CHAPTER-4

EXISTING LEGISLATIVE MECHANISM ON CHILD LABOUR
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4.1 INTRODUCTION

Children are our great hope and assets. In every civilized society, the welfare of children is well-recognized. They are our most vital national resource. The future of any problem is largely determined how its children grow and develop. The welfare of the entire nation, its growth and development, depends on the health and wellbeing of its children. The great poet Milton has said, “Child shows the man as morning shows the day”. A child is said to be national asset. Child care and child development programmes have been attracting the attention around the globe.

Article 15(3), Article 23, 24 and Article 39(e) and (f) of the Constitution of India stipulates that the tender age of the children should not be abused and they should be provided with opportunities of development in a healthy manner and in conditions of freedom and dignity. The Government of India has also in pursuance of these constitutional provisions adopted a national policy for children. Article 18 of the U.N. Convention on the Right of the Child, 1989, recognizes the rights of the child to be protected from economic exploitation and from performing any physical, moral, mental, spiritual or social; development. India too have pledged to the United Nation that it will try to eliminate child labour by the year 2000. Issue of child labour indeed is so important that attention of the Legislature, Executive or Judiciary alone will not do, but it requires the immediate serious attention of social reformists, research scholars, academicians, non-government organizations, and all those who care for the development of the nation.

With the growth of population, poverty and industrialization, the children are neglected everywhere. Because of lack of proper training, care and discipline, lack of health facilities and educational opportunities, they become victims of evil elements in the society. Many of them, who are known as criminals, are the victims of the circumstances prevailing in their family and society. However, no society can afford to neglect the uncured for and delinquent children, as it may have a far-reaching effect upon the welfare of the nation.

Concern for the welfare of children is also reflected in the Declaration of the Rights of the child adopted by the General Assembly of the United Nations on 20th November 1959. The International Labour Organization is instrumental in the process
of gradual elimination of child labour and in the protection of children from industrial exploitation. Apart from our protective constitutional provisions, there are also certain legislations for the welfare of children, like the Child Marriage Restraint Act, 1929; Child Labour (Prohibition and Regulation) Act, 1986 etc.

In India there is estimated one child labourer in every three families and every fourth child aged between 5 to 14 years works as child labour. According to U.N.O. the maximum child labour in the world (approximately 20 percent) are in India. Whatever the figure may be, but it is certain that their number is in crores and illiteracy, unemployment, poverty and on account of a rapid increase in population; child labourers are increasing by leaps and bounds. We find millions of sad human faces of children in our industries in the form of child labour. They are depicting a sober picture of our modern industrialization.

Normally, there are three categories of children involved in child labour. They are broadly classified under the categories of street children, bonded children and working children. The street children are working on the street without the protection of permanent shelter, love and affection. These children are involved in petty thefts and related crimes. The bonded children are who have been either pledged by their parents for small sums of money or those working mainly in the rural areas to pay off the inherited debts of their parents, if they are brought by the owner of artisan or by a middle class housewife, or by the landlord of the village. They may not allow them to escape from the bondage. Hence, the children must serve their lives in servitude till they get married and can sell their children to minimize their debt burden. The third category is the working children who are working as a part of family labour in agriculture and house based work. If they are working 10-12 hours a day with their parents without any scope for education, their position much or less similar to that of children working for employers. Even within the child labour, girls have additional responsibility due to social customs and beliefs.

The Constitution of India embodies several articles guaranteeing rights and privileges to children. These are complemented with numerous legislations that are in operation. India has also demonstrated its political commitment to the cause of children by ratifying in 1992 the landmark United Nation Convention on the Rights of the Child 1989 (UNCRC). According to UNCRC, the rights of the child include;
• Right to Survival
• Right to Development
• Right to Protection
• Right to Participation

As a signatory to the UNCRC, the Government of India is committed to protecting and restoring the rights of all children in the country.

4.2 CONSTITUTIONAL STATUS OF A CHILD

Concern for the welfare and development children is reflected in the provisions enacted in the constitution. Article 15(3) enables the State to special legislation inter alia, for children. Article 24 prohibits employment of children in factory, mines or engagement in any other hazardous employment.

Clause (c) and clause (f) of Article 39 of the Constitution of India provides inter alia that the State shall direct its policy towards securing inter alia that the tender age of children is not abused. Children are given facilities to develop in a healthy manner and in conditions of freedom and dignity. Article 41 makes a provision for right, to work, to education and to public assistance. Article 45 makes a provision for free compulsory education for children. Article 47 of the Constitution of India prescribes a duty on the State to raise the level of nutrition and the standard of living and to improve public health.

4.2.1 CHILD RIGHTS PROVISIONS IN THE CONSTITUTION OF INDIA IN GENERAL

1. Equality before law and equal protection of laws.¹

2. State can make special provisions for women and children.²

Article 15 of the Constitution of India is extension of the doctrine of equality as enshrined in Article 14 of the Constitution of India. In the eyes of the law, everybody is equal irrespective of his or her place of birth, age, sex, religion or race. The doctrine of equality is the core of the Constitution and Article 15 of the Constitution of India simply extends that doctrine. This clause is an exception to the rule against discrimination provided by clauses (1) and (2) of Article 15 of the Constitution of India.

¹Article 14 of the Constitution of India.
²Article 15(3) of the Constitution of India
India. Women and children require special treatment on account of their very nature. Article 15(3) empowers the State to make special provisions for them.

3. Right to freedom of speech and of expression, to form associations/xunions, move freely, etc.  
4. Right to life and liberty including right to food/clothing/shelter/health/basic necessities of life.  
5. It further provides safeguards upon arrest.  
6. It prohibits trafficking in human being and forced labour.

In *Peoples Union for Democratic Rights v. Union of India*\(^7\) the Supreme Court has considered the scope and ambit of Article 23 of the Constitution of India in detail. “It is not merely beggar which is constitutionally prohibited by Article 23, but also all other similar forms of forced labour. This Article strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values… where a person provides labour or service to another for remuneration which is less than the minimum wages, the labour or service provided by him clearly falls within the scope and ambit of the word “forced labour” under this purported Article. Such a person would be entitled to approach the court for enforcement of his fundamental rights under Article 23 by requesting the court to direct payment of the minimum wages to him so that the labour or service rendered by him ceases to be “forced labour” and the breach of Article 23 is remedied.”

In *BandhuMuktiMorcha v. Union of India*\(^8\) the Supreme Court has held that when an action is initiated in the Court through PIL, alleging the existence of bounded labour, it is good opportunity for the Government to examine whether labourers are made to provide forced labour. This is the constitutional obligation of the Government under Article 23. In the year 1976, the Parliament has enacted the Bonded Labour System Act, 1976.

7. It prohibits employment of child below 14 years in any factory/mine/hazardous employment. In *Peoples Union for Democratic Rights v. Union of India*\(^10\), a PIL was filed in the Supreme Court, complaining of violation of various labour laws and

\(^{3}\) Article 19(1) of Constitution of India.  
\(^{4}\) Article 21 of the Constitution of India.  
\(^{5}\) Article 22 of the Constitution of India  
\(^{6}\) Article 23 of the Constitution of India  
\(^{7}\) AIR 1982 SC 1473.  
\(^{8}\) AIR 1984 SC802.  
\(^{9}\) Article 24 of the Constitution of India  
\(^{10}\) AIR 1982 SC 1473.
employment of children in various construction works. In this case, an argument was
advanced that the Employment of Children Act, 1938 was not applicable to
construction work. Rejecting the argument, the Court held that the construction work
was hazardous work and therefore, a child below the age of 14 years should not be
employed in it. The court advised the State Government to ensure that there is no
violation of the Constitutional mandate of Article 24.

8. It ensures protection from abuse/exploitation/abandonment and ensures
opportunities to develop.\(^ {11} \) Though Article 39 falls under Directive Principles of the
State Policy, and the directive principles are not justiceable, even then the State is
bound to act in the consonance with the Directive Principles. In \textit{Vishal Jeet v. Union
of India}\(^ {12} \), a writ petition by way of Public Interest Litigation was filed in the Supreme
Court, seeking prevention of sexual exploitation of children and flesh trade by CBI
inquiry. In this case it was held that one of the objectives under clause (e) of 39 is that
the State should, in particular, direct its policy towards securing that childhood and
youth and protect against exploitation and against moral and material abandonment.
These objectives reflect the anxiety of the Great Constitution makers to protect and
safeguard the welfare of the children of our country. The Government of India has also,
in pursuance of these Constitutional provisions of clauses (e) and (f) evolved a national
policy for the welfare of the children. Further it was held by the Court in spite of the
stringent and rehabilitative provisions of law under various Acts, it cannot be said that
the desired result has been achieved.

\textbf{In M.C. Mehta v. State of Tamil Nadu}\(^ {13} \) a PIL was filed in the Supreme Court
against the employment of children in match factories. Supreme Court quoting Article
39(f) held, “we are of view that employment of children within the match factories
directly connected with the manufacturing process upto the final production of match
sticks of fireworks should not at all be permitted.”

9. State to provide educational opportunities and facilities.\(^ {14} \)

10. It further ensures free and compulsory education upto 14 years of age.\(^ {15} \) Formally it
was believed that fundamental rights are superior to directive principles. Now it is well
established that Directive Principles and Fundamental Rights are supplementary and

\(^ {11} \) Article 39 (e) and (f) of the Constitution of India
\(^ {12} \) AIR 1990 SC 1412.
\(^ {13} \) AIR (1997) SC 699
\(^ {14} \) Article 41 of the Constitution of India
\(^ {15} \) Article 45 of the Constitution of India
complementary to each other. In *Unni Krishnan v. State of A.P.*\(^{16}\), it has been held that fundamental rights must be construed in the light of directive principles. In this case, the right to education has been implicit in the right of life as enshrined in Article 21 of the Constitution of India. In *Francis Coralia Mullen’s case*\(^{17}\) the right to life has been held to include right to life with human dignity. Article 21 has been construed in the light of directive principles. The right to life with human dignity under Article 21 has been held to derive its life breath from the directive principles. The word “life” in Article 21 has received a very broad interpretation. It includes educational facilities also. In *Bandhu Mukti Morcha’s case*\(^{18}\) it has been held that the minimum requirements must be given which must exist in order to enable a person to live with human dignity. The right to life under Article 21 and the dignity of an individual cannot be reconciled unless it is accompanied with a right to education. Rights guaranteed under Article 19 cannot be fully appreciated unless a citizen is educated. In *Mohini Jain’s case*\(^{19}\), the right to education has been held to be concomitant to the fundamental rights. It has been also held that the State is under obligation to provide educational facilities to its citizens.

Regarding the importance of Article 45 of the Constitution of India, in *M. C. Mehta v. State of Tamil Nadu*\(^{20}\), the Supreme Court has said, “the spirit of the Constitution perhaps is that children should not be employed in factories as childhood is the formative period and in terms of Article 45 they are meant to be subjected to free and compulsory education until they complete the age of 14 years.

11. Promotes educational interests of the weaker sections of all people-protects them from social injustices and all form of exploitation.\(^{21}\)

12. State to improve public health and nutrition.\(^{22}\)

13. State to respect International law and treaty obligations.\(^{23}\)

4.2.2 CONSTITUTIONAL AND LEGISLATIVE PROVISIONS WITH RESPECT TO CHILD LABOUR.

Constitution provides for Equality before the Law.\(^{24}\) It states that the State shall not deny to any person equality before the law and equal protection of the laws within

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\(^{16}\)AIR 1993 SC 2178.
\(^{17}\)AIR 1981 SC 746.
\(^{18}\)AIR 1984 SC 802.
\(^{19}\)AIR 1992 SC 1858.
\(^{20}\)(1997) SC 699.
\(^{21}\) Article 46 of the Constitution of India
\(^{22}\) Article 47 of the Constitution of India
\(^{23}\) Article 51(c) of the Constitution of India
\(^{24}\) Article 14 of the Constitution of India
the territory of India. This Article employs two expression “equality before the law” and “equal protection of the law”. “The equal protection of law” is a corollary of the first expression “equality before the law” and it is difficult to imagine a situation in which violation of equal protection of law will not be the violation of equality before the law.

Constitution of India provides for the particular application of the general principle embodied in Article 14. Article 15(1) prohibits discrimination between the citizens on grounds only of;

A. Religion
B. Race.
C. Castes.
D. Sex.
E. Place of birth, or
F. Any of them.

Constitution of India provides that no citizen shall be subjected to any disability, restriction or conditions on grounds only of religion, sex, caste, place of birth or any of them regarding access to shops, public restaurants, hotels and places of resorts, which are maintained wholly or partly out of State fund or which has been dedicated to the use of general public.

Article 14 of the Constitution of India applies to all persons while Article 15 of the Constitution of India applies to citizen only. Article 15(3) of the Constitution of India creates an exception to the general rules provided in clause (1) and (2) of Article 15 of the Constitution of India. Constitution of India empowers the State to make special provisions with respect to women and children as they need special care and protection as discussed above. In accordance with this theory our parliament has passed several enactments like Equal Remuneration Act, 1976, The Medical Terminancy of Pregnancy Act, 1971, The Child Labour (Prohibition and Regulation) Act, 1986, etc.

25 Article 15 of the Constitution of India
26 Article 15 (3) of the Constitution of India
27 Article 15 (3) of the Constitution of India
Constitution of India states that traffic in human beings and other similar forms of forced labour are prohibited and any contravention to this provision shall be an offence punishable in accordance with the law.\(^{28}\) On the basis of this our parliament has passed the Bonded Labour System (Abolition) Act, 1976, providing for the Abolition of the bonded labour system. It is true that Article 23 of the Constitution of India does not make an express mention of slavery system. But it is implied in the expression traffic in human being. In view of the authorization under this Article, our parliament has also passed the Suppression of Immoral Traffic Act, 1956. Now this enactment is known as Immoral Traffic (Prevention) Act, 1956.

Constitution of India 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.\(^{29}\) In *M. C. Mehta v. State of Tamil Nadu*\(^ {30}\) the Supreme Court has delivered a very exhaustive judgment. In this case, the court has directed the setup of Child Labour Rehabilitation Welfare fund and ordered the offending employer to pay for each child an amount of Rs. 20,000-00 by way for compensation.

### 4.2.3 RIGHT TO EDUCATION UNDER ARTICLE 21A OF THE CONSTITUTION OF INDIA

India is a Socialist State, it aims to protect the standard of life and aims to provide a decent standard of living to its citizens. Thus, Article 21 of the Indian Constitution provides that

“No person shall be deprived of his life or personal liberty except according to procedure established by law”.

Over the years Article 21 has been liberally interpreted so as to mean something more than mere survival and mere existence. Therefore, it includes all those aspects of life which make a man’s life meaningful, complete and worth living with dignity. It aims at good quality of life.

The Supreme Court has implied ‘Right to Education’ as a fundamental right from Article 21. The word ‘life’ has been held to include ‘education’ because education promotes good and dignified life. If this provision is read cumulatively with Directive principle contained in Article 38\(^ {31}\), 39(a)\(^ {32}\), 41\(^ {33}\) and 45\(^ {34}\), the court opined that “it

\(^{28}\) Article 23 (1) of the Constitution of India

\(^{29}\) Article 24 of the Constitution of India

\(^{30}\) AIR 1997 SC 699.

\(^{31}\) Article 38 of the Constitution provides that ;
becomes clear that the framers of the constitution made it obligatory for the State to provide education for its citizens.”

Therefore, the Parliament in its 86th Amendment to the constitution in 2002 inserted Article 21A to the constitution which states that

"The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

Hence, education became a fundamental for all children between the age of six to fourteen and the Right of Children to Free and Compulsory Education Act, 2009 was passed by the Indian Parliament. It aims to achieve universalization of primary education in India in line with UNESCO’s education for all (EFA) goals and the Millennium Development Goals (MDG’S).

4.3 OTHER LEGISLATIVE ENACTMENTS

4.3.1 PROVISIONS OF FACTORY ACT, 1948 FOR THE BENEFIT OF WOMEN AND CHILD

Enumerating the provision of the Factory Act, 1948, it is necessary first to appreciate the definition of “Factory” as given in S.2(m) of the Act, 1948. The definition is as under:

Factory means any premises including the precincts thereof:

(a) Whereon ten or more workers are working, or where working on any days of the preceding twelve months and in any part of which a manufacturing process is being carried on.

(b) Whereon twenty or more persons are working, or where working on any day of proceeding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

“(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.
(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.”

32 Article 39(a) states that ; “ That the citizens, men and women equally, have the right to an adequate means of livelihood”
33 The shall, within the limits of its economics capacity development, make effective provisions for securing the right, to education and public assistance in cases of unemployment, oldage, sickness and disablement, and in other cases of undeserved want.
34 The States shall endeavour to provide early childhood care and education for all children until the complete the age of 6 years.
4.3.2 LATERINS AND URINALS FOR WOMEN (SECTION 19(1))

(a) Sufficient latrine and urinal accommodation shall be provided, conveniently suited and accessible to workers at all times when they are at factory.

(b) Accommodation shall be provided for male and female workers which shall be adequately lighted and ventilated and no latrine and urinal shall, unless specially exempted in writing by an intervening open space or ventilated passage. This accommodation shall be in clean and sanitary condition at all times. Sweepers shall be employed whose primary duty would be to keep the latrines, urinals and washing plate clean.

4.3.3 PROHIBITION ON OR NEAR MACHINERY IN MOTION (SECTION 22(2))

No woman and young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the woman or young person to risk of injury from any moving part either of that machine or to any adjacent machinery.

4.3.4 PROHIBITION OF WOMAN AND CHILD EMPLOYMENT NEAR COTTON OPENERS (SECTION 27)

No woman and child would be employed in any part of a factory for crossing cotton in which a cotton opener is at work. However, if the feed end of a cotton opener is in a room separated from the delivery end by a partition extending to the root or to such height as the inspector may in any particular case specify in writing. Woman and children may be employed on the side of the partition where the feed end is situated.

4.3.5 CRECHES (SECTION 48)

In every factory where more than 30 workers are ordinarily employed they should be provided with suitable rooms for the use of their children below six years of age. Adequate accommodation along with adequate light and ventilation should be provided in such rooms. The employer is liable to maintain such rooms in clean and sanitary condition.

4.3.18 INDIAN PENAL CODE, 1860

The code provides certain provisions to protect the interest of child considering their tender age.
**Act of a child under seven years of age.** - Nothing is an offence which is done by a child under seven years of age.35

**Act of a child above seven and under twelve of immature understanding.** - Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion.36

**Kidnapping and maiming a minor for purpose of begging.** - (1) whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of minor, in order that such minor may be employed or used for the purpose of begging shall be punished with imprisonment of either description of term which may extend to ten years and shall also be liable to fine.37

Indian Penal Code provides that whoever maims any minor in order that such minor may be employed and used for the purpose of begging shall be punished with imprisonment of life, and shall also be liable to fine.

Indian Penal Code further provides that where any person, not being the lawful guardian of a minor, employs or uses such minor for the purpose of begging, it shall be presumed, unless the contrary is proved, that such kidnapper otherwise obtained the custody of that minor in order that the minor might be employed or used for the purpose of begging.

“begging” can be defined as-soliciting or receiving alms in a public place, where under the pretence of singing, dancing, fortune telling, selling articles or otherwise; entering on any private premises for the purpose of soliciting or receiving alms; exposing or exhibiting with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal; using a minor as an exhibit for the purpose of soliciting or receiving alms.

For the above said purpose “minor” means-

(i) In the case of a male, a person under sixteen years of age, and

(ii) In the case of a female, a person under eighteen years of age.

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35Section 82 of the Indian Penal Code.
36Section 83 of the Indian Penal Code.
37Section 363 (A) of the Indian Penal Code.
**prosecution of minor girl** – Whoever by any means whatsoever, includes any minor girl under the age of eighteen years to go from any place or to do any act which intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.\(^\text{38}\)

**importation of girl from foreign country** – Whoever imports into India from any country outside India or from any State of Jammu and Kashmir any girl under the age of twenty one years with intent that she may be or knowingly it to be likely that she will be force or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.\(^\text{39}\)

**kidnapping or abducting child under ten years with intent to steal from its persons** – Whoever kidnaps or abduct any child under the age of ten years with the intention of taking dishonestly any moving property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.\(^\text{40}\)

**selling minor for purpose of prostitution etc** – Whoever sells, lets to hire or otherwise disposes of any person under the age of eighteen years with the intent that such person shall at any age be with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punishable with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.\(^\text{41}\)

When a female under the age of eighteen year is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

“illicit intercourse” means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognized by the personal laws or custom of the community of which they belong, or

\(^\text{38}\)Section 366A of the Indian Penal Code.  
\(^\text{39}\)Section 363B of the Indian Penal Code.  
\(^\text{40}\)Section 369 of the Indian Penal Code.  
\(^\text{41}\)Section 372 of the Indian Penal Code.
where they belong to different communities, of both such communities, as constituting between them a quasi-martial relation. 42

_**Unlawful compulsory labour**_—Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**4.3.7   CODE OF CRIMINAL PROCEDURE, 1973**

On the basis of reasonable restrictions and in view of special protection certain provision are provided in this Code for protection and separate treatment to the children which are as under:-

**Order for maintenance of wives, children and parents** —In short this provision is made for maintenance of minor child (legitimate and illegitimate) whether married or not unable to maintain itself and even after attaining majority (except in case of a married daughter) where such child is by reason of physical or mental abnormality or injury unable to maintain itself. 43

**Police officer's power to require attendance of witnesses** —Criminal Procedure Code provides a proviso clause that no male person under the age of fifteen year or women shall be required by any police officer making investigation to attend as witness at any place other than the place in which such male person and woman resides. 44

**When bail may be taken in case of non-bailable offence** —The proviso clause provides that in case of a person under the age of sixteen years or a women or sick or infirm, provision has been made for releasing him/her on bail, even when there are grounds to believe that he/she has been guilty of an offence punishable with death or life imprisonment and even if he/she is a previous convict of an offence punishable with death or life imprisonment or imprisonment for seven years or more, or when he/she has been previously convicted twice or more for a non-bailable and cognizable offence. 45

42 Section 374 of the Indian Penal Code.
43 Section 125 of the Criminal Procedure Code.
44 Section 160 of the Criminal Procedure Code.
45 Section 437 of the Criminal Procedure Code.
4.3.8 GUARDIAN AND WARDS ACT, 1890

The Act casts a legal duty on the Court to consider the welfare of minor while appointing guardian. The Act states that “matter to be considered by the Court in appointing guardian” relating to welfare of the minor.\(^{46}\) The provision is directly related with the child labour, because sometimes the problem arises on account of irresponsible act of parents and guardians saddling their evils on their children. If analysed critically, the problem of child and bonded labour system is connected with the inspection of human race, when women and children were considered as property and commodity of man. In ancient days and in early jurisprudence, the duty was cast on each individual male to look after and to maintain his wife and children even by committing theft. The concept of treating wife and children as property compels the debtor to serve the creditors for realization of debt. Sometime even the father or guardian started pledging the labour of their child and wife to the creditor. In extreme situation there were cases, even to sell the wife and children, resulting bonded and child labour system in the society. Basically slavery is the outcome of this system. As published in some print-media that in “Kalahandi” some time the mothers sell their child to fulfill their own hunger also.

4.3.9 CHILDREN (PLEDGING OF LABOUR) ACT, 1933

This is an important Act to prohibit the pledging the labour of children. Apart from employer, the Act provides provision to punish even the parents and guardians making agreement to pledge the labour of a child. The Act is more relevant in the present scenario, especially for the parents and guardians who are irresponsible and saddling their evils to their children and instead of taking benefits of various component plans, they are sitting idle, but enjoying their life on the earning of their tender age children. Now the time has come that such parents and guardians should be dealt seriously under this Act. But unfortunately the Act do not provide for proper action. The government should now think over on this issue for effective implementation of the Act.

4.3.10 BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

Thought the Act, 1976 is not directly concerned with the child labour, yet the entire object is to protect the interest of poor, unorganized and illiterate work-force. The basic object of this Act is to check the miseries of ill-fated persons deprived of basic human needs and are compelled for “beggar” and forced labour. The Act, 1976

\(^{46}\) Section 17 of the Guardian and Wards Act, 1890
has been enacted basically to prevent the economic and physical exploitation of the weaker sections of the society. Moreover, the Act, 1976 is related with the constitutional provisions of Article 23 and Article 24 of the Constitution of India. Traffic in human being, beggar, forced labour and other similar forms of labour practice by any one is within the sweep of Article 23 of the Constitution. In view of the observation of Hon’ble Apex Court in People’s Union for Democratic Rights and others v. Union of India and Bandhu Mukti Morcha v. Union of India, an exceptional clause has been inserted under section 2 of this Act vide Act no. 73 of 1985.

4.3.11 INDIAN CONTRACT ACT, 1872

It is statute for private contract between the parties to regulate certain conditions, but it must be legal and enforceable. Any contract cannot be enforced which needs free consent. Hence, the person entering in the contract must be competent to contract. Contract Act, 1872 says that the person contracting must be major; meaning thereby the person below the age of eighteen years, being minor is not competent to contract. Therefore the guardian being competent to look after the welfare of the minor child is competent to contract for the labour of his child. Thus, the parents and guardians are held responsible to pledge the labour of their child and are liable to be dealt accordingly.

4.3.12 INDIAN MINES ACT, 1952

Mining operation is mostly concerned below the surface, which is not suitable for non-adult persons. The Act, 1952 prohibits, the employment of a person below the age of eighteen years, as such there is no scope to employ child labour in mining operation below the surface. Moreover children are not employed in mining operation.

4.3.13 BEEDI AND CIGAR WORKERS (CONDITION OF EMPLOYMENT) ACT 1966

This is a special statute for the welfare of the workers engaged in making Beedi and Cigar, and to regulate the conditions of their service. The Act prohibits the employment of child in any industrial premises, who has not completed fourteen years

47 1982 (3) SCC 235
48 1984 (3) SCC 161.
49 Section 11 of the Indian Contract Act, 1872
50 Section 40 of the Indian Mines Act, 1952
of age.\textsuperscript{51} But in the view of provision of section 3 Child Labour (Prohibition and Regulation) Act, 1986, the provision of section 24 of Beedi and Cigar Workers (Conditions of Employment) Act, 1966 become in fructuous to the extent of prohibition, because the employment of child labour in Beedi making process itself as shown in Part-B of the Act, 1986 irrespective of industrial or any other premises.

\textbf{4.3.14 ATOMIC ENERGY ACT, 1962}

The subject of atomic energy is completely under the control of Government of India and the chances to employ child labour are very remote. Inspite of this the Central Government under the Act, 1962 has formulated “Radiation Protection Rules, 1971”\textsuperscript{52} and Rule 5 prohibits the employment of person below the age of 18 years as “radiation worker” except with the prior permission in writing from the competent authority appointed and duly notified by the Central Government.

\textbf{4.3.15 JUVENILE JUSTICE ACT, 1986 (ACT NO. 53 OF 1986)}

This Act was enacted prior to Child Labour (Prohibition and Regulation) Act, 1986. The field of operation of both the statutes are quite different, but the provision of this statute has impact on the problem of child labour in the country. This Act, 1986 deals with and provides for the care, protection, treatment, development, and rehabilitation of neglected and delinquent child and juveniles and for the adjudication of certain matters relating to them. The term “juvenile” is defined under the Act, 1986 means a boy who has not attained the age of eighteen years.\textsuperscript{53} “Neglected Juvenile” has been defined under the Act, 1986 means a juvenile\textsuperscript{54} who-

(i) is found begging or;
(ii) is found without any home or settled place of abode and without any ostensible means of subsistence and is destitute;
(iii) has a parent and guardian who is unfit or incapacitated to exercise the control over the juvenile; or
(iv) lives in a brothel or with a prostitute or frequently goes to any place used for the prostitution, or is found to associate with any prostitute or any other person who leads an immoral drunken or deprived life;
(v) who is being or likely to be abused or exploited for immoral or illegal purposes or unconscionable gain.

\textsuperscript{51} Section 24 of the Beedi and Cigar Workers (Condition of Employment ) Act, 1966
\textsuperscript{52} Section 30 of Atomic Energy Act, 1962
\textsuperscript{53} Section 2 (h) of the Juvenile Justice Act, 1986
\textsuperscript{54} Section 2 (e) of the Juvenile Justice Act, 1986
If this wide definition of neglected juveniles is tested on the touch stone of the definition of “child labour”, it is obvious some of the juvenile below the age of fourteen years may become the child labour, but child labour having their place of abode and residence and consent of their parents and guardian and having their employer cannot be called juvenile delinquent. The Juvenile Justice Act deals only and concerned with those children who are delinquent and living in the conditions explained and enumerated under section 2(e) of the Act, 1986. However, the Act, 1986 has provided separate procedure and machinery to deal with such juveniles.

4.3.16 THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986.

This is a comprehensive and special enactment on the prohibition of employment of child labour in certain occupations and processes and regulates the working condition of the child labour in other establishments in which none of the occupations or processes referred in Part A or Part B of section 3 of the Act, 1986 is carried on. Specific provision has been made under the Act, regarding amendment of schedule. Constitution of technical advisory committee, amending the provisions of some other enactments relating to minimum age and penal clause, as well as regulatory provisions for the children working in non-hazardous occupations processes and establishments. This Act of 1986 has given wide coverage to combat with the elimination of child employment and its related problems, but still there is scope for amendments which are being proposed from various corners.

The child is also a citizen of the country under Article 5 of the Constitution of India, and he has full right to get ample protection against infringement of their fundamental as well as their human rights, guaranteed under the constitution of India. Simultaneously Article 15(3) of the Constitution provides the power to enact special provisions for women and children. Considering the plight of child labour, as well as the flaws in the laws on the subject, the Parliamentary Standing Committee on labour and welfare had recommended that the employer may be converged within the frame work of some law to contribute some share from their own profit for education, health and welfare of the child labour of the country. National Labour Institute was also asked to conduct social survey regarding social and economic scenario prevailing around the child labour.
The Mahatma Gandhi National Rural Employment Guarantee Act, (NAREGA) was notified on September 7, 2005. The objective of the Act is to enhance livelihood security in rural areas by providing at least 100 days of guaranteed wage employment in a financial year to every household whose adult members volunteer to do unskilled manual work.

**NAREGA GOAL**

- Strong social safety for the vulnerable groups by providing a fall-back employment source, when other employment alternatives are scarce or inadequate

- Growth engine for sustainable development of an agricultural economy. Through the process of providing employment on works that address causes of chronic poverty such as drought, deforestation and soil erosion, the Act seeks to strengthen the natural resource base of rural livelihood and create durable assets in rural areas. Effectively implemented, NAREGA has the potential to transform the geography of poverty

- Empowerment of rural poor through the processes of a rights-based Law

- New ways of doing business, as a model of governance reform anchored on the principles of transparency and grass root democracy

Thus, NAREGA fosters conditions for inclusive growth ranging from basic wage security and recharging rural economy to a transformative empowerment process of democracy

The Act was notified in 200 districts in the first phase with effect from February 2nd 2006 and then extended to additional 130 districts in the financial year 2007-2008 (113 districts were notified with effect from April 1st 2007, and 17 districts in UP were notified with effect from May 15th 2007). The remaining districts have been notified under the NAREGA with effect from April 1, 2008. Thus NAREGA covers the entire country with the exception of districts that have a hundred percent urban population.

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55 [http://muktsar.nic.in/drda/nrega.htm](http://muktsar.nic.in/drda/nrega.htm)
SALIENT FEATURES OF THE ACT

i) Adult members of a rural household, willing to do unskilled manual work, may apply for registration in writing or orally to the local Gram Panchayat.

ii) The Gram Panchayat after due verification will issue a Job Card. The Job Card will bear the photograph of all adult members of the household willing to work under NAREGA and is free of cost.

iii) The Job Card should be issued within 15 days of application.

iv) A Job Card holder may submit a written application for employment to the Gram Panchayat, stating the time and duration for which work is sought. The minimum days of employment have to be at least fourteen.

v) The Gram Panchayat will issue a dated receipt of the written application for employment, against which the guarantee of providing employment within 15 days operates.

vi) Employment will be given within 15 days of application for work, if it is not then, daily unemployment allowance as per the Act, has to be paid. Liability of payment of unemployment allowance is on the States.

vii) Work should ordinarily be provided within 5 km radius of the village. In case work is provided beyond 5 km, extra wages of 10% are payable to meet additional transportation and living expenses.

viii) Wages are to be paid according to the Minimum Wages Act 1948 for agricultural laborers in the State, unless the Centre notifies a wage rate which will not be less than Rs. 60/ per day. Equal wages will be provided to both men and women.

ix) Wages are to be paid according to piece rate or daily rate. Disbursement of wages has to be done on weekly basis and not beyond a fortnight in any case.

x) At least one-third beneficiaries shall be women who have registered and requested work under the scheme.

xi) Work site facilities such as crèche, drinking water, shelter have to be provided.

xii) The shelf of projects for a village will be recommended by the gram sabha and approved by the Zilla Panchayat.

xiii) At least 50% of works will be allotted to Gram Panchayats for execution.

xiv) Permissible works predominantly include water and soil conservation, forestation and land development works.
xv) A 60:40 wage and material ratio has to be maintained. No contractors and machinery is allowed.

xvi) The Central Government bears the 100 percent wage cost of unskilled manual labor and 75 percent of the material cost including the wages of skilled and semi skilled workers.

xvii) Social Audit has to be done by the Gram Sabha.

xviii) Grievance redressal mechanisms have to be put in place for ensuring a responsive implementation process.

xix) All accounts and records relating to the Scheme should be available for public scrutiny.

PARADIGM SHIFT FROM WAGE EMPLOYMENT PROGRAMMES

NAREGA marks a paradigm shift from all precedent wage employment programmes. The significant aspects of this paradigm shift are captured below:

NAREGA provides a statutory guarantee of wage employment.

It provides a rights-based framework for wage employment. Employment is dependent upon the worker exercising the choice to apply for registration, obtain a Job Card, and seek employment for the time and duration that the worker wants.

There is a 15 day time limit for fulfilling the legal guarantee of providing employment.

i) The legal mandate of providing employment in a time bound manner is underpinned by the provision of Unemployment Allowance.

The Act is designed to offer an incentive structure to the States for providing employment as ninety percent of the cost for employment provided is borne by the Centre. There is a concomitant disincentive for not providing employment as the States then bear the double indemnity of unemployment and the cost of unemployment allowance.

Unlike the earlier wage employment programmes that were allocation based, NAREGA is demand driven. Resource transfer under NREGA is based on the demand for employment and this provides another critical incentive to States to level the Act to meet the employment needs of the poor.

ii) NAREGA has extensive inbuilt transparency safeguards

a. Documents: Job Cards recording entitlements (in the custody of workers) written application for employment, Muster Rolls, Measurement Books and Asset Registers.

b. Processes: Acceptance of employment application, issue of dated receipts, time bound work allocation and wage payment, Citizen Information Boards at
worksites, Vigilance Monitoring Committees, regular block, District and State Level Inspections and Social Audits

iii) The public delivery system has been made accountable, as it envisages an Annual Report on the outcomes of NAREGA to be presented by the Central Government to the Parliament and to the Legislature by the State Government. Specifically personnel responsible for implementing the Act have been made legally responsible for delivering the guarantee under the Act.