardous occupations and process. Also there is no provision in the Act

68. According to Section 2 (iv) of the 1986 Act, ‘establishment' includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating house, theatre or other place of amusement or entertainment.
asking the Technical Advisory Committee to prohibit child labour in an occupation or a process even if the request is backed up by relevant data, not fixed time to respond to such request by the Committee. Therefore, it is necessary that Central government takes up the task of purposes of making additions in the schedule in a time-bound and planned manner.

Besides, the very adjective ‘hazardous’ is held to have purely physical implications excluding the psychological, mental and emotional dangers that a job can mean to child workers in any given work. The very fact that childhood is snatched away from a child and it is forced to experience an adulthood it is not prepared for, commonalises every single economic and forced job for a child as ‘hazardous’. Moreover the Act does not specify the minimum age of employment of children in the occupations and processes other than the prohibited ones.

As Walter Fernandes rightly observed 69, the Act legalises the entry of children in the hazardous occupation by regulating their employment in the industries that are of course non-hazardous for adults but are hazardous for children.

(9). Another significant aspect of the Act is more stringent punishment for violation under section 14 which is within the minimum of fine Rs. 10,000/- to maximum of Rs. 20,000/- or minimum of 3 months of imprisonment to maximum of one year or combined with both. But one should understand that the 1938 Act was flawed not because penalties were too light, but they were rarely enforced. It is necessary that the penal provisions must be excluded from the purview of operations of the provisions of the First offender’s Act by inserting a specific clause to this effect and offences under the 1986 Act should be made cognizable. Besides, offences made in any Act involving the Act by inserting a suitable provision in this Act and other Acts70.

5.2.2.14. National Policy on Child Labour, 1987:

Legislation is however, only one of the ways of tackling the problem of child labour. Aware that the problem is a socio-
-economic one, the Government of India felt that other programmes

69. Walter Fernandes, “A law that will not protect” INDIAN EXPRESS, 18 August (1986).10
would have to be started side by side with legislation in order to find an effective solution to the problem of child labour. In August 1987, therefore, the National child Labour Policy was announced. The objectives of the National Child Labour Policy were three fold.

1. Setting up the enforcement of child labour laws, i.e., a legislative action plan,
2. Focusing of general development programmes, for benefiting child labour however possible; and
3. Starting Project-based Plan of action in areas of high concentration of child labour engaged in wage or quasi wage employment71.

Legislative Action Plan:

A Child Labour Technical Advisory Committee has been set up to advise the Central government on addition of occupations and processes to the schedule contained in Child Labour (Prohibition and Regulation) Act, 1986. The provisions of this Act, the Factories Act and the Mines Act will be enforced so as to particularly ensure that children are not employed in factories or mines or in any other hazardous employment, and where they are employed in non-hazardous employments or occupations, to ensure that the work is regulated in accordance with Part III of the Act. Where it is necessary for state governments to make rules under the Act or under any other legislation so as to protect the interests of child labour, they will be so requested to undertake reviews and frame rules as necessary. The railway administration, major ports, and central and state government departments incharge of oil-fields and mines will also similarly be asked to review the situation arising from the enactment of the 1986 Act, so as to ensure that child labour is not employed in prohibition occupations or employments, and if employed in other occupations or employments, that the provisions set out for their health and safety, for the maintenance of register, and for regulating the period and hours of work or overtime or of weekly holidays and days of rest are enforced in all establishments. Government will also bring forward legislation to delete the provision contained in the Minimum wages Act allowing different wages to be fixed for children, adolescents and adults. In other words, children will have to be paid the same as adults. This will remove the economic incentive to employ child labour on lower wages. For enforcing other protective legislation like the payment of wages Act, the Equal Remuneration Act, the payment of Bonus Act, the payment of

Gratuity Act etc., will be ensured that child labour is not discriminated against as compared to adult labour. The Central and State inspection machinery will be geared up for this purpose\textsuperscript{72}.

**Focussing of General Development Programmes for Benefiting Child Labour:**

National development programmes exist with very wide coverage of areas of education, health, nutrition, integrated child development and the anti-poverty group of programmes. In order to have an impact on child labour, it will be necessary to focus these programmes by the implementing agencies under the state government so as to deliver benefits to child labour wherever possible. Some areas where such focussing could be possible are set out below.

**Education:** The National Policy on Education, 1986 (NPE) sets the targets of all children who attain the age of 11 years by 1990 having had five years of schooling, or its equivalent, through a non-formal system of education. 4,90,000 non-formal education (NFE) centres are proposed to be opened, which will supplement the formal education system. Since the Central feature of the implementation of the strategy for non-formal education is based on micro-level and area-specific and population-specific planning. NFE centres for child labour will be set up with the involvement of voluntary agencies and Panchayati Raj institutions which are capable of running such non-formal education centres wherever possible to cater to child labour who, after work or during holidays can present themselves at the NFE centres. Specific attention will be given to attracting and retaining girls from among working children to NFE centres. Part-time courses and vocational courses will also be catered to at these centres. Such NFE centres for child labour, all the specific features figuring in the programme of action of the NFE will be provided.

For child labour belonging to disadvantaged classes like SC/ST families, details of a scheme of incentive or assistance to indigent SC/ST families who have to put out their children to wage or quasi-wage employment will be worked out in consultation with State Governments. For such children who come from families engaged in occupations like scavenging, flaying and tanning, scholarships will be extended, with constant micro-planning and verification to ensure that SC/ST child labour in NFE centres are enrolled successfully and complete the courses of NFE, upto class VIII. These are as per the specific provisions laid down in the programme of Action of the National Policy of Education.

\textsuperscript{72} Ibid.
Micro-planning for NFE centres will have to be undertaken of child labour, especially for those belonging to such disadvantaged sections of the society as SC/ST or in areas where there are known to be concentration of such disadvantaged group of families.

In urban areas also, especially in urban slums, NFE programmes by both the state Governments and by voluntary agencies will be promoted, including the organisation of extra-curricular activities, diversity in learning activity and with a provision of games and sports and related equipment, plays and skits, excursions, etc.

The projects of voluntary agencies will be entertained for a period of 3-4 years, where for urban or for rural areas, and while the initial proposals would be required to be sent to the State Governments, at subsequent stages, the voluntary agencies will directly approach the Department of Education for release of grants-in-aid to such NFE centres. The Ministry of Labour may also arrange for micro-level planning for NFE centres for benefiting child labour, and recommend these to the Department of Education.

National Rural Employment Programme (NREP) and Rural Landless Employment Guarantee Programme (RLEGP) funds would be used on priority basis for creating the infrastructure for NFE centres catering to child labour under the overall coordination and direction of the local district level development authorities.

For continuing education of child labour who have been enrolled and successfully completed their period of NFE, efforts would be made to link the non-formal education system, so as to enable them to continue their education. The NFE programmes would also be linked with Shramik Vidyapeeths, schemes of public libraries, Jana Shiksha Nilayams and vocational and technical courses of a wide variety would be provided where required for, among others, working for children who come from the non-formal stream73.

Health:

Health is a State subject, and the programmes of medical inspection of children

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73. Ibid., p. 65

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have been assigned to the States. The progress among the various states is uneven. A few States have good programmes, but many other States do not. In those states where there exists a school health service programme, many, and in some states even all primary school going children in the rural areas have been covered under the scheme for regular examinations. But those children who do not join school because of being at work would obviously not be covered by such school health programmes (where they exist). The Ministry of Health and Family Welfare will address the State Government, recommending that intensive medical inspection of children be taken up in those areas where child labour is prevalent. The State Governments will have to be persuaded to extend the coverage of the school health service programme to child labour. Since this is an area essentially under the state sector, a continuing dialogue, effort and persuasion with the State Governments will have to be maintained so that all children, irrespective of whether they are in primary school or at work, are covered by regular health inspection and treatment. It should be possible to arrange for some health screening at NFE centres for child labour.

**Nutrition:**

Department of Women and Child Development have an on-going programme for women and children, i.e., Integrated Child Development Services, which are approved on the basis of proposals by the State Government and non-Government Organisations. While it will not be possible to earmark funds specifically for child labour, proposals from State Governments or non-governmental organisations and voluntary agencies in child labour areas will be funded on a priority basis and, if necessary, the rules could be relaxed to consider proposals from the organisations to be set up for taking up welfare measures for child labour also.

**Anti-Poverty Programme's Coverage:**

Integrated Rural Development Programme (IRDP), National Rural Employment Programme (NREP), Rural Landless Employment Guarantee Programme (RLEGP), etc.,

74. Ibid., P. 66
75. Ibid.,
funds are meant for poverty-alleviation programmes on the basis of criteria which have been laid down for the States to follow. Included in the coverage of the entire gamut of anti-poverty programmes are families which have child labour and, to the extent that such families with incidence of child labour fall within the selection criteria for endowment of income-generating assets (i.e., IRDP) or for wage employment (NREP/RLEG) they would be benefited by the on-going programmes which have a large corpus of funds allocated to them in the Seventh Plan. To the extent, therefore, that the poorest families are often forced to put out their children to work for wage or quasi-wage employment, they would be getting assistance to raise themselves above the poverty line and this, in conjunction with the non-formal education centres being opened in rural areas, slums areas, etc., will go a long way towards tackling one of the basic causes of children being put to work, i.e., poverty.76

**Poverty-Based Plan of Action:**

It is known that there are specific sectors of employment where the incidence of child labour is high, such as:

1. the match Industry in Sivakasi, Tamil Nadu,
2. the diamond Polishing Industry in Surat, Gujarat,
3. the precious stone Polishing Industry in Jaipur, Rajasthan,
4. the glass Industry in Firozabad, Uttar Pradesh,
5. the brassware Industry in Mordabad, Uttar Pradesh,
6. the hand made carpet Industry in Mirjapur, Bhadoli in Uttar Pradesh,
7. the lock-making Industry in Aligarh, Uttar Pradesh,
8. the hand made carpet Industry in Jammu and Kashmir,
9. the slate Industry in Mandsaur in Madhya Pradesh,
10. the slate Industry in Markapur in Andhra Pradesh.77

The child workers involved in the above-mentioned sectors of employment and geographical areas deserve priority attention because either the employment processes in

76. Ibid., 67
which they work are prohibited under the Factories Act, the Child Labour (Prohibition and Regulation) Act, or the work in such that it is likely to affect the child's well-being.

In each of the ten “project areas”, the strategy will be to evolve a package comprising of the following elements:

1. Stepping up the enforcement of the child labour (Prohibition and Regulation) Act, the Factories Act and the Mines Act. If necessary, special enforcement staff will be created for the purpose.
2. Coverage of families of child labour under the income or employment generating programmes under the overall aegis of anti-poverty programmes.
3. Where there is a concentration of SC/ST families with child labour, a concentration of special component and tribal sub-plans by the State Governments in each project area.
4. Formal or non-formal education of ultimately all child labour engaged in hazardous employments, and of as many child labour as possible as may be in non-hazardous employments. Also a stepped up programme of adult education (including non-formal education) of the parents of the working children.
5. Coordinating the activities of different Departments and Ministries of the Central Government and State Governments to benefit child labour.
6. Setting up of special schools for child workers together with provision of vocational education or training in such special schools, supplementary nutrition, a stipend to the children taken out from prohibited employments, and health care for all children attending at such special schools.  

For this purpose, the infrastructure will have to be created, and wherever the infrastructure run by the Departments of Education, Health, etc., like Shramik Vidyapeeth exists, they will be suitably modified and utilised. Stipends will not be paid to children who are working in non-hazardous and non-forbidden employments. The non-formal educational and formal educational institutions in the Project area will function on a flexible hour basis after working hours, during holidays, etc., as may be convenient. They will cover the range of special features of non-formal education set out in the Programme of Action of the National Policy on Education.

78. Ibid.,
In order to enable intensive coverage in the project areas, of the anti-poverty group of programmes, the health programmes analogous to the school health programmes run by the State Governments, the special nutrition programme, and for setting up of special schools, providing vocational education and training arrangements, and for providing stipends to the children taken out from hazardous employments, it will be necessary to provide for additionality of funds over and above the funds that exist in the respective programmes administered under the plan, whether by the Central Government or by State Governments. The additionality of funds required will be channelled through the Ministry of Labour, which will be the nodal Ministry for the Ten child labour projects.

In the first phase of the special project areas approach, it is proposed to cover upto 30,000 child labour. Each project will be carefully drawn up in consultation with the state governments and Central Ministries concerned, to ensure proper coverage and inter-meshing of programmes administered by the Central and State governments under the overall coordinating agency of the Ministry of Labour. The Ministry of Labour will be the nodal agency for drawing up a project report in respect of each project area and for providing the additionality of funds that may be required for the total coverage envisaged in each project area79.

Organisation for Implementing the Child Labour Project:

There will be a Chief Executive officer in charge of each project area who will work under the general supervision and the direction of the administrative head of the district wherein the project is situated. There will be a child Labour Project Board, with the collector as its chairman, on which will be represented the district educational, health, and nutrition authorities, as also representatives of voluntary agencies and Panchayati Raj institutions who are active in the district in the area of child labour. This will ensure coordination of all inputs of the various departments executing plan and non-plan schemes in the project area, so as to enable the focussing for the benefits of child labour and their families and also to allocate the additionality in project funds made available to each project by the Ministry of Labour80.

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79. Ibid., p.164
80. Ibid.,
Monitoring of Projects:

The working of the Child labour projects will be monitored by a high powered Committee of the Central Government with representatives of the Ministries and Departments of Labour, Education, Health, Rural Development, Child and Women Development and the State Governments where child labour projects are being implemented. The Committee will meet as often as necessary to ensure the smooth working of the project.81

Only eight child labour projects, out of the originally anticipated ten, have been started. The State government of Jammu and Kashmir has no particular interest in implementing an action project in their carpet-weaving industry. As for the proposed project in the diamond-polishing industry in Surat, Gujarat, the State Government responded negatively to the project by reporting that there were very few child labourers in that industry.82 Later four other projects are started. At present, twelve National Child Labour projects are under implementation in eight states as shown in the following table.83

NATIONAL CHILD LABOUR PROJECTS.

<table>
<thead>
<tr>
<th>No.</th>
<th>State</th>
<th>Area</th>
<th>Employment</th>
<th>Coverage of children</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>U.P.</td>
<td>Ferozabad</td>
<td>Glass</td>
<td>500</td>
</tr>
<tr>
<td>2.</td>
<td>U.P.</td>
<td>Mcrdabad</td>
<td>Brassware</td>
<td>500</td>
</tr>
<tr>
<td>3.</td>
<td>U.P.</td>
<td>Aligarh</td>
<td>Locks</td>
<td>500</td>
</tr>
<tr>
<td>5.</td>
<td>A.P.</td>
<td>Markapur</td>
<td>Slate</td>
<td>1000</td>
</tr>
<tr>
<td>6.</td>
<td>A.P.</td>
<td>Jaggampet</td>
<td>Tile</td>
<td>100</td>
</tr>
<tr>
<td>7.</td>
<td>T.N.</td>
<td>Shivakasi</td>
<td>Match&amp;Fire Works</td>
<td>2350</td>
</tr>
<tr>
<td>8.</td>
<td>M.P.</td>
<td>Mandsur</td>
<td>Slate</td>
<td>900</td>
</tr>
<tr>
<td>9.</td>
<td>Bihar</td>
<td>Garhwa</td>
<td>Carpet</td>
<td>450</td>
</tr>
<tr>
<td>10.</td>
<td>Rajasthan</td>
<td>Jaipur</td>
<td>Gems</td>
<td>1000</td>
</tr>
<tr>
<td>11.</td>
<td>Maharashtra</td>
<td>Thane</td>
<td>Agriculture/ Chemicals</td>
<td>2000</td>
</tr>
<tr>
<td>12.</td>
<td>Orissa</td>
<td>Sarbalpur</td>
<td>Beedi</td>
<td>3000</td>
</tr>
</tbody>
</table>

81. ibid., p. 165
82. Status Of Child Labour In India, the Concerned for Working Children, (1992), 54
During the Seventh Five Year Plan period, the outlay on these projects was Rs. 493 lakhs. The outlay envisaged for the Eight Plan in Rs 15 crores. For the year 1994-95, the Planning Commission has allotted Rs. 34.40 crores with assurance of more funds, depending upon performance. This allocation of Rs. 34.40 crores has made keeping in view the call made by the Prime Minister on the Independence day of 1994, to eliminate child labour in hazardous employments altogether by the year 2000 A.D., largely by activities modelled on the National Policy on Child Labour. It was estimated that an amount of Rs. 850 crores would be required for this purpose.

**Child Labour Action and Support Programme (CLASP):**

This programme is aided by the Government of Germany. It aims at strengthening the countries capabilities for elimination of child labour. Assistance taken upon this programme is used for the purpose of supporting ongoing activities under the National Child Labour Project. The total allocation under the programme which was started in 1992 is US $ 8.30 lakhs.

**5.2.2.15. International Programme for Elimination of Child Labour (IPEC):**

This is an Action Programme which has been established by the International Labour Organisation. Commencing work in 1990, the ILO entered into an agreement with the Government of Germany in December 1991 for implementing the programme over a period of five years with an assistance of DM 50 million. In 1992, Belgium also became a donor in the programme. India was one of the first countries to join the programme which is now under implementation in ten countries. The long term objective of IPEC is to contribute to effective abolition of child labour. The immediate objective are:

1. Enhancement of the capability of 120 constituents and non-Governmental Organisations to design, implement and evaluate Programmes for Child Labour Elimination;

2. To identify interventions at community and national levels which could serve as models for replication;

84. Ibid,

85. Ibid., P.114
3. Creation of awareness and social mobilisation for securing elimination of child labour.

For the two biennia 1992-93 and 1994-95, allocation for India given under IPEC is US $ 3.65 million. Altogether 89 projects with an outlay of Rs. 8.5 crores have been approved and are under different stages of implementation. The total number of children covered by these 89 projects is about 55,000. Another 12 projects with an outlay of Rs. 48 lakhs to cover about 24,000 children are approved in 1995. Highlights of the IPEC Programme in India are as follows.

1. Developing a model for collecting statistics on Child Labour
2. Examining the economics of replacing children with adults in a few selected industries.
3. Raising public awareness against child labour.
4. Sensitising rural and unorganised workers on child labour issues through the Central Board of Worker’s Education.
5. Disproving to the local community the argument that child labour is inevitable
6. Major interventions with Central Trade Unions
7. Action programme for sensitising employers.
8. Training NGO’s on the design, Management and Evaluation of Child Labour Projects.
11. Highlights safety aspects for children at work in specific industries.
12. Withdrawal of child labour from work and their rehabilitation.
13. Eliminating child labour in selected areas and work spots.

5.2.2.16. The Task Force Report, 1989:

The Report of the Task Force on the implementation of the Child Labour (Prohibition and Regulation) Act, 1986 and the National Policy on Child Labour, set up by the Child Labour Advisory Board, Ministry of Labour, under the chairmanship of Dr. L.M. Singhvi in December, 1989, felt
that the 1986 Act and the NPCL have so far failed to yield any worth-while results\textsuperscript{88}. The Task Force Report provides a brief appraisal of one of the projects, i.e., Sivakasi, Tamil Nadu, on the basis of first hand information secured by the Task Force as follows:

The Project area covers only a part of the entire match industry belt. Further, the fireworks industry in which children are also found working in large numbers, despite the fact that it is in the banned sector, has not been included in the project. Although a survey conducted by the State Government in 1987 revealed that the number of child workers in the area was 14,121 and the number of child worker families was 11,893, a unicef study, done prior to 1985, indicate this number to be 45,000 children. Originally 2000 working children were expected to be covered through 20 special schools to be set up by eight voluntary organisations identified by the State Government. It was found that a mere 1,500 working children have been covered by this aspect of the project. Even in the case of these few children, the project has not succeeded in removing them from the hazardous conditions of the industry as the stipend of Rs. 100 is not sufficient to keep their families from returning them to the labour market.

In 1989-90, a total of Rs. 25.25 lakhs was released out of a budget of Rs. 54.39 lakhs. So, the attempt to provide a real alternative covers not even three percent of the total estimated child labour in the match industry.

The State government of Tamil Nadu was asked to set up a hundred Non-formal Education centres in the project area and inform the Ministry of Labour so that the Ministry could provide funds for nutrition to the child in these centres. But, so far, no such information has came to the Ministry of Labour. Under the employment generation and enhancement of income scheme for child labour families in Sivakasi, all that was started was a printing press, set up by the Tamil Nadu Corporation for Development of Women covering a mere 75 women at a cost of Rs. 11.61 lakhs. Assuming that the 11,893 figure for child labour families, revealed by the survey, in accurate, one wonders why only 75 women have been covered and how and when the other families will be covered\textsuperscript{89}.


\textsuperscript{89} Ibid, PP. 5-7
5.2.2.17. National Commission on Rural Labour, 1991:


5.2.2.18. Indian Ratification of the United Nations Convention on the Rights of the Child, 1989:

The convention on the Rights of the Child, 1989 is the first convention of its kind, in that it specifically deals with the needs of children. In the past, children’s rights were read into the rights drafts for adults. Children’s Rights groups around the world participated in the drafting of this convention and lobbied for its adoption by the United Nations, the first step in the long road to its implementation within countries. The Indian Government ratified the convention in December 199291. This ratification contains the following declaration.

“While fully subscribing to the objectives and purposes of the convention, realising that certain of the rights of child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international cooperation; recognising that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed the minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to each and every area of employment in India, the Government of India undertakes to take measures to progressively implement the provisions of Article 32 of the convention Particularly paragraph 2(a), in accordance with its national legislation and relevant international instruments to which it is a state party”92.

92 Ibid., P.2.

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The ratification by India is conditional, the conditions so impossible and all encompassing that we may as well not have ratified it at all. This conditional ratification is as good as saying that we are not in a position to implement the Articles of the Convention at the present time and the Government of India has shifted the moral responsibility for this on to the so called ‘Developed World’ and the aid they will give us. This is not the first time the Government of India has tricked the people into believing that they have progressed while in fact they have regressed. The Child Labour (Prohibition and Regulation) Act, 1986 is an example of one of such piece of legislation.

5.3. SUMMARY:

The governments of all developed countries and many developing countries have removed children from the labour force and required that they attend school. They believe that employees should not be permitted to employ child labour and parents, no matter how poor, should not be allowed to keep their children out of school. Modern states regard education as a legal duty, not merely a right. Compulsory primary education is the policy instrument by which the state effectively removes children from the labour force. The State thus stands as the ultimate guardian of children, protecting them against both parents as well as employees.

Legislation restricting the employment of children in mines and factories was introduced by the British early in the century. More extensive legislation was passed following the recommendations of the Royal Commission on Labour in 1930. The Indian constitution contains a number of provisions intended to protect children, including a categorical ban that declares that “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. Article 45 of the constitution of India provides for free and compulsory education for all children up to the age of 14 years. After 1950, the parliament passed several Acts prohibiting the employment of children in plantations, mines motor vehicles, merchant shipping, in the bidi (indigenous Cigarettes) and cigar industries. The use of apprentices below the age of 14 years was prohibited. In 1979, on the eve of the International Year of the Child, the Indian Government appointed a Committee to inquire into the state of India’s working children and to make recommendations for their improved well-being. The Committee was unequivocal in its support for both universal primary education and for bringing an end to child labour.

Though 47 years have been passed since the Indian Constitution went into effect, the reality is that the goal of universal primary education remains elusive as ever before. According to
1981 census report, 82.3 million of India’s 158.8 million children ages 6-14 did not attend school. Only 52.2 million of India’s 123.7 million rural children ages 6 to 14 were in school (34.4 million boys, 17.8 million girls). In Urban India 24.4 million of 35.1 million attend school (13.5 million boys, 10.9 million girls). The 1991 census report says that 99 million of India’s 150 million children ages 6 to 14 were enrolled in primary school. The 1991 census report also says that only 51.45 million children have completed the primary education i.e., V Grade.

Those children who do not attend the school stay at home to care for cattle, tend younger children, collect firewood and work in their fields. They find employment in cottage industries, tea stalls, restaurants or as house-hold workers. They become prostitutes or live as street children, begging or picking rags and bottles from trash for resale. Many are bonded labourers, tending cattle and working as agricultural labourers for landowners.

Indian law prohibits the employment of children in factories, but not in cottage industries, family household, restaurants or in agricultural. In deed, government officials do not regard the employment of child in cottage industries as child labour, though working conditions in these industries are often inferior to those of the large factories. In its annual report the Ministry of labour said that “the government had accepted child labour as a harsh reality and it was neither feasible nor opportune to prevent children from working in the present stage of economic development”. And it was stated by the Ministry of education that “should not force poor parents to send their children to school when in cannot provide employment for all adults. Children are economic asset to the poor. The income they bring in and work they do may be small, but parents close to subsistence need their help”. In this context it is pointed out that, if poverty justifies the child labour, it can also justify crimes like prostitution, theft, decoiety, etc.

India is the significant exception to the global trend toward the removal of children from the labour force and establishment of compulsory universal primary education. Poverty has not prevented governments of other developing countries from expanding mass education or making primary education compulsory. Many countries in Africa with income levels lower than India have expanded mass education with impressive increase in literacy.

In 1986 and 1987 the government of India adopted a new set of polices toward working children, which for the first time reflected the privately held views of officials in the Ministries of Labour and Education. The Government would no longer ban child labour, but would instead seek
to ameliorate the conditions of working children. The Government would also endeavour to provide voluntary part-time non-formal education for working children rather than press for compulsory universal primary education. The new policies won legitimacy from several international agencies in the form of quasi-official statements and grants for specific programmes.