CHAPTER - V

CHILD LABOR:— CONSTITUTIONAL AND LEGAL FRAMEWORK

The problem of child labour has been a worldwide problem. Industrialization on a large scale leads to the employment of children in factories, workshops and other unregulated occupations.¹ It become a matter of deep concern to find out ways and means which may put an end to the Employment and Exploitation of Children.² This progress has especially helped in bringing down the incidence of child labour.

Law is the pivot around which the norms of society cluster. In a complex social order, the interference of law is indeed imperative law has always been viewed as instruments to Judge social norms, people’s behavior and all their manifestations.

Child welfare is an expression which embraces those services and institutions conceived with the physical social and psychological well being of children, and it is particularly concerned with children lacking normal parental care and supervision.³ The most widely accepted principle of modern child welfare is that every child needs a home and family of his own.

Though there are certain constitution guarantees for such children, but there are known for their breach rather than compliance.⁴ Every one child in form in India is deprived of his constitutional safeguards as provides protection to children in employment and health.
Child Labour: Constitutional Philosophy.

The perusal of the debates of constituent assembly reveals the inadequacy of discussion on the status of children for the reason that they thought that the problem of child labour welfare needs no discussion because of his largely accepted predominance, so when the constitution was adopted, each and every member of the assembly recognized the need for granting special protection to children. They unequivocally supported the view that the children should also have their distributive justice in future in their free India therefore, special provision ensuing child labour welfare have been incorporated in our national charter with the intention that they are no longer exploited by the people to accomplish their selfish ends. That is why the opening words of the preamble show that the people of India have solemnly committed themselves to secure to all citizen, which impliedly include the children as well, justice social, economic and political, liberty of thought expression, belief, faith and worship equality of status and opportunity and to promote among them all, fraternity assuring the dignity of the individual. There are various provisions in all National charter which obligate the state to ensure that the tender age of children is not abused and they are not exposed to economic necessity to enter avocation unsuited to their age and strength.

Adequate discussion on the status of children is significantly absent in the debates of the constitution of India. It recognizes the need for granting special protection to children. The founding father were wise enough to provide that the children should also have their distributing justice in future in free
India. Therefore, special provision ensuring justice to children have been incorporated in part III with fundamental rights and part IV devoted to Directive Principle of states policy.

5.1 Child Labour Welfare Philosophy under Fundamental Rights

Part III of the constitution of India contains a long list of fundamental rights. This chapter has very well been described as the magna carta of India.9

Fundamental Right are Limitations upon all the powers of the Government, executive as well as legislative and they are essential to the preservation of public and private rights, notwithstanding the representative character of political institutions.10 The rights are regarded as fundamentals because they are most essential for the individual for the development of his full intellectual, moral and spiritual potentialities. The negation of these rights well declaration of fundamental rights in the constitution directions in the interest of the liberty of the citizens.

The chapter on Fundamental Right in Indian Constitution guarantees some fundamental rights only to the Citizens11 of India while the others are guaranteed to any persons12 (i.e., for both citizens and non-citizens) within which the fundamental rights of the children are also implicitly included. The children have right to enjoy all the fundamental rights which are guaranteed to the citizens of India under Articles 15, 16, 19 and 29 of the Constitution because the children in India are also citizens of India.13 The fundamental rights which are available only to the citizens are:
1. The right not to be discriminated against on the grounds of religion, race, caste, sex or place of birth (Art. 15).

2. The right to equality of opportunity in the matter of public employment (Art. 16).

3. The right to six freedoms enumerated in Art. 19. i.e. freedom of speech and expression, assembly, association, movement, residence and profession.

4. Cultural and educational rights conferred by Arts. 29 and 30.

There are also some fundamental rights expressly provided for children and some other fundamental rights which are also applicable for children. Article 14 guarantees equality before law and equal protection of laws to all persons within the territory of India and Article 15 prohibits discrimination on the grounds of religion race, caste, sex, class or place of birth or any of them. But Article 15(3) enables the state to make special provisions in its laws for giving favourable treatment to children and women. Though, no ground is mentioned, preferential treatment is permitted on consideration of inherent weakness of children. Article 15(3) serves as an exception to Article 15(1) and 15(2), Article 15 in general prohibits the discrimination on the ground of religion, race, caste sex or place of birth. Mr. H.M. Seerval is of the view that since Article 15(1) does not make age a prohibited ground of discrimination the reference to children in Article 15(3) appears to be pointless.¹⁴
It is submitted that a specific positive provision serves the purpose of avoiding any controversy and demonstrates the concern, however, inadequate of the framers of the Constitution that the state shall strive to promote the welfare of the people including children. Our solicitude for children and repulsion for the exploitation of children of tender age, impelled our founding fathers to make a specific mention of them\(^{15}\), the state can made law for welfare of children giving them preferential treatment over other persons in the society.

Article 21 is to provide for the protection of life and personal liberty of the people including. “Right to Life” in the context has been held to be not a mere animal existence\(^{16}\) but it is to be with human dignity and values.\(^{17}\)

Article 23 of the constitution prohibits traffic in human beings, begar and other similar forms of forced labour and exploitation. Although this article does not specifically speak of children, yet it is applied to them and in more relevant in their context because children are the most valuable section of the society. It is a known fact that many children are exploited even by the parents who allows their exploitation because of their poverty. And in the absence of parents their exploitation by close relatives still deeper. They are deprived of education. Made to do all sorts of work injurious to their health and personality.\(^{18}\) In rural areas children are pledged by destitute parents to the landlords as full-time servant or part-time worker to look after both domestic and agricultural operation. In urban areas, the exploitation of children in myriad form exists such as helpers to artisans and skilled workers and also as domestic servants. Millions of children are exploited in violation of this fundamental
right and no adequate legislature and administrative measures have been taken by the state.\textsuperscript{19}

In reference to children the work "begar" can be given a wide connotation. Even inadequate payment for the work rendered by the child amount to begar or forced labour. The most atrocious and heinous crime against helpless children is that they are captured and maintained by criminal ganges to indulge them in begging business. Sometimes, the children of tender age are enticed for the flesh trade, thus all in violation of Article 23.\textsuperscript{24}

**Form of Forced Labour**

In another landmark case, this one brought on behalf of a group of bonded quarry workers in the early 1980s, the Supreme Court ruled that "(i)t is the plainest requirement of Article 21 and 23 of the Constitution that bonded labourers must be identified and released and on release, they must be suitably rehabilitated... [A]ny failure of action on the part of the State Government[s] in implementing the provisions of [the Bonded Labour System (Abolition) Act] would be the clearest violation of Article 21 [and] Article 23 of the Constitution".\textsuperscript{21}

Article 24 prohibits the employment of children below the age of 14 years in factories, mines or hazardous employment. But in the context of the prevailing poverty in the country it would be extremely difficult to implement the above provision.\textsuperscript{22} Employment of children below a particular age is also prohibited so also hazardous or injurious work may be prohibited to children taking into consideration their physical structure.\textsuperscript{23} This article does not create
an absolute bar to the employment of children below the age of 14 years. Moreover, it does not prohibit their employment altogether. The employment is prohibited only in factory or mine or in any other hazardous occupation. However, this provision is to be understood in the light of realities and economic need of parents and children in our society. As Article 24 prohibits the employment of children below the age of 14 years, it is submitted that every with respect to children above the age of 14 years, all agreements either express or implied are voidable and are of doubtful validity in case of exploitation.24 Further, Article 24 is plainly and indubitably enforceable against every one and by reason of its compulsive mandate, no one can employ a child below the age of 14 years in a 'hazardous employment'.25 This provision raises a question as to what are the 'hazardous' employment. Hazardous employment of children below 14 years is a constitutional prohibition which even if not followed up by the appropriate legislation, must operate proprio vigore.26 It is therefore, necessary to indentify the employment which may be called 'hazards' employment. Thus Article 24 is an additional precautionary measures securing distributive justice to children.

There are also the fundamental rights which are available to any person.27 Thus the question arises whether the fundamental rights which are available to a 'person' are also available to the child or not? The answer to this question finds in the answer to the question whether the word 'person' includes the child or not? The India Constitution does not define the word 'person' obviously for child a 'person' cannot include an 'artificial person'. But the question still remains whether an unborn child is included in the definition of
'person' as used in Article 14, 17, 18(1), 20, 21, 22, 23 25, 26, 27, 28 and 32 of the Indian Constitution. There is no direct decision of Indian Supreme Court on this point. The Allahabad High Court, held that for the purpose of Section 304-A(a) of Indian Penal Code, the word 'person' includes a child born or unborn. A child in womb can be regarded as a living entity with a life of its own. In Hindu law a child in Womb is deemed to be in existence as a person and is entitled to share the joint family property. Thus, the fundamental rights which are variable to any 'person' may also be available to a child.

5.2 Child Labour Welfare Philosophy Under Directive Principles of State Policy

The underlying principles of the Directive Principles of State Policy is "To fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution." Through such a social revolution the constitution also seeks to achieve the objectives of the child welfare. To achieve the goals of child welfare, the constitution has some provisions in Part IV. The Directive Principles of State Policy have been designed with an earnest zeal to strive to promote the welfare of people by securing and protecting as effectively as it may a social order in which justice, social, economical and political shall inform all the institutions of national life. Naturally, an effective implementation of this principle results, in promoting the welfare of the people through social, economic and political justice and in this turn is expected to promote proportionately, the child welfare also.

Article 39(e) and (f) direct the state to evolve a policy eliminating the abuse of tender age and to free children from the circumstances forcing them to
enter into avocations unsuited to their age or strength. The state is also directed to create social and economical conditions and infrastructure for the healthy development of children and to provide facilities and climate for exercise of freedoms and maintenance of dignity. The State is further directed to protect the children against exploitation and moral and material abandonment.\textsuperscript{32}

Article 41 deals with the right to work education and public assistance in certain cases. Though it does not mention children the ending words “....... and in other cases of undeserved want”. Article 41: Right to work to education public assistance in certain cases: The state shall be within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disblement, and in other cause of deserved want, It covers the children as the suffering children deserved the least fate as in no case they can be held responsible for their past sins. Hence its the duty of state to provide social assistance to all the children who suffer for want of basic necessities of life. The implementation of this provision is also expected to promote the welfare of the children proportionately and to ensure distributive justice to them.

Article 42, requires the state to make provisions for securing just and humane conditions of work and for maternity relief. The measures for maternity relief are meant for expectant mothers and mothers during the period of pregnancy and after the child birth. these measures meant for providing proper health care and other facilities to the mothers before and after the child
birth are expected to promote the health of children and to provide healthy environments for their bringing up.

Under Article 45 a duty is imposed upon the state to provide free and compulsory education within a period of ten years of the commencement of the constitution for all the children until they complete the age of 14 years. This Directive signifies that it is not only confined to primary education, but extends to free education whatever it may be upon the age of 14 years. Article 45 is thus supplementary to Article 24 on the ground that when the child is not to be employed before the age of 14 years, he is to be kept occupied in some educational institutions. It is suggested that Article 24 in turn supplements the clauses (e) and (f) of Article 39, thus ensuring distributive justice to children in the matter of education. It is suggested that Articles 24 and 45 should be amended so as to raise that age limit form 14 to 16 years. By doing so the children's education at least up to matriculation, would be ensured or the proper growth and development of their personality. There are various state Acts, which stipulate the upper age limit of 16 years.

Article 46 provides that the state shall promote with special care, the educational and economic interests of the weaker section of the people, and in particular, of scheduled tribes, and shall protect them from social injustice and all forms of exploitation. The implementation of this principle, while promoting the economic and educational interests of the weaker section of the people particularly those of scheduled castes and scheduled tribes, will indirectly promote the welfare of the children of these sections of the society.
need the welfare measures most because of the appealing poverty and backwardness of their parents.

Article 47 imposes a primary duty upon the state to raise the level of nutrition and the standard of living of its people and improvement of public health. Thus it is the responsibility of the state to provide nutritious food to the children as the word “people” includes and only adults but children as well as perhaps this provision become more relevant in case of children as the malnutrition can cause irreparable danger to the personality of the children though mental retardation and blindness.

Through these directives are not intercepte by the Court, yet these leave been declared to the fundamental in the governance of the country. It is the obligation of the state to apply these principles in making laws. If the government ignores them it will certainly have to answer for them before the electorate at the time of the election. Thus, it will not be correct to say that there is no sanction of enforceability behind these directives. In our democratic setup, vigilant public opinion is the real force behind the political institution which stands for the benefit of individual. The actions of the government are subject to scrutiny by the masses and distinguished leader of the different parties. If the government pursues a policy in accordance with the principles of the constitution, people tolerate it, otherwise they oust it in the next election. Since these directives relating to the welfare of children have also been embodied in the constitution, the government are apt to implement them. Though they do not have legal force behind them but the highest tribunal, i.e., public opinion behind them.
Furthermore, Article 31-C gives precedence to all the directive principles over the fundamental rights. According to this Article, if a law is enacted for giving effect to any of the directive mentioned in Part IV its validity cannot be challenged in the courts of Law on the ground that it is inconsistent with or takes away or abridges any of the right guaranteed by Article 14 or 19 of the constitution. This position has now been altered by the Supreme Court in Minerve Mills\(^3^7\) case in which the Court held that Article 31-C to the extent it was amended by 42\(^{nd}\) amendment Act is unconstitutional, It is now confined to directives contained in Article 39(a) and (c) however, the court will have power to examine whether the law is really intended to give effect to directives or it is intended, in the guise of giving effect to directives, to achieve some other purpose.\(^3^8\)

5.3 Child Labour under Social Labour Legislations

Every society has its own pattern of life suited to their livelihood. this pattern of life in the old society was regulated through its norms. Social norms and values are upheld by an approved machinery of the society to regulate and maintain the social order. In a complex society, where social system is easily broken it became much more difficult to maintain the social system. In such situation, formal law is helpful. The major functions of the legal system are (Gangrade 1982) (1) maintenance of public order, (2) upholding rights and duties, (3) facilitating co-operation (4) confirming legitimacy, (5) Protecting the poor and the needy.
In every society, old traditions, values, and norms create difficulty in adopting new change for development and growth of its members. Therefore reformation is needed to change its old system to meet the needs for their welfare and development. Long ago, child labour was not a social problem, but with the change in social understanding, child labour needed legislative protection against their exploitation and for their proper growth and development.40

Child labour in both an economic practice as well as a social evil. It has existed in some form from time immemorial. But it was way after the advent of factory type units in the middle of the 19th century that children began being employed in industries where they worked for long hours under appealing conditions.41 Child labour legislations did not receive much attention during British era. There was no integrated approach about the well-being of child labour. They were touched upon incidently in both in civil and criminal legislations. There was no specific statutory measures for the care, protection and welfare of the child labour and consequences was that the employers exploited their on a wider scale accomplish their selfish ends.41

The foregoing chapter brought to light a distressing fact that children of varying ages, are not only exploited but abused in a work place. They became victims of personal aggrandisement, greed and even lust. It is a party that there helpless children are even sexually assaulted in a society which claims to be modern and civilised. It is high time to think seriously how best to protect them from these vultures, whose main aim is to fillfil these greed for
money while the total eradication at this social evil cannot be completely eradicated. Perhaps in some situation that may not even be desirable or feasible but efforts have to be made to minimise their hardships and sufferings and accord them the rightful place in the society. This is possible by providing them protection both voluntarily as well as legally, and heating an awareness in the children and the society to which they belong.

**CHILD LABOUR LEGISLATION**

These essence of any legislation is to protect and safeguard the interest of the people from the onslaught of exploitation of any form or nature. In fact laws are the expressions of collective conscience of society. These are enacted to society to regulate its affairs in a satisfactory manner. The passage laws derive the social sanctions from various international as well as national conventions. Starting from the promises that children are the most valuable asset of any nation, that child labour is injurious to the physical, mental moral and social development of children, and that some special measures are urgently required to protect them form various kinds of adverse effects of the work undertaken by them, various provisions have been made at the national and international levels.

Before, initiating a discussion on child labour it would be in the fitness of things to know what exactly child labour force constitutes. It is unfortunate that till now concrete definition and child labour has emerged. In fact different Acts have defined child labour differently. Perhaps this has been done keeping in view the seriousness of problems of children working in
different sectors of economy. This is clearly demonstrated when we examine Article 24 of the Indian Constitution which says “No child below the age of fourteen shall be employed to work in any factory or mine a employed in any hazardous employment”.\textsuperscript{43} Contrary to this section 82 of the Indian Penal Code reads, “nothing is an offence which is done by a child above seven years and under twelve who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on the occasion”.\textsuperscript{44} Surprisingly enough the Indian majority Act, 1984 has put the majority age at eighteen years whereas the vaccination Act of 1880 puts it at fourteen years in the case of boys and eighteen in the case of girls. Such is the confusion prevailing in the rank of legal luminaries that are wonders as to who is a child in the eyes of law.

The child has been subject of special laws and legal provisions. Because of its tender age, weak physique, and inadequately developed mind and understanding, it needs protection against moral and physical harm and exploitation by others. In fact the formative years of its life, the child needs special care service to realize its full potential for growth and development. There are about 300 central and state statutes concerning children. These have been enacted with an intention to protect and help children and achieve the goal of child labour welfare enshrined in our national charter.\textsuperscript{45}

The constitution makers were conscious of the need for special care for children and, therefrom provision to the welfare to the children dealing especially with the protective child labour have been envisaged in our national charter.\textsuperscript{46} Accordingly our national policy provision for Children,
1974, lays special stress on the responsibility of the nation for physical, mental, moral and special development of children. All this calls for a great deal of legislative activity. The subject of "child" does not fall exclusively either in the Union (Central) or the State field. Different matters related to child care and development are distributed among the Union: state and concurrent list of the constitution. It is not only in India but in other industrialized countries including those developed ones that the present labour legislation is aimed to provide legal protection to child labour who constitute an important section of wage-earning population. The underlying conviction of all labour legislations is that it is now of the principal duties of the state to protect and safeguard the interest and well-being of workers, irrespective of their age, caste, creed and colour.47

The welfare state, as the modern 'partia potestas'48 is required to see that childhood is not abused. The dignity of the individual, the basis of the democratic society has been assumed by the constitution by declaring the fundamental rights of the individual on the one hand, and by forbidding the traffic in human beings, begar and exploitation of youth and childhood on the other. The traffic in human beings, means buying and selling wrongfully of human beings and includes slavery, bandhak mazdoor and immoral traffic in women.49

It may be submitted that the labour legislation in India including protective legislation for children has been greatly influenced and is the result of various inventions50 and recommendations adopted by International Labour
Organisation. Beside constitutional provisions, there are at present 13 major legislative enactments which provides legal protection to children in various occupations. There are:

i. The Children (Pledging of Labour) Act, 1983;

ii. The Employment of Children Act, 1938;

iii. The Minimum Wages Act, 1948; and rules made thereunder by the government;

iv. The Factories Act, 1948;

v. The Plantations Labour Act, 1951;

vi. The Mines Act, 1952;

vii. The Merchant Shipping Act, 1958;

viii. The Motor Transport Workers Act, 1961;

ix. The Apprentices Act, 1961;

x. The Atomic Energy Act, 1962;

xi. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966;

xii. The Shops and Establishments Act in various states.


From time to time, amendments have been made in most of the above statutes, because of the progressive outlook of the governments for improving the conditions of the important legislations which regulate the working conditions of child workers and mitigate the adverse effect of employment on their health, education and training, etc.
The main object of this Act is to eradicate the evils arising from the pledging of labour of young children by their parents employers in lieu of loans or advances.

Previously, the Act extended to whole of India except Jammu and Kashmir, but after September 1, 1971, it has been extended to the Jammu and Kashmir also.52

The Act declares an agreement, oral or written, to pledge the labour of children, whereby the parents or the guardian of a child, in return of any payment or benefit to be received, undertakes to cause or allow the services of a child to be utilized in any employment, to be void.53 “However, an agreement made without detriment in a child and not made in consideration of any benefit other than reasonable wages to be paid for the child’s service and terminable at more than a week’s notice is not to be deemed to be an illegal agreement.”54 A person who knowingly enters into an agreement with a parent or guardian of a child whereby such parent or guardian pledges the labour of child, or an employer who knowingly employs such a child is liable to a fine upto Rs. 200. A parent or a guardian who knowingly pledges the labour of his child is liable to be wished with a fine which may extend upto Rs 50.55

Child means, under this Act a person who has not completed the age of 15 years.56
ii. The employment of Children Act 1938

This Act is also applied to the whole of India. To prevent employment of children in hazardous employment and certain categories of unhealthy occupations, the Act prohibits the employment of children below 15 years of age in any occupation connected with transport of passengers, goods or mail by railway, or a port authority within the limits of a port.57

With exception of children employed as apprentices or trainees, no child between the age of 15-17 can be employed or permitted to work in these occupations unless he is allowed a rest interval of at least 12 consecutive hours in a day. The period of rest is to include at least 7 such consecutive hour between 10 P.M. and 7 A.M. as may be prescribed by the appropriate government.57

The Act also prohibits the employment of children below the age of 14 in workshops connected with bidimaking carpet-weaving; cement manufacture including begging of cement, cloth printing; dyeing and weaving; manufacture of matches; explosives and fire works; mica cutting and splitting; shellac manufacture; soap manufacture tanning and wool cleaning.58 These provisions, however, do not apply to workshops where the work is done by the occupier with the aid of his family only or to any school established, aided or recognized by any state government. The State governments are empowered to extend the scope of this provision of the Act to any other employment also.54 In exercise of this power the government of Madras has extended the Act to children working as cleaners in workshop attached to motor transport
companies. The Government of Uttar Pradesh has also extended this provision of the Act to brassware and glass bangle industries. The penalty for the breach of the Act is imprisonment upto one month or fine upto Rs. 500 or both. The Act also require the Railway and port authorities to maintain registers showing names date of birth, rest intervals, etc. of children under 17. It is however, imperative to mention here that this Act has been repeated to the extent it is in consistent with the child labour (Prohibition and Regulation) Act, 1986.

iii. The Factory Act. 1948

The Act extends to the whole of India except the state of Jammu and Kashmir. It applies to establishments employing 10 or more workers with power or 20 more workers without power. A child under the Act is defined as a person who has not completed the fifteen years of age. A young person is defined as either a child or an adolescent. Who has completed his fifteen years but not eighteen years. Thus, “young person” may be divided into three categories:

(i) Those who are under fourteen years. They are totally prohibited by this Act from entering into employment in factory.

In Walker T. Ltd., v. Martindale, it was held that the prohibition is absolute and not restricted to employment in one of the manufacturing processes; thus a child employed as a sweeper to clean the floor of a factory is in contravention of the provisions of the section, woven through he is not employed in any of the manufacturing processes.

The following employments are also prohibited by the court:
a. Shorting of groundnuts in a courtyard near the machinery room for decorticating Ramanathan v. K.E. 69

b. To employ children under 7 years in plating straw in a workroom the benefit of which does to the mother was held liable to penalty-Beordon v. parrot. 70

c. Piling of parts of machinery of the spinning mill by a young person during meal time, through done without order and for workers own amusement was held in Preir v. Slaith-waite Spinning Co. 71

(ii). Persons who are between 14 and 15 years they can be employed under the following restrictions provided under Sections 68, 69 and 71 to 75 of the Act:

i. Such persons should have a certificate of fitness issued by a surgeon and should carry a token of such certificate. 72

ii. The certifying surgeon should follow the procedure laid down in Section 69.

iii. They should not work at night. i.e., twelve consecutive hours including the period form 10 P.M. to 6 A.M. 73

iv. They should work not more than four and half hour a day. 74

v. The period of work is to be limited to two shifts. 75

vi. The shift should not overlap. 76

vii. Each child has to be employed in one relay. 77
viii. The spread over is not to exceed five hours and should also not change except one in 30 days.\textsuperscript{78}

ix. They should not be employed in two separate factories on the same day.\textsuperscript{79}

x. The employer should display notice regarding the periods of work for such children.\textsuperscript{80}

xi. The manager of the factory should maintain a register in respect of such child-workers.\textsuperscript{81}

xii. No such child be employed except in accordance with the notice of periods of work displayed at the entries against his name in register of child workers.\textsuperscript{82}

Section 75 empowers the inspectors to require any such person for re-examination by surgeon and he may prohibit the employment till the examination is made.

Persons between 15 and 18: They are employed as adults if they possess a certificate of physical fitness issued by the certifying surgeon and they also carry a token of such certificate.\textsuperscript{83} The adolescents under 17 are not allowed to work at night.\textsuperscript{84}

The object of these statutory restriction over the employment of young person is to prevent exploitation of young labourers and to provide for their safety. This was the view expressed by Chief Justice Narasimba. Orissa High Court in \textit{Jhunjhanwalla v. B.K. Patnaik}\textsuperscript{85}, where the occupier of a glass factory was severely punished for employing 14 adolescent in blowing section
of the factory, which is a hazardous occupation, without a certificate of fitness required under sections 68 and 69 of the Factories Act.

In Mechnitesh v. First Brook Door Co., it was observed that it was the duty of the employer to ascertain by reasonable means that the applicant was of requisite age and merely the statement of child about his age should not be treated as correct.

The Act also prohibits the employment of children to any part of the factory for pressing cotton in which a cotton opener is in a room separate from the delivery end.

The state government is empowered by this Act to make rules prescribing the maximum weight's which may be lifted by adolescents and children. Besides a weekly day of rest. every child worker who has worked for a period of 240 days or more in a factory during a calender year is entitled during the subsequent year of leave with wages at the rate of one day for every 15 days of work as against every 20 days in the case of an adult worker. Rest-shelters, canteens, etc. are also to be provided to all workers including children.

vi. The Plantation Labour Act. 1951

The Act covers in the first instance all tea, coffee, rubber cinchona, cordamory plantation and areas 10.117 hectares or more, in which 30 or more persons are employed or were employed on any day or the preceding 12 months. Further the state government is however, empowered to extend, all or any of the provisions of this empowered to extend, all or any or the provisions
of this Act to any land used or intended to be used for growing and plantation even if it measures less than 10.117, hectares and the number of persons employed therein is less than thirty, provided that land which measured less than 10.117 hectares or in which measured less than 30 persons are employed immediately before the commencement of the Act would not be covered.

The Act prohibits the employment of children under 12 years. An adolescent between 15-18 years cannot be employed for work unless he is certified fit for work by a surgeon. Such certificate is valid only for one year. Use of a false certificate of fitness is punishable by imprisonment which may extend to one month, or with fine or both.

This Act is, however, more comprehensive in the sense that this Act alone makes the provisions for education as a responsibility of the employer and so is for the housing and medical and recreational facilities. Perhaps the legislators were moved to make all these provisions in this Act because of the fact that plantation labour is commonly known as “family labour” as against 'Individual' child labour.

v. The Mines Act. 1952

This Act also extends to the whole of India and includes all excavations where any operation for the purpose of searching for or obtaining minerals is carried out. This Act also defines child as a person who has not completed his fifteen years. This Act only prohibits the employment of children in mines, but only prohibits the employment of children in mines, but also prohibits the presence of children in any part of a mine which is below
ground or in any open cast working in which any mining operation is being
carried on.\textsuperscript{100} Even an adolescent is not allowed to work in part of a mine
which is below ground, unless he has completed his 16th year and has a
medical certificate of fitness for work.\textsuperscript{101} A certificate is valid only for 12
months.\textsuperscript{102} The Act also says that an adolescent is allowed to be employed in any
mine except between 6 A.M. This act also include:

i. all bore holes and oil well:

ii. All shafts, in or adjacent to and belonging to mine, whether in the course
of being sunk or not:

iii. All levels and inclined planes in the course of being driven:

iv. All convey or aerial railways provided for the bringing into or removal
from mine of minerals or other articles or for the removal of refuse
therefrom:

v. All adits, levels, planes, machinery, works, railways, tramways, and
riding:

vi. In or adjacent to and belonging to a mine:

vii. All workshops situated within the precinct of a mine and under the same
management and used solely for purposes connected with that mine or a
number of mines under the same management:

viii. All power stations for supplying solely for the purpose of working the
mines or a number of mines under the same management:
ix. Any premise exclusively occupied by the owner of the mines and for the
time being used for depositing refused from a mine or in which any
operation in connection with such refuse is being carried on: and

x. Unless exempted by the central government by notification in the
official gazette, any premises or part thereof in or adjacent to and
belonging to a mine, On which any presses ancillary to getting; dressing
or preparation for sale of minerals\textsuperscript{103} or of coke is carried on.

vi The Merchant Act. 1958

The Act prohibits the employment of children in any capacity, who
are below 15 years of age, on sea-going ships. This Act applied to ships
registered in India. It also prohibits the employment of young persons under 15
as trimmens and stakes except under certain specific conditions. Such persons,
if employed, are required to produce a certificate of fitness. Further the Act
empowers the government to make necessary rules regarding employment of
young persons as and when the occasion demands.

vii. The Apprentices Act, 1961

The main object of the Act of to provide for the regulation and
control of training of apprentices in trades and for matters connected therewith.
The Act extends to the whole of India\textsuperscript{104} Under the Act, an apprentice has been
defined “as person who is undergoing apprenticeship training in a designated
trade in pursuance of control of apprenticeship”. The Act provides that no
person shall be qualified for engaged as an apprentice or to undergo
apprenticeship training in any designated trade unless he is atleast 14 years of
age and satisfies such standards of education and physical fitness as may be
prescribed. If he is a minor, his guardian is required to enter into a contract
of apprenticeship with the employer and it shall be registered with the
apprenticeship Advisor.

Initially the Act was enforced in 12 industries but in order to meet the
growing the changing demands of all skilled workers in other industries, the
coverage of the Act has been extended to 195 industries. The central
government has also specified 56 designated trades for the purpose of the
Act.

viii. The Motor Transport Workers Act, 1961

This Act applies to the whole of India. It covers every motor
transport undertaking employing 5 or more transport workers. The state
governments are authorised to apply all or any of the provisions of this Act to
any motor transport undertakings employing less than 5 works. This Act also
Prohibits the employments of children under 15 in any capacity in the motor
transport undertakings. The adolescents are prohibited to work unless a
certificate of fitness is granted, which is valid only for 12 months. An
adolescent can work only for 6 hours including a rest interval of half an hour
and between 10 A.M. and 6 P.M. only.

ix. Bidi and Cigar works (conditions of Employment) Act, 1966

The Act also extends to whole of India. The Act provides that no
child should be required or allowed to work in any industrial premises the
Act defines the child as a person who has not completed his fourteen years of
The employment of young persons between 14 to 18 years is prohibited between 7 P.M. to 6 A.M. The Administration of Act rests with the state who appoint Chief Inspectors or Inspectors for the purpose. The Act provides the penalties for breach which may be imprisonment upto three months or a fine upto Rs. 500 or both.

Provisions for canteen, first aid, cleaning, and ventilation are also made under the Act.

(x) Contract Labour (Regulations and Abolition) Act, 1970

The Act also extends to the whole of India. The Act applies to establishments and contractors employing 20 or more workers. It is not applied to establishment in which work only of an intermittent or casual nature is performed. There are no specific provisions under the Act pertaining to employment of children.

(xi) Shops and Commercial Establishment Act, 1969

Provisions relating to minimum age also exist in different state shops and commercial establishments Acts. These acts applied to shops, commercial establishments, restaurants and hotels and place of amusement and notified urban areas, to which the Factories Act does not extend the coverage of the Act in any establishment.

The minimum age of employment in shops and commercial establishment is 12 years in Bihar, Gujarat, J&K 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, Tamil Nadu, Punjab, Delhi, Chandigarh, Pondicherry and Meghalaya. The minimum age of employment is 15 years in Maharashtra. There is no separate shops and Commercial Establishment Act in Andaman & Nicobar, Arunachal Pradesh, Dara and Nagar Haveli, Lakshdweep, Nagaland and Sikkim.127

(xii) The Child Labour (Prohibition and Regulation) Act, 1986

The Act states right in the beginning that its aim is to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments.

According to this Act, the employment of Children Act, 1938 is repealed. All rules made in this Act will be in addition to the provisions of the Factories Act, 1948, the Plantations Labour Act, 1951 and Mines Act, 1952:

i. According to this Act “Child” means a person who has not completed his fourteen years of age.128

ii. Again, family units and training centres are not included in the purview of the Act.

iii. The Act provides for the setting up to “Child Labour Technical Advisory Committee” for the purpose of addition of occupations and processes to the schedule. A notice of at least three months will be given by the Central Government before adding any occupation or process to the schedule.129
ix. The Act clearly lays down that no child will be allowed to work for more than six hours per day\textsuperscript{130} with a rest period of one hour after three hours of work. Once a week he will be given a holiday.\textsuperscript{131}

v. No Child will be allowed to work between 7 P.M. and 8 A.M.\textsuperscript{132} No over time will be permitted.\textsuperscript{133}

vi. The Act clearly states that the can made rules for the health and Safety of children who are permitted to work in any establishment. These rules can provide for matters such as cleanliness\textsuperscript{134}, ventilation\textsuperscript{135}, dust and fumes\textsuperscript{136}, lighting\textsuperscript{137}, drinking water\textsuperscript{138} and sanitary facilities. etc But there is no mention of nutrition or medical facilities.

vii The penalty for violation of the Act will range from three months to one year of imprisonment with a fine of Rs. 10,000 to Rs. 20,000.\textsuperscript{139}

viii. If a person is found guilty he will be liable for punishment under the clauses given in Section 14(1&2) and not under any of the previous Acts.

ix. Any person, police officer or an inspector can file a complaint of an offence or an inspector can file a complaint of an offence under this Act in any Court of Competent jurisdiction.\textsuperscript{140}

x. Part "B" of the schedule has added one more process into existing list and that is "building and construction industry". All other provisions are similar to the ones already existing in the Act of 1938.\textsuperscript{141}

Work relating to the selling of crackers and fireworks in shops with temporary licenses was added to the list of occupation along with the manufacture of State pencils (including packing).
Manufacture of products from agate and processes using toxic metal and substances such as lead, mercury, manganese, chromium, benzene, pesticides and asbestos were inserted in the list of hazardous process respectively by notification No. 8.0 404(e) dated 5 June 1989 published in the Gazette of India, Extraordinary.

The Act does not include balloon and other factories where children are forced to work with fire and dangerous chemicals. It is also silent on children working in the agricultural sector, which constitutes 80 percent of child employment.

The word ‘Hazardous’ is not clearly defined in this Act and it is left to the Technical Advisory Committee to define hazardous occupations. With modernization and rapid industrialization along with tremendous strides in electronics, can one really precisely define what is hazardous and what is not within definite time frames? More and more hazardous jobs for children will make the scene in time. Some jobs, which are not hazardous today, will become hazardous tomorrow.

Besides, the adjective, ‘hazardous’ is held to have purely physical implications excluding that a job can mean to child workers in my given work. The very fact that childhood is snatched from a child and it is forced to experience adulthood it is not prepared for, transforms every aspect of what should be an optimistic environment for a child into a pessimistically hazardous one. Moreover the present Act does not specify the minimum age of employment of children in occupations and processes other than the prohibited ones.
Walter Fernandez has rightly observed that the present act legalizes the entry of the children in hazardous occupations by regulating their development in industries that are obviously non-hazardous for adult but hazardous for children. Another significant aspect of the 1986 Act is the more stringent punishment for violations under Section 14, which ranges from a fine of Rs. 10,000 to Rs. 20,000 or a minimum of three months imprisonment to a maximum of one year or a combination of both fine and imprisonment.

However, one should understand that the earlier Acts were flawed not because the penalties were too light but because they were already enforced. It is necessary that the penal provisions be excluded. It is necessary of operation of the provisions of the first offenders Act by inserting a specific clause to this effect that offences under the present act be made cognizable. Besides offences made in any Act involving Child Labour should be deemed to be an offence under the Child Labour (Prohibition & Regulation) Act 1986 by inserting suitable provisions in this and other Acts.

5.4 The National Policy on Child Labour

The National policy for children resolution adopted in August 1974 provides for free and compulsory education for all children, up to the age of 14, provisions of health and nutritional programs and services, providing alternative forms of education for children unable to take full advantage of formal school education and to protect children against neglect, cruelty and exploitation and engagement in hazardous occupation with heavy work. The National Child Labour Policy is set out under the following three heads:
1. The legislative action plan

2. The focusing of general development

3. Programs for benefiting child labour whenever possible.

4. Project passed plan of action in area of high concentration of child labour engaged in wage/quasi-wage employment.

It is well known that legislation alone can not bring an end to child labour. A national policy on child labour was through formulated in conjunction with the legal measure to address the socio-economic issues having a bearing on child labour and to provide a framework for a concrete programme of action. The policy encompass action in the fields of education, health, nutrition, integrated child development and employment.¹⁴³

New projects are on the anvil for checking child labour in our country. Recently, two days 42nd state labour minsiter's conference was held at New Delhi. The main object of the conference was the national child labour policy. Other topic that came up at the conference was the enforcement of legal provisions for prohibition and regulation of child labour, developmental schemes for child labour and association of the non-governmental agencies in implementation of such projects.¹⁴⁴

The conference deliberated on the recommendations made at the meeting of the Employers of child labour with union labour minister.

P.A. Sangma, both the government and the employers had resolved at the meeting to cooperate on the move for eradication of child labour. The
employer's had endorsed the govt, more to amount the minimum wages Act to ensure payment of wages to child labour at a par with adult workers.\textsuperscript{145}

It has also been announced by the labour minister that child labour Act would be amended to bring more industries under the category banned of child labour. The Employment of child in all industries would be regulated.\textsuperscript{146}

In the recent past the practice of child labour in India has evoked would wide criticism. On the line of the action taken by the U.S. Senate, the German parliament also has before it a Bill seeking a ban on import of Indian goods produced by child labour.

Moreover, the central advisory board for child labour has identified ten states and union territories for which a target of three years for the elimination of child labour has been set. They Mizoram, Meghalaya, Manipur, Nagaland, Arunachal Pradesh, Tripura, Goa, Pondicherry, Chandigarh, Sikkim. Besides a national policy on child labour has been formulated in conjunction with the legal measures to address to socio-economic issues having a bearing on child labour and to provide a framework for concrete programme of action. The policy encompass action in the fields of education, health, nutrition, integrated child development.

1. Legislative Plan

The Child Labour Technical Advisory Committee has been setup to advise the central government on addition of occupations and processes to the schedule contained in Child Labour (Prohibition and Regulation) Act, 1986.

**Focusing of General Development Programms for Child Labour**

1. **Education Programme:**

   The national policy on Education 1986, sets a target, whereby all children who attain the age of 11 years by 1990, will have received five years of schooling, or its equivalent in a non-formal system of education. With this goal in view, 490,000 non-formal education centres are to be opened nationally to supplement the formal education system. Since non-formal education is to be planned and organised at the local level, centres for child labour will be set up in both urban and rural areas with the involvement of local voluntary agencies and Panchayati Raj institutions (the latter being self-governing organisations with the participation of the People’s elected representatives). Funds from the National rural Employment programme and the Rural landless Employment guarantee programme will be used on a priority basis to create the infrastructure for these centres. Efforts will be made to link the non-formal educational institutions with the formal educational system, so as to enable child workers who have completed the former to continue their schooling in the latter.¹⁴⁷

   Special attention will be given to acting and retaining working girls at these centres. Part time vocational causes will also be provided afterward
and during holidays. The centres would aim to educate children up to class V level, with arrangements for continuing up to class VIII wherever feasible.

Details of scheme of incentives and assistance for families who are forced to involve their children in wages or quasi-wages employment are to be worked out in consultation with State Governments. Scholarship will be given to working children who came from specially deprived families, engaged in occupations like scavenging, to ensure that they are enrolled successfully and complete the non-formal education course.\(^{148}\)

(1) Non-formal education

A closer look at the details of the NFE programme will serve to highlight these observations. The “clientele” for NFE was identified as “children in habitations without schools, school dropouts, working children and girls who cannot attend school”. In the first two years these children, through the NFE centres were to attain primary school level and in the following three years they were to complete the upper primary level. All instruction was to be by local youth who would work as teachers with a remuneration of Rs. 100 to Rs. 200 per month “with the provision of an annual increment of Rs. 50 after the completion of two years of satisfactory service till remuneration reaches Rs. 500 per month”. Apart from the Government the work of running NFE centres would be done through voluntary agencies and Panchayat Raj institutions.

The NFE programme, in design therefore, has all the elements which is the opinion of the policy makers is a “good” programme. It does not interfere with the child's work schedule and at the same time is extremely cost-effective. But design apart, can it really achieve what it has set out to do?
In actual fact the NFE programme is a low cost strategy devised more out of financial compulsion than convection. It envisages the existence of a band of highly creative and imaginative local school teachers available in every village especially in backward districts who can with ingenuity condense an eight year course of elementary education to five years, that too with only a half-hour session every evening or whenever convenient to children, at a salary which is less than one-fourth of what a regular school teacher gets. Simultaneously it conjures an image of a working child who is alert and is earnestly waiting to attend the evening classes just to lap up all that is taught within half an hour or even one hour and thus catch up with children in the better-off formal schools, who attend school for six full hours. Obviously it does not require an expert in education to predict the efficacy of this programme.

While the NFE programme is not the only programme under the new Education policy, we have focused attention on the NFL system of universalising education mainly because it serves to illustrate quite dramatically the consequences of the assumptions that have shaped government policy. To what extent are these assumptions valid? In order to examine this we would take to briefly touch upon the MVF experience.

The MVF experience

The MVF has over the last eight years working in the field of education, especially among working children and bonded labourers. The initial thrust of the programme run by MVF was almost entirely on the
abolition of bonded child labour. The focus over the years has shifted to cover elimination of all forms of child labour through universalising primary education. Each year, the organisation has been conducting mobilisation camps for working children in order to withdraw them from work and admit them at the appropriate levels in schools.

The methodology adopted has been to conscientise men and women in rural areas, particularly parents of working children. Parents and teacher committees have been formed and awareness building training conducted to sensitise all those involved with the issue of child labour. Children's camps have incorporated, apart from teaching activities, a programme of development of leadership qualities among children. Street plays and campaigns by children themselves to motivate other working children to go to school have also been devised. The MVF programme also involves a strong component of follow-up measures to prevent dropouts among those who have gone through the camp. In eight years that the programme has been in operation, over 1000 children have attended these camps and 3500 have additionally been motivated to go to school. The latest phase of the programme covers 6000 children spread over 36 villages.

The camps have been a revelation and have provided rich material on the attitudes of children, parents and government of officials towards the problems of child labour and illiteracy. The camps have also provided pointers to the basic elements that must be incorporated in any scheme dealing with these problems. In the main, the camps have shown that
1. Abolition of child labour and universalisation of school education are practically synonymous.

2. Parents of working children are willing to make adjustments to enable their children to go to school.

3. The income of a working child is not the motivating factor in most cases, for the parents to send their children to work.

4. There is no alternative to using government institutions in order to bring about universalisation of education as NGOs cannot provide the infrastructure on the necessary scale.

5. There is considerable scope of involving the village community in the work of universalising elementary education.

It is instructive to examine the implications of the MVF experience in the context of the government approach to universalising primary education.

The first significant outcome has been that a large number of children have been motivated to join schools. In fact even children engaged in the most exploitative form of work i.e. bonded labourers have been withdrawn from work and admitted to schools. Time and gain the annual camps of the MVF have demonstrated that children who are normally assigned the status of victims of the “harsh reality” of child labour are willing to go to school. Importantly, parents are willing to make such sacrifices as are necessary to ensure that children continue in school. While it would be difficult for the MVF to claim that these results would hold in any situation the fact remains that over
a period of 8 years positive results have been observed with respect of 5000 children. Obviously the argument of the harsh reality of child labour has been overemphasized.

It is against this experience that we assert that the failure of the NFE programme lies not in its faulty execution. In fact its greatest failure is in its assumption that labourers cannot be withdrawn from work and therefore have to be given the benefits of education outside of working hours. The fact that there is an unfulfilled demand for formal education even among the poor in rural areas has been totally denied in this attempt to expand primary education. There is a singular lack of faith in the fact that people, even poor people, value education and learning and are prepared to make extraordinary sacrifices to educate their children.

We turn to the implications that these observations have with respect to compulsory education.

**Universal Elementary Education:**

Free India made a solemn resolve to given its children free primary education, but 60 years down to line, it's still battling with problems of a high drop-out rate and lack of funds, schools and teachers.149

The UEE, as envisaged in Article 45 of the constitution which had set a target of ten years of achieve this, has not only remained as unattained goal, but education in India today is a story of stark desparity that was introduced by the same guiding principle's meant for making the nation prosperous and enlightened.150
Elementary education in India is characterised by fictitious enrolment, high drop-out rates and a constantly mounting number of illiterate children. Figures show that although the number and percentage of children attending school is increasing the number of schools has grown India's share in the world's illiterates has also risen. In absolute terms, the number of illiterates in the country is increasing as a result of the high drop-out rate among children in the first five years of schools.\textsuperscript{151}

In order to achieve the target of Universal Elementary Education (UEE), the State Government have abolished the tuition fees at the primary stage in the Government sponsored institutions\textsuperscript{152}

But since the rate of growth of population is much faster than the rate of growth of education, the goal of universalization of elementary education has not yet been realized, inspite of the fact that more than 30 years ago education was brought on the concurrent list by means of a constitutional amendment of 1976.\textsuperscript{153}

The National Policy on Education 1986 and its programme of Action (1986) gave the highest priority to making elementary education universal. The focus shifted form enrolment to retention. To retain the child in the school and to make the school environment attractive, a new scheme 'Operation Black Board' was launched in 1987-88.\textsuperscript{154}

But the Lokshala Project for universalisation of Elementary Education, quoting form the Ministry Annual Report of 1993-94 point's out drop-out rates are significant, retention of students in school is low and
wastage. There are striking disparities in access to Elementary Education - disparities as between regions, rural and urban areas, boys and girls and the haves and have-nots.¹⁵⁵

In short, the government would also endeavor to provide voluntary part-time non-formal education for working children rather than press for compulsory universal primary education. The only apology offered with respect to child labour was to accept its existence as a 'harsh reality'.

**Central Advisory Board on Child Labour**

The Central Advisory Board on Child Labour was constituted on March 4, 1981. The following are the terms of reference of the Board:

A. Review the implementation of the existing legislation administered by the Central Government

B. Suggest legislative measures as well as welfare measures for the welfare of working children.

C. Review the progress of welfare measures for working children;

D. Recommend the Industries and areas where there must be a progressive elimination of child labour.

The Board was re-constituted last on November 2, 1994. The Union Labour Minister is the Chairman of the Board. The other members of the Board include representatives from the various sister ministries, members of Parliament, nongovernmental organizations, representatives of major trade unions and employers organizations.

**Child Labour Technical Advisory Committee:** Under section 5 of the Child Labour (P&R) Act 1986, the Government of India is empowered to constitute a
child labour technical advisory committee for the purpose of addition of occupations and processes in the Schedule to the Act; the committee consists of a Chairman and members not exceeding ten. The Committee has been re­constituted on February 5, 1996 under the chairmanship of Director General of Indian Council of Medical Research.

5.6 National Child Labour Projects (NCLP):

Under the action plan of the National Policy on Child Labour, there have been National Child Labour Projects set up in different child labour endemic areas to rehabilitate children released from work. A major activity undertaken under the NCLP is the establishment of special schools to provide non-formal education, vocationalised training, supplementary nutrition etc to children withdrawn from employment besides conducting door to door surveys, launching awareness generation programmes to sensitize employers, parents and children. For the ninth five year plan period (1997-98 to 2001-02), an allocation of Rs. 2610 million has been made for the National Child Labour Projects. Under the project based action plan of the policy, 12 NCLPs were started in the States of Andhra Pradesh (Jaggampet and Markapur), Bihar (Ganjiah), Madhya Pradesh (Mandsaur), Maharashtra (Thane), Orrisa (Sambalpur), Rajasthan (Jaipw), Tamil Nadu (Sivakasi) and Uttar Pradesh (Varanasi-Mirzapur-Bhadohi, Moradabad, Aligarh and Ferozabad). Study the following table 5.1.
### Table 5.1

**State wise Distribution of National Child Labour Projects**

<table>
<thead>
<tr>
<th>States</th>
<th>Districts</th>
<th>Sanctioned Schools</th>
<th>Coverage Children</th>
<th>Actual Schools</th>
<th>Coverage Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>20</td>
<td>807</td>
<td>43550</td>
<td>610</td>
<td>36249</td>
</tr>
<tr>
<td>Bihar</td>
<td>08</td>
<td>174</td>
<td>12200</td>
<td>173</td>
<td>10094</td>
</tr>
<tr>
<td>Gujarat</td>
<td>02</td>
<td>040</td>
<td>2000</td>
<td>023</td>
<td>1254</td>
</tr>
<tr>
<td>Karnataka</td>
<td>03</td>
<td>100</td>
<td>5000</td>
<td>024</td>
<td>1200</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>05</td>
<td>138</td>
<td>9800</td>
<td>087</td>
<td>6524</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>02</td>
<td>074</td>
<td>3700</td>
<td>024</td>
<td>1200</td>
</tr>
<tr>
<td>Orissa</td>
<td>16</td>
<td>430</td>
<td>33000</td>
<td>239</td>
<td>14972</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>02</td>
<td>060</td>
<td>3000</td>
<td>054</td>
<td>2700</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>08</td>
<td>379</td>
<td>19500</td>
<td>307</td>
<td>14684</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>04</td>
<td>150</td>
<td>11500</td>
<td>105</td>
<td>7488</td>
</tr>
<tr>
<td>West Bengal</td>
<td>04</td>
<td>219</td>
<td>12000</td>
<td>164</td>
<td>8250</td>
</tr>
<tr>
<td>Total</td>
<td>76</td>
<td>2571</td>
<td>155250</td>
<td>1810</td>
<td>104615</td>
</tr>
</tbody>
</table>

Source: Government of India’s Policies and Actions:  
http://www/nembassy.org/policy/child_labour/child_Labour/him

The children who have been identified as child labourers and who are between the ages of 5-8 would be put into the formal schooling system. The child labour in 9-14 age group would be put through a special schooling mechanism before mainstreaming them into the formal system. It is expected that these steps will lead to mainstreaming into the formal system of all children in 5-14 age group who are found working in hazardous occupations and processes by the end of the 10th plan. The budgetary allocation for the scheme during the 9th five year plan was Rs. 2694 million. It has been substantially stepped up during the 10th plan to Rs. 6675 million.
The Government of India has also launched the INDO-US child labour project Feb 16-2004. The INDUS project would be supportive of government initiative towards complete elimination of child labour and help to achieve the target set for the 10th plan period. The basic objective of this project is withdrawing, rehabilitating, preventing and progressively eliminating child labour in the 10 hazardous occupations in 21 identified districts of U.P., Tamil Nadu, Maharashtra, Madhya Pradesh and national capital territory of Delhi.

Rehabilitation of Children working in Hazardous Occupations:

A major programme was launched on 15th August 1994 for withdrawing child labourers working in hazardous occupations and for rehabilitating them through special schools. Under the programme a total of two million children are sought to be brought out of work and put in special schools where they will be provided with education, vocational training, monthly stipends, and nutrition and health checks. As a follow up, a high powered body, the National Authority for Elimination of Child Labour (NAECL) was constituted on 26th September 1994 under the Chairmanship of the Minister for Labour, Government of India. The functions of NAECL are:

a) To lay down policies and programmes for the elimination of child labour, particularly in hazardous employment;

b) To monitor the progress of the implementation of programmes, projects and schemes for the elimination of child labour;

c) To co-ordinate the implementation of child labour related projects of the various sister ministries of the Government of India to ensure convergence of services for the benefit of the families of child labours.
Secretaries to Government of India in the ministries of Labour, Information and Broadcasting, Welfare, Rural Development, Textiles and the Departments of Expenditure, Education, Health Family Welfare and Women and Child Development are members of the National Authority for Elimination of Child Labour.

**Assistance to Voluntary Organizations:**

Under the grant-in-aid scheme; voluntary organizations are being financially assisted to the extent of 75% of the project cost for taking up welfare projects for working children where the children are provided with education, supplementary nutrition, health care and vocation! skill training. In spite of all this, it is being felt that a small number of non governmental organizations cannot help to mitigate the sufferings of millions of children in a vast and diverse country like India. Dr. Lakshmihar Mishra remarks on the contribution of NGO’s as “it is evident that the State as an agent of society has failed to provide any protective cover to millions of vulnerable children at their most crucial stage of development. Even though a handful of NGO’s have undertaken highly innovative, cost-effective and result oriented initiatives in a few pockets of the country and produced striking results, the fact remains that in terms of coverage or spread this is negligible and uneven.158

**An Integrated Programme for Street Children :**

The objective of this programme is to cover children on streets and facilitate their withdrawal from a life of distress and destitution. The programme provides for shelter, nutrition, health care, education, recreation facilities to street children and seeks to protect them against abuse and exploitation. The strategy is to develop awareness and provide support to build
the capacity of the Government, NGOs and the community at large to realize the rights of the child in the Juvenile Justice (Care and Protection of Children) Act, 2000 and also those enshrined in the UN Convention on the Rights of the Child (CRC). The target group of this programme is children without homes and family ties i.e. street children and children especially vulnerable to abuse and exploitation such as children of sex workers and children of pavement dwellers.

State Governments, Union Territory Administrations, Local Bodies, Educational Institutions and Voluntary Organizations are eligible for financial assistance under this programme. The Government of India provides up to 90 per cent of the cost of the project and the remaining has to be borne by the organization/institution concerned. Under the programme no pre-defined cost heads are stipulated. Depending upon the type of activity and the nature of service an appropriate amount not exceeding Rs.15 lakh per annum can be sanctioned as recurring cost for each project. The grant under the programme is released to selected organizations in two equal half-yearly installments.

This programme has spread to 39 cities of the country and the expenditure incurred the three years from 1999 to 2002 is as follows:-

**Table 5.2**

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of NGOsd</th>
<th>Expenditure (Rs. in lakhs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999-2000</td>
<td>102</td>
<td>717.13</td>
</tr>
<tr>
<td>2000-2001</td>
<td>77</td>
<td>623.03</td>
</tr>
<tr>
<td>2001-2002</td>
<td>88</td>
<td>601.48</td>
</tr>
</tbody>
</table>

The Ministry under “An Integrated Programme for Street Children” has initiated child line, a 24-hour free phone service for children in distress, which can be accessed, by a child in difficulty or an adult on his behalf by dialing 1098, Child line, presently, has expanded its services to 42 cities.

The basic objectives of the child line service are as follows:-

- To respond to children in emergency situations and refer them to relevant Governmental and non-Governmental organizations.
- To create a structure, which ensures the protection of the rights of the child as, ratified in the UN Convention on the Rights of the Child and the Juvenile Justice Act.
- To provide a platform for networking amongst organizations and to strengthen the support systems which facilitate the rehabilitation for children in especially difficult circumstances.
- To sensitize agencies such as police, hospitals, Municipal Corporations and the railways towards the problems faced by these children.
- To provide an opportunity to the public to respond to the needs of Children in difficult circumstances.

Child Line India Foundation (CIF) has been established as an umbrella organization to identify, provide support and to monitor efficient service delivery of the centres at various locations. CIF serves as a link between the Ministry and the NGOs in the field. The Secretary, SJ&E is the chairperson of the Governing Board of the Foundation.
Child line has responded to 27.30 lakh calls from children/concerned adults till August 2002. These calls have been for medical assistance, shelter, repatriation, missing children, protection from abuse, emotional support and guidance; information, referral to services, death related calls etc.

The details of grants released for the child line project in the three years from 1999 to 2002 is as follows:

Table 5.3

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of organizations assisted</th>
<th>Total grant released (Rs. in lakhs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999-2000</td>
<td>45</td>
<td>66.74</td>
</tr>
<tr>
<td>2000-2001</td>
<td>46</td>
<td>102.97</td>
</tr>
<tr>
<td>2001-2002</td>
<td>83</td>
<td>204.37</td>
</tr>
</tbody>
</table>


5.7 Commission and Committees on Child Labour

A number of commissions and committees on child labour have looked in to the working conditions of children and made recommendations, which resulted in enactment of labour laws having provisions aiming at the overall development of the children.

One of the earliest commissions was the Royal Commission on Labour, 1929, which recommended the prohibition of children below the age of ten from work and the entry of all the names in wage books. It also recommended the prohibition of children from taking overtime and taking work home. The Labour Legislative committee (Rage Committee) 1944 recommended for the adoption of positive measures to wean children away from industrial
employment. Following this, the Labour Investigation Committee 1946, reported that in several establishments the legal provisions of prohibiting the employment of children appear to be infringed openly and with impunity. Commenting on the laws dealing with children, the Harbans Singh Committee on Child Labour, 1977 reported that the existing legal framework for the employment of children in India is rather dispersed and patchy and recommends single-model legislation. The report of the M. S. Gurupadaswamy Committee, 1979 observed that no general law regulating child labour was to be found in the Indian statute books and this was because, historically, legislation was passed not with a focus on the employment of children but with reference to the need to regulate employment in a particular industry as and when such need arose. The committee stressed the need for bringing child labour laws into proper focus.

The National Human Rights Commission (NHRC) in India has also been monitoring the implementation of Government policy and programs on identification, release and rehabilitation of child labor in selected districts of the country. The Commission entertains complaints related to child labor and bonded labor and after investigations, gives appropriate orders for compliance. The Supreme Court of India in its order-dated 11-1197 has requested NHRC to be involved in dealing with the issue of bonded labor. In pursuance of the Supreme Court Order, a Central Action Group (CAG) was constituted in 1998. Two Special Rapporteurs have been appointed by the NHRC to review and look into bonded labor and child labor issues. They make periodic visits to districts and interact with local people, NGOs and Government functionaries to ascertain the position at the ground level. Their reports are studied by the NHRC and follow up action initiated in consultation with the Ministry of Labor\textsuperscript{160}. 
The National Authority for Elimination of Child Labor (NAECL) was established in 1994 to set the policy and program for the elimination of child labor, particularly in hazardous industries, and to coordinate the various child labor programs implemented by the various Ministries of Government of India. A Standing Group to evolve a mechanism for dealing with the problem of child labor was constituted under the Chairmanship of the Cabinet Secretary in April 1998. Members of the group include the Secretaries of the Ministries of Textiles, External Affairs, Commerce, Labor, Rural Development and the Department of Education, Women & Child Development, Legal Affairs, Health and Chief Secretary of Uttar Pradesh.

A Central Monitoring Committee on child labor constituted by Government of India on 30.12.98 under the Chairmanship of Union Labor Secretary is responsible for the overall supervision, monitoring and evaluation of National Child Labor Projects in various States. A National Resource Center on Child Labor (NRCCL) was set up at the National Labor Institute in Noida, UP, in March 1993. The Center is engaged in the documentation, publication and creation of a data bank on child labor, research and training, media management and technical support services etc. and assists Union and State Governments, NGOs, policy makers and others. A Child Labor Cell has also been set up at the National Institute of Rural Development, Hyderabad with a similar mandate.

The State Governments have set up State Level Monitoring Committees for monitoring the implementation of National Child Labor Projects in their respective States and similar bodies also function at the district level under the Chairmanship of the District Collector & Magistrate.
Several other programs have contributed substantially to the reduction of the number of working children in India. Thus, the Integrated Child Development Service (ICDS) is the single largest program in the whole world for pregnant mothers and children in terms of immunization, nutrition and pre-primary early childhood education. To fulfill the constitutional commitment to free and compulsory universal primary education, nearly 6,00,000 schools have been set up. A massive non-formal education program with the involvement of NGOs, with thrust on enrolment of girls has been launched for those children who cannot be enrolled in the formal system as also for school dropouts. The National Literacy Mission has been launched since 1988 to remove parental illiteracy and promote functional adult literacy. The Department of Education is also implementing the District Primary Education Program that covers working children in a large number of child labor endemic districts. The programme of universal primary education known as Serva Shekhsha Abiyani has been launched throughout the country. At least one school has been set up in each of the six thousand villages of India.

Many States have mid-day meals programs in school to improve the nutritional level of school going children and also to induce the parents to send their children to school rather than to work.  

The child welfare programmes of the Ministry of Social Justice and Empowerment focus on children in conflict with law and the children in need of care and protection.

The Government's concern for child labour becomes visible with the setting up of a 16-member committee on Child Labour in 1979. The Committee was headed by M.S. Gurupadaswamy and was to inquire into the causes leading to
and problems arising out of employment of children and also to suggest measures by which we could protect the children. The committee drew up a plan of action for the conduct of in-depth and diagnostic studies on the nature and extent of the problem of adequacy of existing legal framework and the supportive measures for working children. The committee was of the view that a distinction has to be drawn between child labour and its exploitation. The committee further viewed that:

‘Labour becomes an absolute evil in case of the child when he/she is required to work beyond his physical capacity, when the wages are not commensurate with quantum of work done and the occupation he is engaged endangers his health and safety.’

The Committee submitted its report in December 1979 some of the recommendations of the Committee are:

(i) The existing laws relating to prohibition and regulation of employment of children should be consolidated into a single comprehensive code in order to prevent any ambiguity in respect of the basic objectives.

(ii) In case of child workers, the periodical medical check-up should be linked up with the National Health Scheme.

(iii) In the areas where there may be concentration of working children arrangements should be made for non-formal education.

(iv) In the areas, where there is large number of working children, recreational and cultural activities should be provided.

These aspects of the problem were considered by the Ministry of Labour, and felt that there is a need to ensure the health and safety of children at the
workplace and that they should be protected from excessively long working hours and from night work.

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 of working children more acceptable. The plan proposed a greater role of voluntary agencies in providing child workers with health care, nutrition and education. The abolition of child labour, it said, could only be achieved when there is sufficient improvement in the conditions of the families whose children are compelled to work. Keeping these points in view, the government adopted a new set of policies i.e., National Child Labour Policy in 1987 programs to benefit child labour and project based action plans in areas of high concentration of child labour engaged in wage/quasi-wage employment.

The entry of Government of India into ILO's IPEC program in 1992 indicated the Government's growing concern about child labour and the need to act against it. The advent of IPEC in India coincided with government initiatives to tackle the problem systematically. These included the historic declaration made by the Prime Minister, Shri P.V. Narasimha Rao, on August 15, 1994. This was the first major political announcement on release of children from hazardous work and rehabilitation of such children. The prime Minister also announced Rs.850 crores fund to be administered over the next five years on schemes for the elimination of child labour in hazardous industries. The Prime Minister's statement is an unequal demonstration of the Government's concern about the deep-rooted malady of child labour and its determination and commitment to overcome it.
The National Authority on Elimination of Child Labour was constituted under the Chairmanship of Union Labour Minister with Secretaries of nine Departments of Government of India concerned with Child Labour to oversee the implementation to release two million children employed in hazardous nature of work by 2002 A.D. A conference of 62 district collectors was held in Setup was held in September, 1995, to give a final shape to the Action Plan. Finally, 76 projects were sanctioned in 76 districts to translate the plan to action known as National Child Labour Project.\textsuperscript{167}

The period 1992-95 marked a turning point of the country's prospect on child labour. The impetus for the change comes from the increasing media attention the issue, spurred by the work done by NGO's. But the most important was the clear direction the government took, focusing on a phased elimination of child labour.\textsuperscript{168}

In India, there have been several legislations - both before and after independence which are mainly directed to restrict the minimum age of children at the time of employment in certain type of work, as well as to regulate the working conditions. The government to look into the problem and suggest remedial measures to ameliorate the problems of working children has constituted many enquiry commissions. Unfortunately, due to some reason or the other, all these efforts seem to have had very little impact on the incidence of child labour. The available data does not show any decline in number of child worker in general, not even in hazardous occupation.\textsuperscript{169}

The Labour ministry has indicated the despite the provision of restrictive laws, the practice of child labour continues unabated, because exploitation of children is of financial advantage to employers and a matter of economic
compulsion to parents. In its annual report (1983 - 84) the Ministry of Labour said that the government had accepted child labour as a “harsh reality” and that is was neither “feasible nor opportune” to prevent children from working in the present stage of economic development. Under these circumstances, the Ministry proposed to take measures to improve the working conditions of children, rather than removing them from the work force. The National Child Labour Policy of 1987 was formulated in pursuance of this. This policy was not and adequate response to the 44 million children working in the country as it was only for 30,000 children in 10-project area. However, it was a modest beginning towards the right end. Some steps have been taken to implement the project based plan of action through National Child Labour Project (NCLPs).

The main trust of NCLP to reduce the incidence of child labour in the project areas thereby, encouraging the elimination of child labour progressively. Some of the activities of the NCLP are:

(i) Stepping up enforcement of child labour laws;
(ii) Non-formal education;
(iii) Adult education;
(iv) Income and employment generation;
(v) Special schools;
(vi) Raising public awareness; and
(vii) Survey and evaluation

The principal agencies for implementation of the project societies which were formed and registered under the Registration of Societies Act, 1860. The actual implementation of various schemes under the project is being carried out by local NGGs.
Elimination of child labour needs an effective mechanism to provide inputs for policy formulations and program support. Keeping this in mind, a Child Labour Cell was set up in 1990 in the V.V. Giri National Labour Institute. In response to the interest group engaged in the elimination of child labour, the Cell was upgraded to National Resource Centre on Child Labour (NRCCL). The NRCCL was set up in March 1993 to assist national and state governments, NGOs, policy makers, legislators and social groups through a variety of interventions and develop capabilities of the target groups. The NRCCL gets financial support from the Ministry of Labour, Government of India and UNICEF.

It has built up an impressive and one of the largest documentation on child labour and is now assisting the Ministry of Labour in the implementation of child labour projects. The NRCCL has set two kinds of goals for itself. The long-term goal includes establishing Regional Network Centre and identifying partners in Asian Countries. The Center's short-term goal is to establish Centers in State with high concentration of Child Labour. Research and training are the two important activities of NRCCL. Beside these two, activities, like documentation and dissemination, publication, workshops, seminars, networking etc.

So far as the research activity is concerned, it involves around updating and upgrading the existing information as well as exploring new aspects related to child labour. The training activity involves bringing about an attitudinal change in the trainees to enable them to play the role of agent of change. The training programs are participatory in nature and seek to create greater awareness on the nature, magnitude and dimensions of the problem of child
labour. While imparting training, care is taken to design the training in such a way that it meets the requirements of different target groups of trainees. Besides the normal training programs, the Center also conducts the training of Trainers program, which aims at creating a larger pool of trainers for achieving wider coverage.

The Center provides technical support services to various agencies like Trade Unions, Non-Governmental Organizations, Universities, and other engaged in the implementation of Child Labour Project. The Center lays special emphasis on organizing workshops and seminars, which helps in catalyzing new innovative programs and actions. These workshops/seminars are meant for people belonging to diverse groups such as NGO's trade unions, labour factory inspectors, district collectors and Project Directors, film makers, training institutes, etc.

Yet another activity of Center is dissemination of information through its number of publications. Beside, the Center has been working in close collaboration with international agencies, like ILO and UNICEF, State Labour institutes, NGO's trade unions, employers, organizations and judiciary. The center has established a network with about 400 NGOs in assisting them through various ways of implementing child labour programs.

Apart from the NRCCL, the institute has set up a legal studies cell in September 1997, with a view to provide legal support service on child labour to national and state governments, policy makers, legislators and social groups. The main activities of the Cell are:

(i) To review the existing child labour laws;

(ii) To conduct training on legal aspects of child;
(iii) To examine the structure of enforcement system on child labour;

(iv) To collect, analyze and disseminate information on judgments, orders and laws relating child labour.

(v) To provide legal support to prosecute or take on appeal a few cases relating to violation of law on child labour.

After looking into the measures taken by Government, one can say that Government alone cannot achieve success, as the problem pertaining to child labor is quite a complex one. Government will have to take the help and active cooperation from other concerned quarters by ensuring active involvement of experts, activists, planners, administrators and above all NGOs already working in the area of the child labour. Though the government has already started working actively on the above lines, yet it is desirable on its part to associate all these people consistently from its inception to the conclusion of the action program. Training may be imparted to officials and NGOs working in the areas of child labour.

RECOMMENDATION OF NATIONAL COMMISSION ON RURAL LABOUR 1991:

CHILD LABOUR:

(i) Free and compulsory education for all children up to the age of 14 should be ensured immediately through the formal school system. Compulsory Primary education Act should be enacted in States, which do not have such legislation, and the Act should be implemented strictly. Informal education centers should also be set up near the basis. This will be the most effective method of preventing child labour of all kinds.
(ii) This measure should be backed up by a substantial increase in outlay for elementary education for providing school buildings and equipment, teachers, textbooks and other requisites. Supporting measures like free textbooks and uniforms, stipend or attendance scholarships, particularly for girls and mid-day meals consisting of pre-cooked packed food etc. should also provide.

(iii) If guaranteed wage employment can be provided to the parents of such child labour, the need for spending the child for work will also reduce. This programme should be phased and spread over the next five years, especially first covering areas where employment of child labour is extensive.

(iv) Simultaneously, the law also should provide for prohibition of child labour (that is, those under fourteen years of age) in all occupations and processes.

(v) A publicity campaign should also be undertaken through various media to bring out the evils of child labour and educate the public.

CONCLUSION AND RECOMMENDATION OF NATIONAL COMMISSION:

(a) Employment of children has of late been on the decline in organized industries;

(b) It is still common in the unorganized sectors or me economy, 

(c) The employment of children is more an economic problem than anything else. Even then, where it results in denial of education to them, employment hours of children should be so fixed as to enable them to
attend to schooling,

(d) Where the number of children is adequate, the employers with the assistance of the State Government should make arrangements to combine work with education.

INADEQUATE ENFORCEMENT:

The enactment of law is only a first step. What is really important is its enforcement. From the reports of the many committees and commissions it is clear impression of several inadequacies in the existing administrative set up for the implementation of various laws. The jurisdiction of individual inspectors was too extensive for them to keep a regular watch on the activities within their purview. In several States on inspector was required to cover a group of several districts. He was also burdened with very wide ranging other responsibilities pertaining to labour legislation. The result of this situation was apparent; there was practically no prosecution in most parts of the country of any violation of existing laws pertaining to child labour. According to the report of the committees in one of the States it was pointed out with pride that the first prosecution over launched by them was only in the international year of child.

The committee itself during spot investigations noticed children of very tender age working in certain factory premises in total disregard of the statutory provisions.

The committees recognized many situations, which impel parents to send their children for work. At the same time is felt that the law need to be more restricted regarding the effectively enforcement and necessary amendments should be made and alternate means for the children should be
provided. Most of inspections conducted on child labour law do not result in prosecution because during the inspection, some of the provisions of the Act or the rules are lost sight of the labour enforcement officers. This may be because of the labour enforcement officers not being careful, through and tactful while carrying our inspections.

Inspections under the Act to be purposeful and effective should always be surprise inspections. Otherwise employers of child labour send the children away or hide them and destroy the evidence about their employment the amount they get a hint of the impending visit of the inspections. As employers generally do not keep records of child labour, frequent inspections are necessary. Inspections after expiry of the prescribed working in excess of the prescribed hours of work should be there. Surprise visit to the establishments on the notified day of rest will help in detecting violations pertaining to section 8 of the Act.

Prosecutions do not result in convictions very of them because of the failure on the part of Inspectors' together sufficient and reliable evidence during the course of the inspections for bringing home the violations of the Act to the accused persons. Workers often do not give evidence against their employers even when they have given a statement at the time of inspection about the violations noticed by the inspectors. Such refusal is generally owing to fear of victimization and harassment or losing their employment. In many cases, even when the workers come forward and appear in the court, they either turn hostile or fail to remain inconsistent during cross examination.

Courts of Law generally decide matters on the basis of hard facts. Since the consequences of any prosecution can be punishment of the person charged
with the offence, the courts take into account human considerations and suffering only after the charges are established by sufficient legal evidence. Therefore it becomes essential to proceed carefully and collect sufficient documentary evidence will in advance before launching prosecution for violations of the Act. Studies on child labour reveal the following reasons for acquittal in some of the cases studied (1) delay in filing the case (ii) the inspectors failed obtain a deposition from any other worker of the factory prosecuted the case was not a notified under Section 17 of the Child Labour Act, 1986. (iv) Section 92 of the Factories Act, 1948 was not amended to accommodate the prosecutions of contraventions of section 67, under section 14(1) of the Child Labour (Prohibition and Regulation) Act, 1986; (v) the medical officer was a notified authority to certify the age of children only under the Factories Act, 1948 and not under the Child Labour (Prohibition and Regulation) in the prescribed form; (vii) the prosecution failed to produce the children before the court; (viii) the register of child labour was not seized and produced before the court; (ix) the rules were not framed by the State Government under section 18 of the Child Labour (Prohibition and Regulation) Act, 1986 and under such circumstances the legality of attracting Section 14(1) of the Act for the award of punishment would not be a valid contention; and (x) the certification of age of the child could not be considered as complete and final.

In 1979, a committee on Child Labour was setup under the chairmanship of Gurupadaswamy. By analyzing various factors, organizations, institutions, persons related to child labour, the committee recommended that the existing laws relating to the prohibition and regulation of the employment of children be consolidated into a single comprehensive one, adopting uniform definitions of
the child and adolescents while prescribing the hours of work, conditions of work etc.

A major breakthrough regarding child labour was made in 1986. A concrete law had become enacted in 1986, which was commonly known as the child labour (Prohibition & Regulation) Act, 1986. The major provisions of the Act were:

(a) To ban the employment of children below 14 years in specified occupations and processes.

(b) It laid down a procedure to divide the schedule of banned occupations or processes.

(c) To regulates the conditions of work of children in employment where they are not prohibited from working.

(d) It laid down enhanced penalties for employment of children in violation of the provisions of this act, and other acts which forbid the employment of children.

(e) It also tried to obtain a uniform of 'child' in the related laws.

In spite of the several laws on child labour and the various measures initiated to curb the evil, child labour is prevalent on a large scale in India. The fault lies partly with loopholes and weak enforcement of laws and partly with the belief system of the society.

By analyzing the above legislation on child labour, one can come to the conclusion that the major loophole of the legislation on child labour is the lack of uniformity. These laws do not conform to a single agreed minimum age. The minimum age differs from Act to Act, organization to organization and
industry to industry. This is true not only of the definition of minimum age, but also the working hours, rest period, night employment.

Even where laws apply, the employers do not implement them. There are also hardly any cases of Government taking employers to court for disregarding the various stipulations of the Acts. Weak enforcement machinery in the form of small inspectorates of laws radiated to child labour is another factor for the failure to implement such laws. The punishment is very light for violating the laws. The offenders are not worried about deterrent punishment because they can always bribe the labour commissioners. The law is also evaded due to non-awareness of the existence of laws and the illiteracy of the people.

Regarding the medical examination of adolescents, the ILO conventions require that in occupations involving high health risks, the age up to 21 years. However in a country like ours, where the health facilities are rare, it is impossible to enforce such provisions.

One major fault in the child labour (Prohibition and Regulation) Act, 1986 is that it excludes child labour in family enterprises from the ban. That is why main clever employers have installed looms for carpet weaving in homes.

The act is based on the belief that child labor should be prohibited only in hazardous processes. Again, it is impractical to think that a labour inspector without the necessary qualification and the infrastructure of the testing laboratories can identify dangerous chemicals. It even violated the fundamental Rights in the constitution by permitting the children to work in occupations not covered in part A of the schedule and part B of the processes. It does not included glass industry among the list of occupations hazardous children even
though there is enough evidence to prove that glass works are very dangerous for children. State pencil industry, where workers succumb to silicosis and other respiratory ailments before they even reach middle age is also excluded from the purview of the Act. Another major loophole of the Act is that the prosecution of the employers is possible only if the age of the child is established. In poor illiterate families to which most child labourers belong there is never any proof of age.

The new national policy on education adopted by the government for providing non-formal education for working children is also fraught with problems. The major short coming of the policy is that children can not expected to study after working 12-16 hours a day.

The propensities announcement to set a frame work of a decade to solve the problem of child labour by rehabilitating child workers at the rate of 20 lakhs a year, speaks of the vagueness that persists regarding the magnitude of the problem. The number of child labourers is at least three times more than the official figure. In the face of this grim reality the attempts made by the government to ameliorate the plight of the child labourers appears to be half-hearted.

Government’s difference to the problem of child labour is also evident from the fact that at the Ministerial Conference of WTO at Sea Hale rejected the “Social clause” sponsored by the west, which seeks to establish linkage between international trade and enforcement of child labour standard. It is true that social issues relating to employment, skills development and elimination of child labour or up gradation of
INTERNATIONAL PROGRAMME ON THE ELIMINATION OF CHILD LABOUR (IPEC)

The International Programme on Elimination of Child Labour is a global programme launched by the International Labour Organisation in December 1991. India was the first country to join it in 1992 when it signed a MOU with ILO. The long term objective of IPEC is to contribute to the effective abolition of child labour. Its immediate objectives are:

- Enhancement of the capability of ILO constituents and Non-governmental Organizations to design, implement and evaluate programmes for child labour elimination;
- To identify interventions at community and national levels which could serve as models for replication; and
- Creation of awareness and social mobilization for securing elimination of child labour.

At the international level, IPEC has a Programme Steering Committee consisting of representatives of the ILO, the donors and participating countries. The IPEC Programme Management is guided from the ILO Headquarters. At the national level in India, there is a National Steering Committee of which the Labour Secretary is the Chairman. This is tripartite in composition with representation for NGOs as well.

IPEC-India has in the period spanning 1992-2002 supported over 165 Action Programmes. Apart from these, Integrated Area Specific Project and State Based Project in Andhra Pradesh are the large and comprehensive projects.
Currently IPEC is implementing the INDUS Child Labour Project which is funded by the Ministry of Labour, Govt. of India and the Department of Labor, United States of America (USDOL) and is implemented in ten hazardous sectors in 20 districts across four States namely, Maharashtra, Madhya Pradesh, Tamilnadu and Uttar Pradesh. An estimated 80,000 children will be withdrawn and rehabilitated under this project. Support activities will also be directed to 10,000 families of former child workers.

In recent times, it has been impressed in various fora, including at the meeting of the IPEC Programme Steering committee, that IPEC activities should be conducted in conjunction with national policies, priorities and programmes of the recipient Member States. The concerned Member States should be fully aware of activities undertaken under IPEC. All proposals recommended by the National Steering Committee must be processed expeditiously and sanctions communicated in time backed by timely release of funds. It has also been impressed that it is essential to augment funding for IPEC activities in India and that contributions should be towards core funding rather than to specific projects.

The Memorandum of Understanding signed by the Government of India in 1992 for the implementation of IPEC in India expired on 31st December 1996. It has thereafter been extended from time to time. The IPEC programme had been extended till December 2002 by mutual exchange of letters. The IPEC programme is further being extended till September 2006.
STRATEGY FOR THE TENTH PLAN

In the Tenth Plan, the policies and programmes for elimination of child labour will be continued in a more focused manner. The objective of the programme is to eliminate child labour in hazardous activities by the end of the plan period. Keeping in view the National Child labour Projects are being extended to 150 additional districts. Of these, 50 new districts have already been included in the NCLP Scheme.

Convergence with the ongoing schemes of the Dept. of Education, Rural Development, Health and Women & Child Development would play a critical role in the ultimate attainment of the objective of elimination of child labour in a time bound manner. Efforts on eliminating child labour have been strengthened in the Tenth Plan by linking them with the Sarva Siksha Abhiyan of the Ministry of Human Resource Development. As part of this, child workers in the age group 5-8 years will be directly mainstreamed through formal schools. Working children in the age group of 9-14 years would be mainstreamed through the special schools of NCLPs to formal education system. Besides this, during the Tenth Plan, the formal school mechanism would be strengthened both in terms of quality and numbers.

The NCLP scheme has also been revised to include/strengthen and certain important parameters. The revised scheme also provides for

- One Master vocational trainer for each NCLP for training of vocational teachers of the NCLP schools. This will strengthen the Vocational training component in the scheme.
• A Medical Doctor for every 20 schools to take care of the primary health needs of the children.

• The amount for provision of nutrition to the children in the special schools has been doubled from Rs. 2.50 per child per day to Rs. 5.00 per child per day.

• As against the existing arrangement of disbursing the stipend of Rs. 100/- per child per month, in the revised scheme, the monthly stipend will be deposited regularly in the Bank account of the child and disbursed to her/him as a lump sum amount at the time of her/his mainstreaming into the regular schools.

• Large-scale involvement of the voluntary organizations at the district level to assist in the running of the NCLP schools. The attempt during this Plan would be to encourage the running of the rehabilitation schools only through accepted and committed NGOs so that the Government machinery is not burdened with running of such schools.

• By following the strategy enunciated above and combining this with the existing established mechanisms of enforcement, it is expected that a drastic reduction in child labour would result by the end of Plan period.

Keeping in mind constraints of resources and the prevailing level of social consciousness and awareness, the government has fixed the time till the end of the 10th Plan to eliminate child labour in the hazardous sector. Elimination of all forms of child labour itself is a progressive process beginning with elimination efforts in the hazardous areas.
References


3. Encyclopaedia Britannica at p. 523.

4. The Hindustan Times, Wednesday, the metropolitan, Dec. 11, 1996.


6. See the Preamble of the Constitution of India.

7. Art. 38(2) of the Constitution of India.


11. See, The Constitution of India, Article 15, 16, 19 and 29 which guarantee fundamental rights only for the citizen of India.

12. See, the Constitution of India, Articles, 14, 17, 18, 20 to 28 and 32 which guarantee fundamental rights for both the Indian citizens and non-citizen found in India.


18. Article 23(1) reads: "Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law".


20. Ibid.


22. Article 24 reads: "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.


25. See, Laksami Kant v. India, AIR 1984, SC 469, upon the great importance of child welfare in the country.


27. See Constitution of India, Articles 14, 17, 20, 21, 22, 23, 25, 26, 27, 28, & 32.


31. See, Constitution of India, Part IV, Article 38.

32. Article 39 the state is to see:

(a) that the health and strength of workers, men and women and the tender age of children are not abused and that citizen's are not forced by economic necessity to enter avocations unsuited to their age or strength.

(b) that children are given opportunities or facilities to develop in a healthy manner and in conditions of freedom of dignity and that childhood and youth are protected against exploitation and against moral and mental abandonment.


34. According to a report of the Indian Council of Medical Research at least 60% of the children in India suffer from protein coloria malnutritional anaemia.


37. See, Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789.

38. Ibid.


43. The Constitution of India.

44. The Indian Penal Code, 1860.


46. See Art. 15(3), 14, clauses (e) and (f) of Art. 39 and 45 of the Constitution.


49. Ibid.

50. India has ratified 4 conventions, namely, Minimum Age (Industry) Convention, 1919, Minimum Age (Trimmers and stockers), Convention 1921; Medical Examination of Young Persons (sea) Convention, 1921, and Night Work of Young Persons (Industry) convention, 1948.


52. See, The Children (Pledging of Labour) Act, 1933, Section 1(2).

53. Ibid., Section 3.

54. Ibid., Section 2.

55. Ibid., Section 4.

56. Ibid., Section 2.

57. The Employment of Children Act, 1938, Section 3(3).
58. Ibid., Section 3(2).
59. Ibid., Section 3(3).
60. Ibid., Section 3-A.
61. Ibid., Section 4.
62. Ibid., Section 3-E.
63. The Factory Act 1948, Section 1(2).
64. Ibid., Section 2(m).
65. Ibid., Section 2(c).
66. Ibid., Section 2(d).
67. Ibid., Section 2(b).
68. Ibid., Section 67.
70. See AIR 1927-Mad, 435.
71. See (1871) L.R.Q.B. 718.
72. See (1808), I.O.B. 881.
73. See, Factory Act, 1948, Section 68.
74. Ibid., Section 71(f) (6).
75. Ibid., Section 71(1) (a).
76. Ibid., Section 7(2).
77. Ibid.,
78. Ibid.,
79. Ibid.,
80. Ibid., Section 71(4).
81. Ibid., Section 72.
82. Ibid., Section 73.
83. Ibid., Section 74.
84. The Factory Act. 1948, Section 68.
85. Ibid., Section 70.
86. See. 11 L.L.J. Orissa, 551 (1964).
87. See (1904) 34 C.L.T. 370.
88. The Factory Act., 1934 Section 27.
89. Ibid., Section 34(2).
90. Ibid., Section 79.
91. Ibid., Section 5.
92. See, the Plantation of Labour Act, 1951, Section 4(a).
93. Ibid., Section 24.
94. Ibid., Section 26.
95. Ibid., Section 27(2).
96. Ibid., Section 34.
97. Ibid., Section 5, 6, 7.
98. The Mines Act. 1952, Section 1(2).
99. Ibid., Section 2(j).
100. Ibid., Section 2(e).
101. Ibid., Section 45(i).
102. Ibid., Section 40(i).
103. Ibid., Section 41(i).
106. Ibid., Preamble.
107. Ibid., Section 3.
108. Ibid., Section 4(a).
109. Ibid., Section 4(b).
112. Ibid., Section 1(4).
113. Ibid., Section 21.
114. Ibid., Section 22.
115. Ibid., Section 23(2).
117. Ibid., Section 24(b).
118. Ibid., Section 2(b).
119. Ibid., Section 25.
120. Ibid., Section 32.
121. Ibid., Section 16.
122. Ibid., Section 15.
123. Ibid., Section 8.
124. Ibid., Section 9.
126. Ibid., Section 1(4).
127. Ibid., Section 1(5)(4).


130. Ibid., Section 5.

131. Ibid., Section 7(3).

132. Ibid., Section 8.

133. Ibid., Section 7(4).

134. Ibid., Section 7(4).

135. Ibid., Section 13(1).

136. Ibid., Section 13(a).

137. Ibid., Section 13(c).

138. Ibid., Section 13(d).

139. Ibid., Section 13(f).

140. Ibid., Section 13(g).

141. Ibid., Section 14.

142. Ibid., Section 16(1).

143. Ibid., Part B(ii).


146. Ibid.

147. Ibid.

148. Ibid.
149. Ibid.


155. Savita A. Sharma, "More Snakes than Ladder", The Hindustan Times (Delhi Edn) dated 29.8.95.


172. Child Labour a proactive policy towards Eliminating Child Labour.