In India, the nature and gravity of the problem of child labour is posing a serious challenge to the society. The children who are employed at an early age become the victims of exploitation. They cannot protest the misdeeds committed against them because of their tender age. Under such circumstances, it becomes necessary to find out ways which may put to an end to the employment and exploitation of child labour. It is the responsibility of the society and government to take care of the children and think for their development. In a developing country like India, it is not possible to eradicate the problem of child labour within a very short span of time. It is, therefore, necessary to regulate child labour through adequate legislations.

Law is a framework which fulfils certain basic needs of the individual, society and the nation. Government of India has adopted measures designed to protect children against neglect, cruelty and exploitation and provide equal opportunities to children for development. These measures are concerned with social protection, regulation of the working and living conditions of child labour. Different laws have been passed by the central government and state governments to protect the interests of child labour in India. Provisions for the welfare of children and also to protect the child labour have been incorporated in the Constitution of India. Moreover, National Policy on Labour, 1987 lays special stress on the responsibility of the nation for the physical, mental, moral and special development of children.
THE CONSTITUTIONAL FRAMEWORK

The problem of child labour has been consistently posing serious threat to the state. Although there had been lack of serious efforts on the part of the state, it would not be justified at all to say that no efforts have been made in this regard. In the Constitution of India, there are some provisions relating to child labour as well as child welfare, which have been incorporated in Part III and Part IV dealing with Fundamental Rights and Directive Principles of State Policy respectively.

It may be observed that adequate discussion on the status of children is significantly absent in the debates of the Constituent Assembly. The reason can be that this matter might have been taken for granted during deliberations. However, when the Constitution was adopted the Preamble unequivocally stated that social, economic and political justice, liberty of thought, expression, belief faith and worship, equality of status and opportunity and fraternity assuring the dignity of the individual and unity and integrity of the nation will be secured to all citizens. The framers of the Constitution realised that the children require special protection. So, in Part III and Part IV of the Constitution, special provisions relating to children have been incorporated.

The Constitutional provisions dealing with welfare of children can be divided into two categories. Those are explicit provisions and implicit provisions. The explicit provisions dealing with the child welfare are as follows:

1. Article 15 (3): It empowers the state to make special provisions for women and children.
2. Article 21: It guarantees right to life and personal liberty. 86th Amendment states that the “Then State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law, determine."

3. Article 24: It prohibits the employment of the children in factories etc.

4. Article 39 (e) and (f): It obliges the state to safeguard the health of children and afford opportunities to grow with dignity.

5. Article 45: It provides for free and compulsory education for children.

The implicit provisions dealing with the welfare of children may be mentioned as under.²

1. Article 14: Equality before law.


3. Article 38: It endeavours to secure a social order for the protection of welfare of the people.

4. Article 41: Right to work, to education and to public assistance in certain cases.

5. Article 42: Provision for just and humane conditions of work and maternity relief.

6. Article 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections and

7. Article 47: It obliges the state to raise the level of nutrition and the standard of living and to improve the public health.
Part III of the Constitution contains a long list of fundamental rights. This chapter of the Constitution of India has very well been described as the Magna Carta of India. As early as 1214, the English people exacted an assurance from King John for respect of the liberties which were prevalent at that time. The Magna Carta is the evidence of their success which is a written document. This is the first written document relating to the fundamental rights of the citizens. Thereafter from time to time the king had to accede to many rights to his subjects. France declaration of Rights of Man and the Citizen (1789) declared the natural inalienable and sacred rights of man. Following the spirit of Magna Carta of the British and Declaration of the Rights of Man and Citizen of France, the Americans incorporated the Bill of Rights in their Constitution. The Americans were the first to give Bill of Rights a Constitutional status. Thus when the Constitution of India was being framed, the background for the incorporation of Bill of Rights was already present. But the declaration of fundamental rights in the Constitution of India is the most elaborate and comprehensive yet framed by any state.

Article 14 of the Constitution guarantees equality before law to all the citizens of India. Though this Article forbids class legislation, it does not prohibit reasonable classification of persons, objects and transactions by the legislature for the purpose of achieving specific ends. 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, as they require special treatment on account of their very nature. Article 15(3) serves as an exception to Article 15(1) and 15(2). Article 15
in general prohibits the discrimination on the grounds of religion, race, caste, sex or place of birth. Mr. H. M. Seervai is of the view that since Article 15(1) does not make age a prohibited ground of discrimination; the reference of children in Article 15(3) appears to be pointless.  

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. Solitude for children and repulsion for the exploitation of children of tender age impelled the framers of the Constitution to make a specific mention of them. The state can make law for welfare of children, giving them preferential treatment over other persons in the society.

Article 21 deals with protection of life and personal liberty. ‘Right to life’ has been held to be not a mere animal existence, but it is to be with human dignity and values.

Free and compulsory primary education has been made a fundamental right under Article 21 of the Constitution of India by the 86th Amendment of the Constitution. The Amendment to Article 21 says “the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law, determine.” Earlier in the chapter of Directive Principles of State Policy, under Article 45 a duty was imposed upon the state to provide free and compulsory education for all the children until they complete the age of 14 years. But after 86th Amendment no longer is the promise of achieving universal primary education an unenforceable Constitutional directive. Now there is scope for judicial
intervention to provide educational infrastructure to all Indian children up to the high school level.

The Amendment also seeks to compel the parents to send their children to school by including it as a Fundamental Duty (Article 51-A) and amends Article 45 of the Constitution to make the state “endeavour to provide early childhood care and education for all children until they complete six years of age”. The Minister for Human Resource Development, Murli Manohar Joshi, has rightly called the passing of the bill in the Lok Sabha the “dawn of the second Revolution in the chapter of citizens rights and announced that laws will be made to operationalise the Fundamental Right”.10

Article 23 of the Constitution prohibits the traffic in human beings, begar and other similar forms of forced labour. The second part of Article 23 declares that any contravention of this provision shall be an offence punishable in accordance with law. Although this Article does not speak of children, yet it is applied to them and is more relevant in their context because children are the most vulnerable section of the society.11 It is a known fact that many children are exploited even by the parents and in the absence of parents their exploitation by close relatives is still deeper. They are deprived of education and compelled to do all sorts of work injurious to their health and personality. In rural areas children are pledged by destitute parents to landlords as full time servants or part time workers to look after both domestic and agricultural operations. 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 these fundamental rights.
In reference to children the word 'begar' can be given a wide connotation. Begar does not require total absence of payment. 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 maimed by children gangs to indulge them in begging business. Sometimes, the children of tender age are enticed for the flesh trade, thus all in violation of Article 23.12

Article 24 of the Constitution prohibits employment of children below 14 years of age in factories and hazardous employment. This provision is certainly in the interest of health and safety of children. Children are the assets of the nation. That is why, Article 39 of the Constitution imposes upon the state an obligation to ensure that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.13

Article 24 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 factories or mines or in any other hazardous occupation. However, this provision is to be understood in the light of realities and economic needs of parents and children of the society.

Article 24 is plainly and indubitably enforceable against everyone and by reason of its compulsive mandate, no one can employ a child below the age of 14 years in a 'hazardous employment'.14 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*.15
Part IV of the Constitution deals with Directive Principles of State Policy. India is a welfare state which seeks to promote the prosperity and well being of the people. The Directive Principles strengthen and promote this concept by seeking to lay down some socio-economic goals which the various governments in India have to strive to achieve. These principles obligate the state to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy. These principles give direction to the legislatures and the executives in India as regards the manner in which they should exercise their powers.\textsuperscript{16} Though it is not obligatory for the government to implement the Directive Principles and none can go to the court for the violation of these principles by the government, yet the governments show utmost importance to these principles as socio-economic development of the people will be possible and welfare state as enshrined in our Constitution can be established only when these principles will be implemented.

India strives to be a welfare state; this is reflected in the Directive Principles of State Policy. Directive Principles of State Policy although do not lay emphasis on the child welfare directly, but children will be bound to be beneficiaries, if these provisions are implemented.\textsuperscript{17} It is stated by the Supreme Court that these principles being conducive to the general interest of the public and therefore, to the healthy progress of the nation as a whole, merely lay down the foundation for appropriate social structure in which the labour will find its place of dignity, legitimately due to it in lieu of its contribution to the progress of national economic propriety.\textsuperscript{18} To achieve the goals relating to child labour, the Constitution has some prohibitions in Part IV which have been designed with an unrest zeal to strive to promote the welfare of the
people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of 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 way, it is expected that it will promote, the child welfare also.\textsuperscript{19}

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 economic 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.

Article 41 deals with the rights to work, education and public assistance in certain cases. It requires that the state shall within the limits of its economic capacity and development, make effective provision for securing \textit{inter alia}, the right to education and public assistance in cases of unemployment and other cases of undeserved want. The implementation of this provision is also expected to promote the welfare of the children proportionately and to ensure distributive justice to them.\textsuperscript{20}

Article 42 obligates the state to make provisions for securing just and humane conditions of work and for maternity relief. 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 promote healthy environments for their bringing up.\textsuperscript{21}
Article 43 lays down that it is the duty of the state to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and in particular, the state should promote cottage industries on an individual or co-operative basis in rural areas. As the Article is applicable to all workers, so child labourers are also automatically covered by it.

Article 46 similarly lays down that the state shall promote with special care, the educational and economic interests of the Scheduled Castes and Scheduled Tribes and other weaker sections of society. The children belonging to such category are the worst affected and need to be constitutionally protected.

Article 47 imposes a primary duty upon the state to raise the level of nutrition and standard of living of its people and improvement of public health. Thus, it is the duty of the state to provide nutritious food to the children as the word 'people' includes not only adults but children also. This provision actually would have become more relevant in case of children as malnutrition can cause irreparable danger to the personality of the children through mental retardation and blindness.

Though these directives are not enforceable by the courts and if the government fails to carry out these objects, no court can compel the government to ensure them, yet these principles are very important in the governance of the country and it is the duty of the state to apply these principles in making laws.

The sanction behind them is in fact political. As Dr. Ambedkar observed in the Constituent Assembly, "If any government ignores them, they will certainly have
to answer for them at election time". It would be also a patent weapon at the hands of the opposition to discredit the government on the ground that any of its executive or legislative acts is opposed to the Directive Principles. Therefore, the government tries to implement these principles subject to the availability of the resources.

Though the Constitution of India has prohibited employment of children in factory, mine or any other hazardous employment, it is silent regarding their employment in non-hazardous forms of work. If they are permitted to work in the non-hazardous employments, then their right to education under Article 21 will be violated, as it is not possible to continue work and study simultaneously for the small children. Even if arrangement is made by the government to provide them education beyond their working hours, it will be an injustice for them. After working for several hours, they become tired and if they are compelled to go to school, then it will be an additional pressure on them and may even affect their health. So, condition of child labour cannot be improved through such provisions.

THE STATUTORY FRAMEWORK

Child labour is both an economic practice as well as a social evil. It existed in some form or other from time immemorial. But it was only after the advent of factory type units in the middle of the 19th century that the employers began to employ children in industries where they worked for long hours under appalling conditions. The question of the regulation of the conditions of work for labour was first breached
in 1875 by the appointment of a Committee by the Bombay Government. After much deliberation the first Act was passed in 1881.24

The Factories Act, passed in 1881 covered only those factories employing 100 or more persons and which used mechanised power. It only provided for the regulation of working hours of children below the age of 12 years. Minimum age of a child for employment was fixed as seven years. Working hours was prescribed not to exceed nine hours a day and at least four holidays to be given in a month. Successive employment for the same employee, that is, employment in two factories on the same day was prohibited.

The Factories Act was revised in 1891 by which minimum age for employment was increased to 9 years. Hours of work were also limited to a maximum of seven hours per day, with prohibition of work at night between 8 p.m. and 5 a.m. This Act was made applicable to units having 50 or more workers. However, the smaller units, where the worst abuses existed were not covered by the Act. Regulations, however, were not always enforced and evasion was frequent.25

In 1889, in a report on the working of the Factories Act, it was stated that in the Jabalpur Mill Children worked from sunrise to sunset with a rest period of one hour. In the coalmines in Bengal, children were employed extensively underground. During the 1905 industrial boom with the introduction of electric light, it was found that children often had to work for 14 to 16 hours in a day. The physique of the factory children was poor in comparison to other children. They had no opportunity of education, no training in skills and hence no chances of upward mobility.26 But
gradually people began to think about the need of legislations which could help in the abolition of the evil practice of child labour.

The Mines Act, passed in 1901, prohibited the employment of children under 12 years of age.

The Factories Act of 1911 prohibited work of children between 7 p.m. to 5-30 a.m. It also provided for prohibition of work in certain dangerous processes and requirement of certificate of age and fitness.

After the first World War, International Labour Organisation was formed. India was one of the founder members of the Organisation and it was a signatory to the first Convention on the Prohibition of Child Labour in 1919.

To implement the Convention No. 5 of the International Labour Organisation which was adopted in 1919, the Factories Act was amended in 1922. By this amendment minimum age limit was increased to 15 years. The scope of the Act was limited to establishments employing 20 or more persons with mechanical processes. It prohibited the employment of children below 18 years and women in certain processes. However, children below the age of 12 years were only prohibited to employment prescribing an obligatory condition that, for employment such children are required to produce certificate of age and certificate of fitness from a qualified Medical Practitioner.27

In 1923, the Indian Mines Act was passed. This Act prescribed a higher minimum age for employment in Mines, that is, from 12 to 13 years.
The Factories Act was again amended in 1926. This amendment imposed certain penalties on the parents and the guardians for allowing their children to work in two separate factories on the same day.

The Indian Ports (Amendment) Act, 1931 provided that 12 years shall be the minimum age of a person for handling goods in ports.

The Resolution which was drafted at the Karachi Session of Indian National Congress in 1931 highlighted that children of school going age should not be employed in factories and mines.28

The Final Report of the Labour sub-committee presented to the Indian National Congress in May, 1940 highlighted that working and living conditions of children including hours of work should be regulated and the minimum age of employment of children should be progressively raised to fifteen in correlation with the education system.

Two years before the Karachi Session of the Indian National Congress, the Whitley Commission Report of the Royal Commission on Labour in India was shocked by the appalling conditions of children working in factories and observed that in many cities large number of young boys were employed for long hours. Workers as young as five years of age were found in some of these places working without adequate meal, intervals or weekly rest days. They had to work for 10 or 12 hours daily for sums as low as two annas.29

The Commission, therefore, appropriately recommended legislation to fix the minimum age for employment of children at a higher level than that obtaining in
many industries. In the following years, the minimum age for employment of children was fixed at 12 years under the Factories Act and 15 years under the Mines Act.

The Report of the Royal Commission on Labour in 1931 had an impact on legislations pertaining to child labour during the period of 1931 to 1949.

The Royal Commission found that the practice of pledging of labour of children was prevalent in areas such as Amritsar, Ahmedabad and Madras in carpet and beedi factories. The children in these factories were found to be working under extremely unsatisfactory working conditions. Hence, the Royal Commission recommended the expediency of penalising the giving of advances to secure the labour of children. It also suggested that the bond for pledging of labour of a person under 15 years executed on account of any consideration should be void. The Commission observed:

The system is indefensible; it is worse than the system of indentured labour for the indentured labour is, when he enters on the contract, a free agent while the child is not.

This recommendation was given effect to by the legislature by introducing in the Legislative Assembly a Bill called the Children (Pledging of Labour) Bill in 1932, which was, a year later, converted into an Act. Previously, the Act was extended to whole of India except Jammu and Kashmir, but after September 1971, it has been extended to Jammu and Kashmir also. This may be said to be the first statutory enactment dealing with child labour.

This Act prohibits parents and guardians from pledging the services of a child. A person who knowingly enters into an agreement with a parent or a guardian of the child, whereby such parent or guardian pledges the labour of his child, is liable to a
fine up to two hundred rupees. A parent or guardian, who knowingly pledges the labour of his child, is liable to be punished with a fine which may extend up to fifty rupees. Child means under this Act, a person who has not completed the age of 15 years.

This Act was passed with an intention to protect child from exploitation in various hazardous occupations, but it remained a dead letter. No judicial efforts were made to protect the child from exploitation.32

This Act imposes only fines and not any imprisonment as penalty. The minimum fine is Rupees 50.00 and the maximum is Rupees 200.00 and it was fixed in 1933. In the year 1976, a comprehensive enactment prohibiting the pledging of the labour of a child was enacted by the Parliament known as Bonded Labour System (Abolition) Act, 1976. Section 3 of the Bonded Labour System (Abolition) Act, 1976 has an overriding effect over other enactments. The penalties provided under the 1976 Act are more rigorous. Further, under the 1976 Act, provisions have been made for rehabilitation of freed bonded labour.33

The Factories Act of 1934 evolved elaborate provisions regularising employment in respect of various age groups working in factories. It prohibited employment of children under 12 years, restricted employment of children between 12 to 15 years to five hours a day and imposed certain restrictions on children between 15 and 17 years.34

The Mines (Amendment) Act, 1935 introduced divisions of children according to age groups and the following restrictions were introduced: -

(i) Employment of children under 15 years in mines was prohibited;
(ii) Underground employment of persons between 15 to 17 years was permitted only on production of certificate of physical fitness granted by a medical practitioner;

(iii) Working time restricted to maximum 10 hours a day and 54 hours a week for work above the ground and 9 hours a day for work underground.\(^\text{35}\)

In 1937, International Labour Organisation adopted a special Convention in its 23rd Session which inserted a special Article for India. It stated that:

"Children under the age of 13 years shall not be employed or work in the transport of passengers or goods or mails, by rail or in the handling of the goods at docks, quays of wharves, but excluding transport by land. Children under the age of 15 years shall not be employed or work... in occupations to which this Article applies which are scheduled as dangerous or unhealthy by the competent authority."\(^\text{36}\)

The Employment of Children Act, 1938 was passed to implement this Convention.\(^\text{37}\) This Act was applied to the whole of India. To prevent employment of children in hazardous employment and in certain categories of unhealthy occupations, the Act prohibited the employment of children below 15 years of age in occupations connected with the transport of passengers, goods or mails by railways.\(^\text{38}\)

With the exception of children employed as apprentices or trains, no child between the age of 15 to 17 years could be employed or permitted to work in these occupations unless he was allowed a rest interval of at least 12 consecutive hours in a day. The period of rest was to include at least 7 such consecutive hours between 10 p.m. to 7 a.m. as might be prescribed by the appropriate government.\(^\text{39}\)

The Act also prohibited the employment of children below the age of 14 years in workshops connected with beedi making, carpet weaving, cement manufacturing
including bagging of cement, cloth printing, dyeing and fire works, mica cutting and splitting, shellac manufacture, soap manufacture, tanning and wool cleaning. These provisions, however, did not apply to workshops where the work was done by the occupier with the aid of his family only or to any school established, aided or recognised by any state government. The state governments were empowered to extend the scope of this provision of the Act to any other employment also. In exercise of this power the government of Madras had extended the Act to children working as cleaners in workshops attached to motor transport companies. The government of Uttar Pradesh, also extended this provision of the Act to brassware and glass bangle industries. The penalty for the breach of the Act was imprisonment up to one month or fine up to Rupees 500 or both. The Act also required the Railway and port authorities to maintain registers showing names, date of birth and rest intervals of children under 17 years of age. This Act has been repealed to the extent it is inconsistent with the Child Labour (Prohibition and Regulation) Act, 1986. In other words, this Act was substituted by Child Labour (Prohibition and Regulation) Act, 1986. But the sections exempting family and school work were retained unchanged.

After independence and the merger of the princely states, the laws of British-India were revised to apply to the whole of the Republic of India. Fresh legislations were enacted to give substance to the Constitution and the Conventions of International Labour Organisations.

The Factories Act, which was passed in 1948, extends to the whole of India. It applies to establishments employing 10 or more workers where manufacturing process is carried on with the aid of power or 20 or more workers where
manufacturing process is carried on without the aid of power.46 A child under the Act is defined as a person who has not completed his fifteenth year of age.47 A young person is defined as either a child or an adolescent.48 An adolescent is a person, who has completed his fifteen years but not eighteen years.49 Thus, young persons may be divided into following categories.

In the first category, there are the persons who are under fourteen years. They are not allowed by this Act to work in any factory.50

In the second category, there are persons who have completed fourteenth year or adolescents. They can be employed under certain restrictions provided under Sections 68 and 69 and from Section 71 to Section 75 of the Act.

The Act provides that such persons should have a certificate of fitness issued by a surgeon and should carry a token of such certificate.51 The certifying surgeon should follow the procedure laid down in Section 69.52 They should not work at night, that is, twelve consecutive hours including the period from 10 p.m. to 6 a.m. They should work not more than four and half hours a day.53 The period of work is to be limited to two shifts.54 The shifts should not overlap.55 Each child has to be employed in one relay.56 The spread over is not to exceed five hours and should also not change except once in 30 days.57 They should not be employed in two separate factories on the same day.58 The employer should display a notice regarding the periods of work for such children.59 The manager of the factory should maintain a register in respect of such child workers.60 No such child shall be employed except in accordance with the notice of periods of work displayed at the entries against his name in register of child workers.61
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 to 18 years 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. The adolescents under 17 are not allowed to work at night.

The Act also prohibits the employment of children to any part of the factory for pressing cotton in which a cotton opener is at work, except where the feed end of a cotton-opener is in a room separated from the delivery end.

The state government is empowered by this Act to make rules prescribing the maximum weights 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 calendar 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. Different facilities like rest rooms, shelters and canteens are also to be provided to all workers including children.

The Minimum Wages Act, 1948 was the first statutory regulation of wages and was inspired by the recommendation adopted by the International Labour Conference in 1928. The Act, which governs hours of work and off days, applied to 13 categories of employment including agriculture. States were permitted to add to the list of employments. This progressive piece of legislation, however, effectively
ensured the persistence of child labour by permitting a three-tiered wage structure for adults, adolescents and children.\textsuperscript{68}

This Act was enacted in 1948, with the objective of fixing, reviewing, revising and enforcing the minimum rates of wages relating to scheduled employments to be notified under the law by the appropriate government. The intention of the Act is to fix minimum rates of wages in employments in which the labour force is vulnerable to exploitation as they are not well organised and has no effective bargaining power. It provides for an institutional mechanism and procedure for fixation, review, revision and enforcement of minimum rates of wages.\textsuperscript{69} The Act maintains expressions of adult, adolescent and child as in the case of Factories Act, 1948. The Act does not make any specific provision except that it says that different minimum rates of wages may be fixed for adults, adolescents and children (Section 3). Rule 24 of the Minimum Wages (Central) Rules, 1950, provides that in the case of a child the number of hours in a normal working day shall be 4½ hours. Thus it can be concluded that the Minimum Wages Act provides for a working day of 4½ hours and differential rates of minimum wages for child workers.\textsuperscript{70}

Employment of Children (Amendment) Act, 1949, raised the minimum age to 14 years for employment in establishments governed by the Act.\textsuperscript{71}

There was the need of amendment of Employment of Children Act again in 1951 as a result of the Convention of International labour Organisation relating to night work of young persons.
This amendment prohibited the employment of children between 15 and 17 years at night in railways and ports and also provided for requirement of register for children under 17 years.\textsuperscript{72}

In 1951, Plantations Labour Act was passed for the welfare of labourers and to regulate the conditions of work in plantations.\textsuperscript{73}

This Act covers, to any land used or intended to be used for growing tea, coffee, rubber, cinchona or cardamom and admeasures 5 hectares or more and in which 15 or more persons are employed or were employed on any day of the preceding 12 months.\textsuperscript{74} The state government is, however, empowered to extend, all or any of the provisions of the Act to any land used or intended to be used for growing and plantation even if it measures less than 5 hectares and the number of persons employed therein is less than fifteen, provided that land which measured less than 5 hectares or in which less than fifteen persons were employed immediately before the commencement of the Act would not be covered.\textsuperscript{75}

This Act prohibited the employment of children below the age of 12 years. However Section 24 of the Child Labour (Prohibition and Regulation) Act, 1986 has omitted this provision from the Plantations Labour Act.

A young person, under this Act, cannot be employed unless he is certified to be fit for work by a surgeon.\textsuperscript{76} Such certificate is valid only for twelve months.\textsuperscript{77} Use of a false certificate of fitness is punishable by imprisonment which may extend up to one month or with fine which may extend up to Rupees fifty or with both.\textsuperscript{78} In case, a person who has been convicted of any offence, involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment
which may extend to 6 months, or with fine which may extend up to Rupees 1000.00 or with both. Further Section 25 of the Act provides,

"No woman or child shall be employed in any plantation otherwise than between 6 a.m. to 7 p.m. except with the permission of the state government."

The total maximum working hours in a week for a child and an adolescent prescribed under the Act are 27.

This Act prescribed a few welfare measures in the nature of suitable rooms for the use of children below the age of 6 years and education for the children of workers employed in plantations.

Under this Act, necessary provision is made for appointment of inspecting and medical staff.

This Act is, however, more comprehensive in the sense that this Act alone makes the provision for education as a responsibility of the employer and so is for the housing and medical and recreational facilities. The reason for this may be that plantation labour is commonly known as family labour as against individual child labour as in this field all the members or most of the members of a family are engaged.

A bill to further amend the Plantations Labour Act, 1951 was introduced in Parliament on March 3, 1975, but it has not been enacted into law.

The Mines Act was passed in 1952. Before the enactment of this Act, the workers in the mines were covered by the Mines Act of 1923, which itself was due to the result of the International Labour Conference held in Washington. The
Conference set certain labour standards and forbade children under 13 years to work in underground mines and limited the hours of work.\textsuperscript{84}

However, so far as India is concerned, its norms were never recognised by the colonial government and the mine workers never had a statutory regulation of working hours. Even the Royal Commission of Labour shocked to note the conditions of work of the mine workers and made certain recommendations. It was only after independence, a comprehensive legislation was enacted by the Parliament in the year 1952.\textsuperscript{85}

The Mines Act, 1952 extends to the whole of India.\textsuperscript{86} The Mines Act of 1901 had empowered the Chief Inspector of Mines to prohibit employment of children in mines under 12 years of age, but this Act could not be enforced strictly. In 1921, the children below 12 years of age constituted three and a half percent of total labour force in mines.\textsuperscript{87} The Indian Mines Act, 1923 prohibited the employment of children under 13 years of age in any part of a mine which was below ground. But in 1926, children below 12 years still constituted about 16 percent.\textsuperscript{88} In 1935, minimum age for employment of children was raised to 15 years. Underground employment of persons between the ages of 15 to 17 years was permitted only on production of certificate of physical fitness granted by a qualified medical practitioner.\textsuperscript{89}

This Act includes all excavations where any operation for the purpose of searching for or obtaining minerals is carried out.\textsuperscript{90} The provision with respect to employment of children under the Mines Act, 1952 are more stringent than those under the Factories Act, 1948. It prohibits the employment of persons below 18 years in any mine. However, apprentices and other trainees, not below 16 years of age may
be allowed to work, under proper supervision, in a mine by the manager, provided that in case of trainees other than apprentices, prior approval of the Chief Inspector or an Inspector is to be obtained before they are allowed to work.\textsuperscript{91}

It has further been provided that no person below 18 years of age shall be allowed to be present in any part of the mine above ground where any mining operation is being carried on.\textsuperscript{92} The central government is the administrative authority under the Mines Act and it administers the Act through inspectors having usual powers. Under Section 48 of the Act, there is the provision for a register of all persons employed in the mine showing the age and sex of the employee and the nature of the employment (whether above ground or below ground and if above ground, whether is open cast working or otherwise) and the date of commencement thereof.

The Act also contains the provisions relating to the powers of inspectors and maintenance of records. Section 87 of this Act further lays down, "no suit, prosecution or other legal proceeding whatever shall lie against any person for anything which is in good faith done or intended to be done under this Act."

The Act has provided for monitoring of different provisions of the Act by the authority appointed by the central government only. The state governments do not have any role in this respect. If the state governments are also given powers, it can be expected that better implementation of the Act will be possible.

The Act provided for fine of five hundred rupees in case of employment of persons below 18 years (Section 68). The Child Labour (Prohibition and Regulation) Act, 1986 has modified this and prescribes punishment of imprisonment for a term
between three months to one year and fine between Rupees 10000.00 to Rupees 20000.00. For contravention of any other provision of the Act, there is provision of imprisonment up to three months or fine up to Rupees 1000.00 or both (Section 73).

The Factories (Amendment) Act, 1954, included a prohibition of employment of persons under 17 years at night. ‘Night’ was defined as a period of 12 consecutive hours and which included hours between 10 p.m. to 7 a.m. 

In 1921, the then Government of India appointed a committee to investigate the recruitment and conditions of work of seamen in Calcutta and Bombay. The committee found that the system of recruitment of seamen through licensing brokers or private brokers has resulted in grave abuse. But the recommendation of the committee was not taken seriously. The Royal Commission of Labour which visited India, recommended a legislation for seamen and impressed the need to increase the welfare and safety measures for those workmen. During the year 1958, the Merchant Shipping Act was introduced. The intention was to revise and consolidate the laws in force in India relating to Merchant Shipping. Subsequently the Act had undergone changes for several times.

The Merchant Shipping Act applies to sea going ships registered in India. The Act prohibits employment of children under 14 years in a ship except in a school ship or training ship or in a ship governed by family members, or in a home-trade ship less than two hundred tons gross; or where such person is to be employed on nominal wages and will be in the charge of his father or other adult near male relatives. The Act restricts employment of young person as trimmer or stoker in any ship, except in a school ship or training ship or in ship which is mainly propelled otherwise than by
steam. It is worth mentioning that a person more than 16 years of age may be employed to work as a trimmer or stoker on a coasting ship provided he is employed in accordance with the prescribed conditions.96 Young persons over sixteen years of age may be employed on ships other than a coasting ship also in case persons above 18 years of age are not available and that two such persons are employed to do the work in place of one person over 18 years of age.97 Such young persons, if employed are required to produce medical certificate.98

A list or register of young persons shall be maintained in the ship.99 The Act empowers the government to make necessary rules regarding employment of young persons on and when needed.100 For contravention of its provisions, there is the provision for penalty.101

The Apprentices Act, 1961 was enacted by the Parliament on 12.12.1961 and it was brought into force with effect from 1.3.1962. The Act was to provide for the regulation and control of training of apprentices. The Act provides for training to apprentices by various designated trades but restricts engagement of an apprentice who has not completed fourteen years of age.102 The Act provides that in case of minor, the contract of apprenticeship has to be entered into by the guardian and it should be registered with the Apprenticeship Advisor.

According to Rule 8 of Apprenticeship Rule, 1962, total number of weekly hours of apprentices is to be between 42 to 48 hours (including the time spent on related instructions). Apprentices undergoing basic training shall ordinarily work for 42 hours per week and during the second year, apprentices shall work for 42 to 45 hours per week including the time spent on related instructions. During the third and
subsequent years apprentices shall work for the same number of hours per week as the workers in the establishment in which they are undergoing their training.

No trade apprentice can be engaged in apprenticeship training between 10 p.m. to 6 a.m. except with the prior approval of the Apprenticeship Advisor who will accord the approval either in the interest of the training of the apprentice or in the public interest.¹⁰³

Motor Transport Workers Act, 1961 was enacted by the Parliament during the year 1961 and it was brought into force in all the states before 31.3.1962. Before its enactment, a section of the workmen employed in motor transport undertakings were covered by the Factories Act, 1948, but a bulk of the workmen was not having any statutory coverage. Therefore, it was thought that there must be a comprehensive legislation to deal with motor transport workers.

The Motor Transport Workers Act, 1961 covers every motor transport undertaking employing 5 or more persons. 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 workers¹⁰⁴. The Act prohibits employment of persons under 14 years of age in any capacity in the motor transport undertaking.¹⁰⁵ Without a certificate of fitness, an adolescent is not allowed to work.¹⁰⁶ (Section 22). Such certificate is valid for twelve months, but can be renewed.¹⁰⁷ Adolescents can work only for 6 hours including a rest interval of half an hour and he cannot be required to work between 10 p.m. to 6 a.m..¹⁰⁸ The contravention of the provisions of the Act regarding employment was, originally, punishable with imprisonment up to three months or fine up to five hundred rupees or both.¹⁰⁹ Section 15 of the Child labour
(Prohibition and Regulation) Act, 1986 has modified this provision. Now, it is punishable with imprisonment for a term between three months and one year or a fine between ten thousand rupees and twenty thousand rupees or with both.

Payment of Bonus Act was passed in 1965 by the Parliament after a recommendation was made by the Bonus Commission appointed by the central government. The intention was to statutorily recognise the right of the worker to receive a share in profit. Further, the said Act also recognised the right of the worker to receive statutory minimum bonus, the percentage of which varied from time to time. At present it is 8.33% of the annual earnings of a workman. While acceding to the right of the workmen in getting statutory minimum bonus (whether the industry makes profit or not), it also provides for a fixed amount in case the percentage works out to a negligible amount. The Parliament had directed that in the case of an adult, the minimum amount is one hundred rupees, whereas for workers below the age of 15 years, the minimum amount will be only sixty rupees. No reason has been assigned for such a distinction.

The Act goes beyond the Factories Act, 1948, by bringing all rules under its purview and including both home based and contract labour. However, the Act does not apply to family workers in a private house.

Before the enactment of Beedi and Cigar Workers (Conditions of Employment) Act, 1966, the beedi and cigar workers had hardly any protective legislation except in some states. The general provisions of other labour laws were defeated by engaging agents, branch managers to supply tobacco leaves and collecting the rolled beedis. In this arrangement, the trademark owners were able to
successfully contend that they were not the real employers as understood by labour laws.

Therefore, the Act was introduced to provide for the welfare of the workers and to regulate the conditions of their work. The constitutional validity of this Act was challenged in several High Courts and finally the matter reached the Supreme Court which by its historic decision dated 31.1.1974 through a constitutional bench upheld the validity of the Act and rejected the contentions of the employers.111

This Act covers all industrial premises wherein any manufacturing process connected with making of beedi and cigar or both is being, or is ordinarily carried on with or without the aid of power.112 The Act prohibits the employment of children (below 14 years) in any such premises.113 The employment of young persons between 14 to 18 years is prohibited between 7 p.m. to 6 a.m.114 Young persons are entitled to leave with wages at the rate of one day for every fifteen days of work performed by them during previous calendar year.115 The Act provides penalties for breach which may be for the first offence, with fine which may extend to Rupees 250 and for a second or any subsequent offence with imprisonment for a term which shall not be less than one month or more than six months or with fine which shall not be less than Rupees 100 or more than Rupees 500 or with both.116

The Contract Labour (Regulation and Abolition) Act was passed in 1970. The Act applies to establishments and contractors employing 20 or more workers.117 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.118
Different states have enacted their own statutes for regulating conditions of workers in shops and establishments. These Acts apply to shops, commercial establishments, restaurants and hotels and place of amusement and notified urban areas, to which factories Act does not apply. Further the state governments are empowered to 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, Jammu and Kashmir, Madhya Pradesh, Karnataka, Bengal, Goa, Daman and Diu and Manipur and 14 years in Andhra Pradesh, Assam, Haryana, Himachal Pradesh, Kerala, Tamilnadu, Punjab, Delhi, Chandigarh, Pondicherry and Meghalaya. The minimum age of employment is 15 years in Maharashtra. There is no separate shops and commercial Establishments Act in Andaman & Nicobar, Arunachal Pradesh, Dadra & Nagar Haveli, Lakshadweep, Nagaland and Sikkim.

The Constitution of India, under Article 23, prohibits all forms of forced labour. Even after the adoption of the Constitution, it took more than 25 years for the Parliament to enact a law to abolish the bonded labour system. Bonded Labour System (Abolition) Act came into force from 25.10.1975.

The Act provides a comprehensive mechanism to deal with bonded labour in any form. Apart from providing stringent punishments and redemption of bonded labour, it has also provided for the machinery for rehabilitating them. It also provides for appointment of vigilance committees.

The Employment of Children (Amendment) Act, 1978, prohibits the employment of child below 15 years in occupations in railway premises such as
cinder-picking or clearing of ash pit or building operation, in catering establishment and in any other work which is carried on in close proximity to or between the railway lines.¹²²

From the above list of various Acts, it is seen that the consciousness of the evils of child labour has been manifested in these legislative processes. But as the problem of child labour is closely connected with the problem of the people, therefore it would be unrealistic to expect that child labour can be completely and immediately abolished because it would result in untold miseries to the affected families. Even the International Labour Organisation has realised this and advocates regularising child labour with improved working conditions as an interim measure before abolishing it.¹²³ But even then the evils of the problem of the child labour and the harm it does to the overall development of a child cannot be overlooked. So, ultimate aim has to be the complete abolition of child labour as soon as possible.

Most of the laws pertaining to the work of children were enacted within the first two decades of independence, but there was no significant improvement in the conditions of child labourers during this period in spite of presence of these laws. The United Nations' International Year Of Child, 1979 focussed public attention on children. In India also, various initiatives were undertaken at that time. Among these was a committee appointed by the ministry of Labour, to report on the child labour in the country.¹²⁴ The committee, headed by M.S. Gurupadaswamy, in its Report, stressed on the need for a single consolidating model law on child labour. The Committee felt that the basis for the model law could be the existing Employment of Children Act, 1938.
In the early 1980s, with the Gurupadaswamy Report and Article 24 of the Constitution as a basis, the government began to work for a law to regulate child labour. The new Bill on child labour called the "Child Labour (Prohibition and Regulation) Bill, 1986 was introduced and passed in Parliament during its winter session in 1986. This Act was enacted on 23.12.1986 by the Parliament to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments. The Act was brought into force by central government with effect from 26.5.1993.

The statement of objects and reason in the Bill declares that there are a number of Acts which prohibit employment of children below 14 years and 15 years in certain specific employments. However, there is no procedure laid down in any law for deciding in which employments, occupations or processes the employment of children should be banned. There is also no law to regulate the working conditions of children in most of the employments where they are not prohibited from working and are working under exploitative conditions.

The object of the Bill was to ban the employment of children, that is, those who have not completed their fourteenth year in specified occupations and processes and to lay down a procedure to decide modifications to the schedule of banned occupations or processes. It also included regulation of the conditions of work of children in employments where they are not prohibited from working. The Bill also sought to lay down enhanced penalties for employment of children in violation of the provisions of this Act and other Acts which forbids the employment of children and to obtain uniformity in the definition of 'child' in the related laws.
As can be seen from the above objects, the intention was to ban engagement of child labour in certain employments and to regulate the areas where it has not been prohibited.

The Act also repeals the earlier Act from the statute book known as the Employment of Children Act, 1938. 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.

According to this Act, ‘Child’ means a person who has not completed his 14 years of age.  

Section 3 of the Act provides that the children shall not be employed or permitted to work in any of the occupations set-forth in Part A of the Schedule. This part includes occupations connected with (a) Transport of passengers, goods or mails by railway; (b) Cinder picking, clearing of an ash pit or building operations in the railway premises; (c) Catering establishments at railway station which may involve the movement of vendor or any other employee of the establishment from one platform to another or movement of a person into or out of a moving train; (d) it also includes the doing of a work in connection with the construction of a railway station or any other incidental work where it requires some work to be done in close proximity to or between the railway lines and (e) such occupations would also include a port authority within the limits of any port.

Such prohibited employments shall also include any workshop wherein any of the processes set forth in Part B of the Schedule Are carried on. The term ‘Workshop’ has been defined under this Act as any premises wherein any industrial process is
being carried on, but it shall not include any premises wherein prohibition is in force with regard to employment of young children under Section 67 of the Factories Act which explicitly provides that no child who has not completed his fourteenth year shall be required or allowed to work in any factory. The processes included by Part B of the Schedule are—(a) Beedi making; (b) Carpet weaving; (c) Cement manufacture, including bagging of cement; (d) Cloth painting; dyeing and weaving; (e) Manufacture of matches, explosives and fireworks; (f) Mica-cutting and splitting (g) Shellac manufacture (h) Soap manufacture (i) Tanning (j) Wool Cleaning and (k) Building and construction industry.

Family units and training centres are not included within the purview of this Act.

Section 4 states that notice of at least three months is to be given by the central government before adding any occupation or process to the schedule.

By Section 5 of the Act, power is vested in the central government to constitute an advisory committee to be called the Child Labour Technical Advisory Committee for the purpose of rendering advice to the central government in respect of inclusion of more occupations and processes to the Schedule providing a list of hazardous industries.

The Act clearly lays down that no child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments. The children will not be required to work at a stretch for a period exceeding three hours and in case he is required to work on any working day for more than three hours, he should compulsorily be provided with rest
intervals for at least one hour. The period of work of a child shall not be spread over more than six hours inclusive of his interval for rest and it includes the time spent for waiting for work on any day. A child cannot be permitted to work between 7 p.m. and 8 a.m. He cannot be required to work overtime. If a child labour has worked in one establishment, he shall not be required or permitted to work in another establishment on the same day (Section 7).

Section 8 imposes an obligation to the employer to provide a holiday of one whole day to the child labour in each week.

An obligation has been imposed under Section 11 on every occupier to maintain a register in respect of children employed or permitted to work in any establishment providing the particulars regarding the name and date of birth of every child, hours and periods of work and intervals of rest to which he is entitled to and the nature of work done by such child.

The Act clearly states that the government can make 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, ventilation, dust and fumes, lighting, drinking water, and sanitary latrine and urinals. But there is no mention of nutrition or medical facilities.

Section 14 provides that for violation of Section 3 of the Act, an employer shall be punishable with imprisonment for a term which shall not be less than three months, but which may extend to one year or with fine which shall not be less than ten thousand rupees, but which may extend to twenty thousand rupees or with both.
Section 15 of the Act provides that if a person is found guilty for violation of Section 67 of the Factories Act, 1948, Section 40 of the Mines Act, 1952, Section 109 of the Merchant Shipping Act, 1958 and Section 21 of the Motor Transport Workers Act, 1961, then he will be liable to get punishment under sub-section (1) and (2) of Section 14 of this Act and not under the Acts in which those provisions are contained.

Any person, police officer or an inspector can file a complaint of an offence under this Act in any Court of competent jurisdiction (Section 16 (i)).

All the provisions of the Act, with the exception of Part III, came into force from the time of enactment. Part III of the Act was to come into force when the appropriate government would decide to enforce it by a notification in the Official Gazette on a given date and to specified classes of establishments. Part III, in fact, contains all the provisions intended to regulate child labour and protect them against exploitation in all the establishments. These regulatory provisions are to be found in Section 6 to 13 of the Act.134

If a comparative study is made between the Child Labour (Prohibition and Regulation) Act, 1986 and the Employment of Children Act, 1938, then it is found that the Act of 1938 fixed the minimum age for employment in railways and ports at 15 years and occupations and processes at 14 years. On the other hand, in the Act of 1986, it has been fixed at 14 years for all employments. The Child Labour (Prohibition and Regulation) Act, 1986 provides for a Technical advisory Committee for identifying hazardous industries. It has fixed the period of work at 6 hours with an interval for rest for at least one hour. The children will get one holiday in a week. The Act has prohibited overtime and work between 10 p.m. to 7 a.m., but the Employment
of Children Act, 1938 was silent in these respects. The term of imprisonment in both
the laws is same, that is 3 months to 1 year. But the amount of fine which was Rupees
500 to Rupees 2000 under the Act of 1938 has been enhanced to Rupees 10,000 to
Rupees 20,000. According to the old law, the complaint could be made in the Court
only by the government inspectors, but the Act of 1986 provides that any person can
file complaint in any court of competent authority.

From the study of the Child Labour (Prohibition and Regulation) Act, 1986, it
can be understood that the Act was not framed with an intention to abolish the child
labour. Even though, Article 24 of the Constitution of India prohibits the employment
of children below the age of 14 years in any factory and in hazardous occupations, the
Act has prohibited their employment only in some of the hazardous occupations
mentioned in the Schedule of the Act. So, the object of the Act appears to be more
regulatory in nature than prohibitory.

The Child Labour (Prohibition and Regulation) Act, 1986, covers the children
who work in the organised sector only. Moreover, under Section 9, every occupier,
who employs child labour, has to send certain information relating to the
establishment. Employers in the unorganised sectors cannot be expected to send these
information to the inspector. Moreover, children employed in family units are not
covered by the Act. In this way these children do not get any benefit from this Act.

The Act has prohibited the employment of children in any occupations
mentioned in the Schedule. But children can perform these works if it is carried on by
the occupier with the aid of his family. As these occupations are hazardous in nature,
so children should not be permitted to perform such works even if it is controlled by the family.

In the Schedule of the Act, many occupations which are hazardous in nature, are not included such as glass and bangle factories and the slate industry. However, technical Advisory Committee has been empowered to add other occupations and processes to the existing Schedule.

Moreover, the Schedule of occupations and processes, where children are not allowed to work, of the child Labour (Prohibition and Regulation) Act, 1986 is almost same as that of the Employment of Children Act, 1938. The only exception is that in the Act of 1986, construction work has also been added. This had to be added because of the judgement delivered by the Supreme Court in People’s Union for Democratic Rights vs. Union of India.135

Under the Employment of Children Act, 1938, night work was prohibited for those whose age is between 15 to 17 years. This was in keeping with the Conventions on night work for young persons in industry adopted by International Labour Organisation in 1919 and revised in 1948. The 1948 Convention (No. 90) was ratified by India in 1950. Yet the 1986 Act includes this prohibition only up to the age of 14 years in contravention of the Convention.136

The offences under the Act are non-cognisable. This prolongs the process of investigating offences and collecting evidence.137

The Act does not specify how the welfare, health and safety of working children are to be protected. The government has taken upon itself the task of providing all welfare measures leaving the employers free of this responsibility.138 It
is practically impossible for the government. So, this responsibility should have been given to the employer.

In order to look into the problem of employment of children and to suggest suitable measures for their protection and welfare, the Ministry of Labour, Government of India, had set up a Committee headed by Shri M.S. Gurupadaswamy, in its resolution, dated 6th and 7th February, 1979. The tasks before the Committee were to examine existing laws, their adequacy and implementation and suggest corrective actions to be taken to improve the implementation and to remove the defects. It was also to examine the dimensions of child labour, the occupations in which children are employed and suggest new areas where laws abolishing or regulating the employment of children can be introduced. Moreover, it was to suggest welfare measures, training and other facilities which would be introduced to benefit children in employment.

The Committee drew up a plan of action for making in depth and diagnostic studies on the nature and extent of the problem and adequacy of the existing legal framework and the supportive measures for working children. The Committee brought out a questionnaire to elicit information on child labour from the public, politicians, trade unions, social workers, welfare and other institutions, employers, parents of children and government organisations. The information received from the questionnaire was tabulated and utilised in the report of the Committee which was submitted to the government on the 29th December, 1979.

The Committee in its report opined that there should be a distinction between child labour and its exploitation. Both of these are the problems, but of a different
kind. It underlined that in all future actions dealing with child labour, this basic aspect 
would have to be taken into consideration. In the perception of the Committee:

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

Realising that legislations alone will not be able to eradicate the problem of employment of children and in order to accomplish the task of protecting the child labour by prohibiting the employment in absolute terms in hazardous employments as well as to regulate the employment of child labour in order to prevent their exploitation by the employer in other areas of employment by ensuring effective implementation of Child Labour (Prohibition and Regulation) Act, 1986, the Government of India announced three pronged National Policy on Child Labour in the year, 1987.

The action plan of this policy has been set out under three heads, namely, legislative action plan, general development programmes and project based plan.

Under the legislative action plan, emphasis is to be laid on strict and effective enforcement of the provisions of the Child Labour (Prohibition and Regulation) Act, 1986, the Factories Act, 1948, the Mines Act, 1952, the Plantations Labour Act, 1951 and other Acts containing provisions relating to employment of children.

Since national development programmes exist with very wide coverage, in order to have an impact on child labour, it was decided to focus general development programmes for the benefit of child labourers in areas, such as education, health, nutrition and coverage by anti poverty programmes.
Under project-based plan, some specific sectors of employment, where the incidence of child labour is high have been identified. The National Child Labour Project (NCLP) aims at reducing the incidence of child labour in the project area, thereby encouraging the elimination of child labour progressively.

A COMPARATIVE STUDY OF THE LEGISLATIONS

From the above, it has been found that a plethora of legislations have been enacted by the central government as well as the state governments to give effects to the constitutional mandates, international covenants and recommendations. These have been enacted with an intention to protect and help children and achieve the goal of child welfare enshrined in our Constitution.

The basic aim of all these enactments is to prohibit the employment of children in certain establishments and to regulate the conduct of the employers of the child workers in such a way, so that these children are not exploited any more. These legislations strictly deal with the number of working hours of child workers, food facilities, rest hours, medical facilities, entertainment hours, schedule of weekly, monthly and yearly holidays of child workers, and minimum wage and mode of payment. Penalty can even be imposed on the employers in case of violation of the provision of these legislations.

But it is seen that there is lack of uniformity in these laws regarding various aspects like definition of child, minimum age of child labour and hours of work. A
comparative study is made below relating to differences in various aspects of these laws.

**Definition of Child Labour**

The term 'Child' has been defined in different laws. But differences are seen in these laws regarding the age limit up to which a person is considered as a child. According to Beedi and Cigar Workers (Conditions of Employment) Act, 1966, child means a person who has not completed the age of 14 years of age. Factories Act, 1948 defines child as a person who has not completed his 15 years. Likewise, according to the Mines Act, 1952, child is a person who has not completed 18 years. On the other hand, Minimum Wages Act, 1948, Motor Transport Workers Act, 1961, Plantation Labour Act, 1951 and Child Labour (Prohibition and Regulation) Act, 1986 has provided that 'Child' means a person who has not completed his fourteenth year of age.

**Minimum Age Of Employment**

If a person wants to work, he must have the physical capacity. Because of their tender age, the children do not possess the necessary physical capacity to perform the works. Moreover, while working in factories and hazardous occupations, necessary care should be taken to avert accidents. But the responsibility, which is required to take care of themselves, does not develop among the small children. Therefore, different laws have provided for the minimum age below which a person cannot be allowed to be employed. But in this respect also different ages have been fixed by different Acts.
Section 67 of the Factories Act, 1948 states that no child who has not completed his fourteenth year shall be required or allowed to work in any factory. Apprentices Act, 1961, Motor Transport Workers Act, 1961, Indian Merchant Shipping Act, 1958, and Beedi and Cigar Workers' (Conditions of Employment) Act, 1966 also have fixed the same age as minimum age of employment.

But Mines Act, 1952 and Radiation Protection Rules, 1971 fixed a higher age for employment which is 18 years.

On the other hand, minimum age varies from one state to another under state Shops and Commercial Establishments Acts. While it is 15 years in Maharashtra, in Andhra Pradesh, Assam, Haryana, Himachal Pradesh, Kerala, Tamil Nadu, Punjab, Delhi, Chandigarh, Pondicherry, and Meghalaya, it is 14 years. But the minimum age is very low in some other states. It is 12 years in Bihar, Gujarat, Jammu and Kashmir, Madhya Pradesh, West Bengal, Goa, Daman and Diu, and Manipur.

**Hours Of Work**

The health and efficiency of the workers depend mostly on the hours of work. Long hours of work are harmful not only for moral and physical development, but also retard efficiency. Considering climatic and geophysical conditions in India, the hours of work should be lowered. In case of children, their strength and capacity to work is less than the elders. So considering their tender age and physical capacity, the working hours of the children should also be less.

Different legislations have made provisions limiting the hours of work for the children. Under Section 71(a) of Factories Act, 1948, no child shall be permitted to work in any factory for more than four and a half hours a day. According to
Minimum Wages (Central) Rules, 1950, the number of hours which shall constitute a normal working day shall be four and a half hours in case of children.

Plantation Labour Act, 1951, provides that no child shall be required or allowed to work on any plantation for more than 27 hours a week.

Under Section 8 of Apprentices Rules, 1962, the weekly hours of work of an apprentice while undergoing practical training shall be 42 to 48 hours including the time spent on related instructions. Apprentices undergoing basic training shall ordinarily work for 42 hours per week including the time spent on related instructions. Apprentices during the second year of apprenticeship training shall work for 42 to 45 hours. These also include the time spent on related instructions. Apprentices during the third and the subsequent years of apprenticeship shall work for same number of hours per week as the workers in the establishments in which the apprentices are undergoing apprenticeship training provided, however, that short term apprentices may be engaged in work, up to a limit of 48 hours per week.

The hours of young persons under state Shops and Commercial Establishments Acts are seven per day in Andhra Pradesh, Bihar, Tamil Nadu, Tripura, Pandicherry and West Bengal, six per day in Gujarat, Maharashtra, Jammu and Kashmir, Uttar Pradesh and Delhi, five per day in Himachal Pradesh, Madhya Pradesh, Karnataka, Orissa and Punjab and three per day in Rajasthan.

Work At Night

Children are prohibited from working at night under different Acts. Section 25 of Plantations Labour Act, 1951 provides that except with the permission of the state
government, no child worker shall be employed in any plantation otherwise than between the hours of 6 a.m. to 7 p.m. Under Beedi and Cigar Workers (Conditions of Employment) Act, 1966 also, no young person can be allowed to work except between 6 a.m. to 7 p.m.

Section 8 (2) of Apprentices Rules, 1962, provides that no apprentice, other than a short term apprentice, shall be engaged in such training between the hours of 10 p.m. to 6 a.m. except with the prior approval of the apprenticeship advisor who also shall give his approval if he is satisfied that it is in the interest of the training of the apprentice or of the public interest.

Night work for children and young person is also prohibited under state laws relating to shops and commercial establishments. The children and young persons are allowed to work between 6 a.m. to 7 p.m. in Andhra Pradesh, Gujarat, Maharashtra, Tamil Nadu and Pondicherry, 7 a.m. to 7 p.m. in Bihar and Kerala, 7 a.m. to 9 p.m. in Jammu and Kashmir and Madhya Pradesh, 6 a.m. to 8 p.m. in Karnataka, 6 a.m. to 10 p.m. in Orissa and Rajasthan and 6 a.m. to 8 p.m. during winter and 7 a.m. to 9 p.m. during summer in Delhi. They cannot be employed after 8 p.m. in West Bengal and Tripura.

On the other hand, Section 71 (b) of Factories Act, 1948 without specifying the period, simply provides that no child shall be employed or permitted to work in any factory during the night.
Penalties

Though different Acts have made various provisions for the welfare of the children, yet there is the possibility that the employers may violate these laws. So, the laws provide for various penalties for them. The Child Labour (Prohibition and Regulation) Act, 1986 provides that if a person is found guilty for violation of Section 67 of the Factories Act, 1948, Section 40 of the Mines Act, 1952, Section 109 of the Merchant Shipping Act, 1958 and Section 21 of the Motor Transport Workers Act, 1961, then he will be liable to get punishment under sub-sections (1) and (2) of Section 14 of the Act. This Section provides that an employer shall be punishable with imprisonment for a term which shall not be less than three months, but which may extend to one year or with fine which shall not be less than ten thousand rupees, but which may extend to twenty thousand rupees or with both.

Under Children (Pledging of Labour) Act, 1933, parents or guardians could be punished for making an agreement to pledge the labour of a child with a fine up to Rupees 50 and in the case of an employer with Rupees 200. However, Bonded Labour System (Abolition) Act, 1976 has provided for punishment which may extend up to three years and fine which may extend up to two thousand rupees. Beedi and Cigar Workers (Conditions of Employment) Act, 1966, also provides for penalty of imprisonment up to 6 months and a fine up to Rupees 5000 or with both.

Therefore, from the above, it is evident that contradictory provisions exist in different laws on the same matter. Sometimes the variations may be necessary
depending upon the seriousness of the problems of the children working in a particular employment, but sometimes it is because of the reason that these laws are framed at different period of times and laws are framed according to the necessity of that particular period. Moreover, personal attitude of the framers is also reflected in these Acts. Whatever may be the reason, these differences may create confusion among the people. It is not possible for the people to remember all the laws having different provisions on the same matter. The employer may take the advantage of ignorance of the people and may violate the laws. Therefore, it is necessary that wherever possible the contradictory provisions in different laws should be removed.

Moreover, there is no justification of different timings in different states in Shops and Establishment Acts. So, these state Acts may be substituted by one central law which will help in bringing uniformity of this law in different states.

From the above, it is seen that many legislations have been enacted from time to time to promote and improve the working conditions of the child labour. Making provisions in these laws for the welfare of children is not sufficient. Proper implementation of these laws is equally important. But these laws have failed to achieve desired goals. Some of the reasons for the failure of these laws are discussed below.

1. Child labour is an economic asset for the poor families. To supply their day-to-day meals, these families do not have any other alternative but to send their children to work. So it should be tried to solve the economic problems of the people first. Then only it will be possible to eradicate the child labour.
2. Due to the ignorance and illiteracy, the law is evaded at different places and at different points of time.

3. Weak enforcement machinery is also responsible for the failure of these legislations. Sometimes a large number of establishments are situated in a particular area, then there will be the need of sufficient number of inspectors. But if the number is small then it will be impossible for them to make their inspection.

4. Employers are also liable for the failure of legislations. These employers generally prefer child labour as they can be paid less, they can be controlled easily and minute works can be done by the children more efficiently. So, for their personal profit, they violate the laws and employ the child labour.

5. Non co-operation of the employers with the inspectors also lead to the failure of the legislations. When the inspector visits an establishment, children are whisked away from the work site and hidden, rendering the exercise futile.

6. Enforcement of labour laws in unorganised sector seems difficult because the units are unregistered and large in number and scattered over a wide area. It is impossible for the inspector to find out the child labour employed in these factories.

7. The inspector has to face legal difficulties even if he manages to find children employed in a particular establishment violating the provisions of law and also takes up prosecution. When the unit is small, it is claimed before the court by the employer that the child labourers are actually the children of the family and so covered by the exemption under Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986. In larger units also, they claim that the children are present in the factory only for the purpose of meeting their parents.
8. Owners of small-scale establishments keep the number of workers employed by them below ten, so that their establishment do not fall within the purview of Factories Act, 1948. Some owners also let out or sub contract several processes to family based units since Child Labour (Prohibition and Regulation) Act, 1986 exempts such units.

9. Prosecution becomes difficult, as it is not easy to prove the age of the child. In rural areas, birth certificates are not common. So, a medical certificate of the age of the child is to be kept by the employer. In this certificate the employer can misrepresent the age of the child.

Proper measures, therefore, should be adopted, and wherever necessary, amendments should be made in the laws to remove the deficiencies mentioned above. Then only, the laws made for them will be able to benefit the children.

NOTES AND REFERENCES


5. Ibid., P. 73.


12. Ibid.

13. Supra, Note 4, p. 240.


15. Ibid.


17. Articles 38, 39(e) and (f), 41, 42, 43, 45, 46 and 47 contain provisions which, inter alia, provides strategy for indirectly promoting the welfare of children.


20. Supra, Note 14.

21. Ibid.

22. Supra, Note 16, pp. 41, 476


25. Ibid.


29. Ibid. p. 169.


31. Ibid.


34. Supra, Note, 30 p. 46

35. Ibid., 47.

36. Ibid.

38. Employment of Children Act, 1938, Section 3 (1).

39. Ibid., Section 3 (2).

40. Ibid., Section 3 (3).

41. Ibid., Section 3 A.

42. Ibid., Section 4.

43. Ibid., Section 3 E.

44. Child Labour (Prohibition and Regulation) Act, 1986, Section 22 (1) and (2).

45. The Factories Act, 1948, Section 1.

46. Ibid., Section 2 (m).

47. Ibid., Section 2 (c).

48. Ibid., Section 2 (d).

49. Ibid., Section 2 (b).

50. Ibid., Section 67.

51. Ibid., Section 68.

52. Ibid., Section 71 (1), (6).

53. Ibid., Section 71 (1) (a).

54. Ibid., 71 (2).

55. Ibid.

56. Ibid.

57. Ibid.

58. Ibid., Section 71 (4).
59. Ibid., Section 72.
60. Ibid., Section 73.
61. Ibid., Section 74.
62. Ibid., Section 68.
63. Ibid., Section 70.
64. Ibid., Section 27.
65. Ibid., Section 34 (2).
66. Ibid., Section 79.
67. Ibid., Chapter 5.

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71. Supra, Note 30, p.47.

72. Ibid., p. 48.

73. Supra, Note 33, p. 242.

74. The Plantations Labour Act, 1951, Section 1 (4) (a).

75. Ibid., Section 1 (5).

76. Ibid., Section 27 (1).

77. Ibid., Section 27(2).

78. Ibid., Section 34.
79. Ibid., Section 37.

80. Supra, Note 32, p. 126.

81. Supra, Note 74 Sections 4 and 7.

82. Supra, Note 2, p. 62.

83. Supra, Note 32, p. 127.

84. Supra, Note 33, p. 247.

85. Ibid.

86. The Mines Act, 1952, Section 1(2).


88. Ibid.

89. Supra, Note 30, p. 47.

90. The Mines Act, 1952, Section 2(j).

91. Ibid., Section 40.

92. Ibid., Section 45.

93. Supra, Note 30, p. 48.

94. Supra, Note 33, p. 251.

95. The Merchant Shipping Act, 1958, Section 109

96. Ibid., Section 110(2).

97. Ibid., Section 110 (3).

98. Ibid., Section 111.

99. Ibid., Section 112.

100. Ibid., Section 113.
101. Ibid., Section 436 (2).
102. Supra, Note 33 p.257.
103. Supra, Note 70 p.250.
104. The Motor Transport Workers Act, 1961, Section 1.
105. Ibid., Section 21.
106. Ibid., Section 22.
107. Ibid., Section 23.
108. Ibid., Section 14.
109. Ibid., Section 31.
110. Payment of Bonus Act, 1965 (as amended up to Act 34 of 1995), Section 10.
111. Supra, Note 33, p. 264.
112. Beedi and Cigar Workers (Conditions of Employment) Act, Section 72 (h) (i).
113. Ibid., Section 24.
114. Ibid., Section 25.
115. Ibid., Section 26 (1)(ii).
116. Ibid., Section 33 (1).
118. Ibid., Section 1 (5) (a)
119. Supra, Note 32, p. 183.
121. Supra, Note 33, p. 269.
122. Supra, Note 30, p. 49.
123. Supra, Note 26, p. 96.

124. Supra, Note 68, p. 72.

125. Ibid., p. 73.


127. Ibid., Section 13 (i).

128. Ibid., Section 13 (2) (a).

129. Ibid., Section 13 (2) (c).

130. Ibid., Section 13 (2) (d).

131. Ibid., Section 13 (2) (f).

132. Ibid., Section 13 (2) (g).

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136. Supra, Note 68, p. 76

137. Ibid., p. 77.