CHAPTER II

HISTORICAL RETROSPECTION OF CHILD LABOUR IN INDIA WITH SPECIAL REFERENCE TO TAMIL NADU
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I. CHILDREN: ASSET OF A NATION

Children are universally recognized as the most important asset of any nation. The future of a society depends directly on how the successive generations are reared and brought up to fulfill many requirements which the society is faced with from time to time. Like any other living organism, a child is basically a product of the environment around him. In societies where the rigors of sheer survival are beset with numerous difficulties, children also are bound to suffer in their development and growth. They develop early propensities towards fending for themselves. The parental care, too, is considerably tempered in the face of actual realities of the situation. The consequential problem is stupendous, and finding solution to it is a real challenge to both the society and the state.¹

With many competing demands on their resources the developing societies, particularly, are often unable to do everything that is necessary to give the children their rightful place in the community. The result is that many children in their tender age are often exploited for work in pitiable conditions. While this could be ascribed to many socio-economic and cultural considerations, yet it cannot be overlooked any more that there is a widespread employment of children, both open and disguised, in environments and professions which are most detrimental to their health and growth and that the state and the society must act to remedy the situation as best as possible. The various facts of

¹ M.S. Gurubadhaswamy Committee Report on “Child Labour in India”, Ministry of Labour, New Delhi, 1979. p.1
this problem have been considered in the past also both at the national and international levels. But even the most recent projections relating to incidence of child labour give a clear impression that not enough has so far been done to remedy the dismal situation.\(^2\)

The problem is very much more pronounced in countries where, because of poverty, ignorance, and several other considerations, situation has been hopelessly, drifting for a long time without a material change in the total dimensions of the problems.\(^3\)

II. DEFINITION AND CONCEPTION:

"Child Labour" is generally speaking, work of children that harms them or exploit them in some way particularly, mentally, and morally or by blocking access to education. There is no universally accepted definition of "Child Labour". Varying definitions of the terms are used by International Organizations, Non-governmental Organizations, Trade Unions and other interest groups. Writers and speakers do not always specify what definition they are using, and often leads to confusion. For instance:\(^4\)

a) International Conventions adopted by the United Nations and the International Labour Organization define "Child" as any one below the age of 18, and "Child Labour" as some type of work performed by children below age 18.

b) And yet ILO Conventions variously define the appropriate minimum age of work as age 15 or under 14 in developing nations.

c) While in another convention, the definition of the "Worst" forms of work applies to all children under age 18.

d) Governments, adding to the confusion, do not always use 18 as the cut-off point for defining a "Child". International Organizations such as UNICEF, and some social scientists make a distinction between "Child Work" (not Objectionable) and "Child Labour" (objectionable) and other phrases "exploitative" or "oppressive" child labour.

\(^2\) ibid.
\(^1\) ibid.
Not all work is bad for children. Some social scientists point out that some kinds of work may be completely unobjectionable except for one thing about the work that makes it exploitative. For instance, a child who delivers newspapers before school might actually benefit from learning how to work, gaining responsibility, and a bit of money. But if the child is “Child” in terms of his chronological age and “Labour” in terms of its nature quantum and income generation capacity child labour however can broadly be defined as “the segment of child population which particularly participates in working either paid or unpaid”.

i. As UNICEF’s State of World’s Children Report”, 1999, puts it, “children’s work needs to be seen as happening along a centenary with destructive or exploitative work at one end and some times separated from their families, frequently deprived of meaningful education and training opportunities that could open up for them a better future. Although this view incorporates all the elements of exploitation inherent in the definition itself, it does not suggest an age cut-off for child labour.

ii. According to Encyclopedia of Social Science (1979) when the business of wage earning or of participation in itself or family support conflicts directly or indirectly with the business of growth of education, the result is child labour.

iii. Concerned for Working Child (CWC), a Banglore based organization described the child worker as a person who has not completed his/her 15 years of age who is with or without wages/income either on a part-time or full-time basis.

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With this definition for Child Labour, the CWC estimates the figure of children below 15 years of age who are not going to school. Children do not go to school for a variety of reasons.

iv. Home Flocks, Chairman of the United States National Child Labour Committee, defined “Child Labour” as, “any work by children that interferes with their full physical development, their opportunities for a desirable minimum of education or their needed recreation”.7

v. V.V. Giri, a trade unionist and former Labour Minister of India and former President of India, stated that the term “Child Labour” is commonly interpreted in two different ways. First as an economic practice and secondly as an evil. In the first context it signifies employment of children in gainful occupation with a view to adding to the labour income of the family. It is in the second context the term “Child Labour” is now more commonly used. In assessing the nature and extent of the social evil, it is necessary to take into account the character of which they are exposed and the opportunities of development in which have been defined.8

The following Acts define the child labour as:

1. According to the Children Pledging of Labour Act 1933 ‘Child’ mean a person who is under the age of 15 years.
2. The Plantations Labour Act (1951) says “Child” is a person who has not completed his fourteen years of age.

8 ibid., p.9.
3. In the Child Labour (Prohibition & Regulation) Act 1986, "Child" means one who has not completed his fourteenth year in specified occupations and processes.

Age limit for the child labour is a formal reflection of society’s judgment about the evolution of children’s capacity and responsibility. Almost everywhere, age limit formally regulates children’s activity; when they can leave school; when they can march; when they can out; when they can vote; when they can join the armed forces and when they can work. But age limit differs from activity and from country to country. The legal age for all work in Egypt is 12, in Philippines 14, in Hong Kong 1, Peru adopts a variety of standards as the minimum age is 14 in agriculture, 15 in industry, 16 in deep-sea fishing land, 18 for work in ports and seafaring. Nevertheless, ILO also establishes a general minimum age of 15 year, provided 15 is not less than the age for competition of compulsory schooling. This is the most widely used yardstick when assessing how many children are currently working around the world.

III. WHO ARE CHILD LABOUR AND WHERE THEY LIVE:

According to ILO, an estimated 250 million child workers between the ages 5 and 14, are working as part-time and full-time workers. But ILO admits that it does not include children especially girl children who work at home and are not paid. UNICEF also says that the exact number is not known, it is surely in the hundreds of millions.

Work range from taking care of animals and planting and harvesting food, to many kinds of small manufacturing (e.g. Match and Fire Works) auto-repair and making footwear and textiles. More boys and girls work outside their homes. But more girls work in some jobs; for instance as domestic maids. Being a maid in someone's house

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10 ibid.
can be risky. Maids typically are cut off from friends and family and can easily be physically or sexually abused by their employers. Less than 5% of child labourers make products for export to other countries.

The proportion of child labourers varies a lot among countries and even inside those countries. From the ILO publication Asia has 61% of child labourers. India is the largest producer of non-school-going child workers. Estimate of the number of children under age fifteen in the labour force range from an official government figure of 17.4 million to a high level of 44 million by a respected non-government research organization. Most child workers in India are illiterates while in the nineteenth century England and in the United States, child workers were at least able to read and write since they were generally in schools for six years, the period of compulsory education. In India most child workers have never attended school or have dropped out before completing four years of schooling, the minimum needed to acquire literacy.

IV. THEORIES OF CHILD LABOUR OR DIFFERENT SCHOOL OF THOUGHT:

There are widely varying perception about the definition and concept of child labour. Related to this there are three clearly divided schools of thought. The views of these are summed up below:

a) Compulsory education – no child labour:

This first school of thought treats education as the fundamental human right of every child in 5-14 age group and holds that any child in this age group who is out of school should be treated as a working child. This school of thought wanted total abolition of child labour.

11 www.google.com, what is child labour.
12 ibid.
b) **Partial schooling system:**

According to the second school of thought the magnitude of the problem is so enormous that the state will find it extremely difficult to create the environment and provide the infrastructure, logical support and resources. This school of thought, therefore, advocate a gradual, sequential, and selective approach to the entire issue of out of school children vis-à-vis working children. Its votaries hold that one should first concentrate on those employed in hazardous occupations/processes, release and rehabilitate them through education, nutrition, and skills training, and subsequently those children working in non-hazardous occupation/industries/processes. According to them, elimination of child labour should be viewed as a long-time goal to be achieved progressively rather than at a single stroke. They also believe that total elimination of child labour by law is not possible and therefore, advocate a dual approach of prohibition and regulation, which is in sharp contrast with the viewpoint of first school of thought advocating total prohibition.\(^{13}\)

c) **Minimum level of learning:**

There is a third school of thought that believes that both civil society and the state as the agent of the society has abjectly failed in, (a) creating the appropriate infrastructure and environment, and providing incentives to ensure access to educational opportunities to all, (b) making education a fundamental human right, (c) creating a positive and conducive school environment that will enable universal retention and participation of children who have enrolled themselves in school and also make it possible for them to achieve at least the minimum level of learning. They, therefore, advocate a point of view that militates against of both the other schools of thought, in holding that it should be left

\(^{13}\) ibid., p.19.
to the children themselves to decide whether or not want to go to school. If they want free universal elementary education, the necessary infrastructure, logistical support, and environment for this should be created by the state on benefit of civil society. If, however, the children find that the educational system is dull, demotivating, and irrelevant, and would prefer to work, the state on behalf of the civil society should create opportunities for forms of work that is in consonance with their physical and mental capacities.  

Each of the three schools of thought has its merits and demerits. The fact, however, remain that every child is also a human being and the finest products of creation. Childhood is a stage in the evolution and growth in human life, it is most tender, formative, and impressionable. While, undoubtedly, access to health, hygiene, sanitation and nutrition for every child in the 0-6 age group is extremely important to ensure sustained physical growth, access to primary and elementary education at the stage of 5 plus is almost an equally important social need. It is true that most children receive some from of early childhood education either through the Anganwadi Centres of the Integrated Child Development Services (ICDS) or through simple interaction with their parents, but these best may be viewed as an important stage in preparing them for entry into the world of primary and elementary education. To the extent the family is literate and numerate, this literate environment will enrich the quality of preparation and facilities access to educational opportunity. Regretfully, however, over 100 million households are non-literate environment for the child that is conducive to his/her learning. It is, therefore, evident that there is a great force in the point of view of the first

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14 ibid., p.20.
15 ibid.,
school of thought, i.e. that (a) education is a fundamental human right, (b) the state as the agent of civil society must create the infrastructure, provide the logistical support and environment for access to free, compulsory, primary education; (c) the state must also simultaneously create the opportunities and provide the facilities for participation, universal retention, and achievement of the minimum levels of learning. Once this is accepted as the irreducible minimum goal of every decent and civilized society it will be impossible for the state to shrink or sidetrack this important responsibility. Intensive efforts must, therefore, be made to awaken the consciousness of all sections of the society, namely, opinion moulders, policy-makers, and programme implementors, to this and thus create conditions that are conducive to the mobilization and motivation of parents, and the universal realization of the importance of education for every child in the 5-14 age group regardless of background or sex.\textsuperscript{16}

There is nothing in this, in as much a number of international instruments have imposed a legal obligation on all their member countries to provide the much needed access to educational opportunity to every child together with other forms of protection. These are:

2. The International Covenant on Civil and Political Rights (1966)
4. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery (1975)

These covenants on the Rights of the Child (1989) spirit of dignity and

\textsuperscript{16} ibid.
respect for children's rights has been reinforced by numerous declarations adopted in international conference such as:

* 1990 World Summit for Children and the World declaration on the survival, protection and development of children.
* 1990 World Conference on Education for All
* 1995 Conference of Labour Ministries of Non-aligned countries and the declaration that was adopted at the close of the conference.
* The Stockholm Congress on commercial sexual exploitation of children held in August 1996.
* The declaration adopted at the close of the two day International conference held at Amsterdam in February 1997.
* The declaration and the action programme adopted at the close of four day International Conference held at Oslo between 27 and 30 October 1997.

V. EMERGENCE OF CHILD LABOUR:

The child labour has its own long history when the whole family started to live on its own income to lead a decent life. In cottage industries as well as in agriculture, children were used to do assistance to their parents. In such system they learn their traditional profession as apprenticeship.

During Industrial Revolution the whole system of labour division was taken up and factory was introduced. This regularized the labour system and hence the nature of labour itself changed. Here male, female, and children were recruited as labourers according to the need of the factory. Hundreds and thousands of women and children
were recruited to assist the male workers, by giving low wages and extracting more works. Exploitation was taking place towards the economic benefit of the Industrialists.

This had its impact on the society since in due course the children started to live in ignorance because they lost their education and due to continuous work the physical and mental disabilities made them disabled. Faculty development stunted. Hence future was blank to those labourers. The longevity of life was reduced. This was viewed by the western humanitarians seriously and urged for the restriction of recruitment of children. So they preached against their recruitment in the factories. The term “Child Labour” itself seemed a notorious term in the Working Class Movement.

VI. CAUSES FOR CHILD LABOUR:

There are some primary reasons for the emergence of labour.

1. The poverty of his family and in order to satisfy his basic needs. Even the smallest payment may satisfy his home. Moreover it is believed that he has to work as to supplement the need of his family which is usually a very large one.

2. Another reason is that they should continue their family tradition of not attending school, and to start work at a tender age irrespective of poverty.

3. Next the parents wish to keep their children occupied and off the streets, so that they do not indulge in mischief. It is valid only when they employed indoors.

4. Children feel working better than schooling because they encounter more difficulties during their years at school.

5. There may be costs of sending the child to school.

6. Another, cause of child employment is the situation at home. E.g. Tension, uncertainty, provoked by poverty etc.

7. The father or mother might have left the house, Illness, or being physically unfit etc., makes the bread winner of the family himself urge his children to go to work.

8. Family expectations and traditions.

17 w.w.w.google.com.
9. Abuse of the child.
10. Lack of good schools and day care.
11. Lack of other services, such as health care.
12. Lack of public opinion that down plays the risk of early work for children.
13. Uncaring attitude of employers.
16. Children work to avoid going to school.
17. Discrimination of the society due to minority or depressed class.

In order that family could survive, the children are often sent to work. But the driving force behind every cause of child labour is, of course, poverty and a combination of some of the factors that have been mentioned below:

a) socio-economic development:

The incidence of child labour is partly linked to the level of socio-economic development of an area and partly to the attitude of the parents, employers, and socio-cultural compulsions.

The incidence of child labour negatively correlates with per capita income, infrastructure development, school enrolment ratio, the position of women in the society and female participation in non-agricultural work.\(^\text{18}\) It positively correlates with parental poverty, illiteracy, unemployment, under employment and the percentage of the labour force in agriculture.

A recent review of Lloyd(1994), the evidence of this relationship from developing countries suggests that the larger size of the household, the more limited will be the

\(^{18}\) Lakshmidhar Mishra, Child Labour in India. (New Delhi: Oxford University press, 2000), p.27.
participation and progress of the child in school and the less the parents investment in schooling. Lloyd's review reveals that the magnitude of the effect of household size is determined by at least four factors:

- The level of socio-economic development. The effect of household size is larger in urban or more developed areas;
- The level of social expenditure by the state (the effect of household size is less if state expenditure is high);
- Family culture (the effect of household size is weaker where extended family system exist; e.g. through child fostering);
- The phase of democratic transition (the effect of household size is larger in the later phases).\textsuperscript{19}

The extent to which boys and girls or all children are equally affected by household size is very much a cultural factor; families from urban slums in Tamil Nadu discriminate in order to provide a few children, principally boys, with quality private education. Where mothers enter the labour force, it is girls who must stay at home.

Analysis of the incidence of child labour boils down to the composition of the household the number of earning members, total earning vis-à-vis liabilities and consumption pattern. In an extreme situation, however a child non-leisure time is available either for schooling or home-based work/income earning work in the market. There are undoubted by competing claim on a member's time in a normal household.\textsuperscript{20}

The way the household allocates the child's time depends inter alia on the household size and structure, the child's productive potential and his/her parents (particularly the mother) in home and market work and the degree of substitution possible between the child and his/her parents (again largely the mother) the time allocation decision usually

\textsuperscript{19} ibid.
\textsuperscript{20} ibid., p.27.
depends on the number of children which determines the income potential from child labour but their potential in terms also determines the designed size of the household. Children’s income potential starts both from their work as children and the transfer of part of their income to the parents when the latter are old.

b) Positive Environment-preference to boys:

Generation of a positive environment for the elimination of child labour is an important as a concrete programme for its achievement. Today’s environment is replete with fads, taboos, and mistaken notions regarding child labour. There is a strong parental perception in much of the district that male offspring are assets and girls a liability, and discrimination against the latter on the ground that it is futile to invest in their education, skill training, healthcare, and nutrition as there is likely to be little return on such investment; that even investment in boy’s education brings marginal returns and, that, therefore it is better to send them to work, unaware of what the long-term consequence of this will be.\textsuperscript{21}

c) Better Substitutes:

A large number of employees believe, though mistakenly, that children are better substitutes for adult as workers because they have humble fingers, are non-unionized, and, therefore, lack of collective bargaining power, can be easily dictated to in terms of remuneration and conditions of service.\textsuperscript{22} They often genuinely believe that it is much better for children to receive training in occupational skills than education in the formal school system which will do little for their future prospects.

\textsuperscript{21} ibid.
\textsuperscript{22} ibid.
d) **Children's aptitude:**

Working children themselves too often believe that it is preferable for them to earn a wage to supplement the limited income of their parents and actually prefer manual work/wages employment to education, finding the latter dull, demotivating, and uninteresting. It is much nations that must be combated.

e) **Employers preference:**

Neera Burra writes (2000), ‘employers prefer child labour because it is cheaper than adult Labour and because children, unlike, adults, can not question the treatment meted out to them. Evidence indicate that the child’s wage in any industry is a third to half that of an adult for the same output, with the child working for as many, if not more, hours than the adult’. It is often because wages are kept low adults that families are forced to send their children into the labour force.

f) **Preference of labour:**

Employers are particularly eager to employ young girls, since they are paid less than boys, and are often employed at younger ages. In the match industry in Sivakasi, most of the children under fourteen are girls and their wages are well below the agricultural wages in the region.

g) **Illiteracy:**

Neera Burra writes, a web of illiteracy and exploitation force uneducated parents to send their children to work, who as illiterate adults then send their own children to work.

h) **Safeguarding against uncertainties:**

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24 ibid.
25 ibid.
Research provides further evidence that poor households send children to work in order to augment household income and also as a safeguard against the uncertainties of income they face, such as the loss of a job, the occurrence of a natural calamity (flood cyclone, drought, famine), failed harvest, prolonged ill-health, etc. Such an interruption can be really threatening for poor households whose income is low, who have no savings, and are not in a position to borrow for want of collateral.

i) Small land-householders with bigger size house-hold:

Most case studies of child labour do indeed identify poverty of the household (and low level of parental education) as important factors in determining the incidence of child labour (ILO, 1992).

In rural areas the relationship between household size and child labour also depends on the extent of land holdings. There is evidence to show that children in landless and marginal farm household generally engage in child labour while those in households with farms engage in agricultural work. The incidence of child labour increase with increase in size of the farm as the marginal contribution of children increase. This trend force the landlord to lease out land instead of operating it himself.

j) Characteristic of the committee:

The supply of child labour is also determined by the characteristics of the community in which the household lives, especially the social infrastructure available, and no social infrastructure could be more relevant and powerful than education. If the system and form of education prevalent is dull, uninteresting and irrelevant many parents,

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26 Lakshmidhar Mishra, op.cit., p.28.
27 ibid.
do not spontaneously send their children to school;\textsuperscript{28} instead viewing child labour as a preferred option. In an economic environment where there is shrinking of jobs in the organized sector on account of rationalization, retrenchment or closure, and where survival depends on work, as in the unorganized or informal sector many parents would be inclined to conclude that taking children out of school and putting them to work will be the most sensible way of surviving.\textsuperscript{29}

\textbf{k) Labour market:}

The supply determinant of child labour relates to the labour market itself, and, therefore, any study of the former would be incomplete without a critical appraisal of the latter. In this study, an appraisal of the level of wages of both children and adults is revelant. It has been observed that flexibility in wages is a key factor influencing the employment of children. In competitive markets where wages are flexible, children can substitute for adults in the market place.\textsuperscript{30}

\textbf{l) Strict force of Act:}

In India, under the Minimum Wages Act, 1948, children are permitted to work for no more than four and half hours a day entitled to receive fifty per cent of the wages of an adult. Since there are no ways of measuring the working hours are made to work the whole environment, in actual practice children are made to work the whole day while wages payable continue to be half those paid to adults. Besides, the same minimum wages law permits payment of wages in kind and also permits computation of these in cash. The prices of essential commodities (rice, wheat, cereals, pulses) are greatly in different parts of the country and therefore, computation of the cash value of wages

\textsuperscript{28} ibid., p.20. 
\textsuperscript{29} ibid. 
\textsuperscript{30} ibid.
payable in kind is not easy. This gives rise to case of under-weighment and cheating, and even though the arrangement may ensure easy availability of essential commodities or food grains, this is often less than what it should be. The usual assumption is that in a normal labour market situation where wages are at a floor level due to legislation or collective social action, adult workers will always be preferred to children as their productivity is much higher.\textsuperscript{31} If the Minimum Wages Act, 1948, provides as in India, periodic reviews and revision of the minimum rate of wages for scheduled employment, and if this is rigorously enforced, it can deter the employment of child labour. Enforcement of the Minimum Wages Act, like the enforcement of child labour legislation has however, several limitations. Establishments in the unorganized or informal sector, for whom minimum wages are notified, are scattered and bringing them within the purview of the labour law enforcement machinery has been found to be extremely difficult, if not impossible. It is, therefore, a moot point where mere fixation, review, and revision of minimum rate of wages would really be accompanied by a reduction in child labour as the process of enforcement of the law continues to be half-hearted and extremely frustrating.\textsuperscript{32}

\textbf{m) Market trend:}

The behaviour of labour market trend away in a situation, as in India, where there is no stability and durability of employment. Employment in the Indian labour market is susceptible to violent fluctuations and is characterized by rapid mobility of labour or migration. This has a considerable bearing on child labour in terms of employment status, wages, working conditions, and merits fairly detailed treatment.

\textsuperscript{31} ibid., p.30
\textsuperscript{32} ibid.
n) **Migration:**

Migration within the country could be of two types, i.e. inter-district and inter-state. In yet another sense, the categories could be determined by the mode of recruitment. One can also be recruited by a recruiting agent or intermediary or contractor or subcontractor of the principal employer for a specific purpose. Freedom of movement in any part of the territory of India and freedom to pursue any vocation of one's choice is a fundamental right guaranteed by Art.19 of the Constitution of India. Migration being the movement of human beings in pursuit of certain desired objectives, is not in any way objectionable *per se* and is a normal social and economic phenomenon. It becomes objectionable only when it leads to exploitation leading to human misery and deprivation of the irreducible barest minimum to which every worker as a human being and as a citizen is entitled. It is objectionable when a person is recruited by an intermediary contractor/subcontractor with promises and allurements that never fructify.

o) **Large Household:**

Tragically, people who migrate are not only poor but have large families to support either at the home if they remain there, or at place of work if they are taken there. In a majority of cases members of the family too accompany the migrant worker. It is a migration through a recruiting agent the law, i.e. Inter-state Migrant Workman (Regulation of Employment and Conditions of Service) Act, 1979, enjoins on the contractor/principal employer the responsibility of providing suitable residential accommodation to the migrant workmen during their term of employment. However, the provisions of the law are in actual practice generally, only honoured in the breach. Residential accommodation is ordinarily not provided by the principal

33 Art.19, Constitution of India.
employer/contractor/subcontractor, and whenever provided it is far below the standards prescribed by law. There are ordinarily no arrangements for supply of potable drinking water to the tenements where the workers live, men, women, and children are obliged to defecate in the open without any semblance of privacy. The hutments where they live are also vulnerable to pollution from dust, fumes and smoke emanating from heavy vehicular traffic as also from the chimneys of manufacturing plants. Exposure to such pollution at the place of work and stay, makes the workers vulnerable to various occupational and respiratory diseases such as silicosis, pneumoconiosis, asthma, TB, anemia, and giddiness.

The social cost of migration is too heavy to be adequately described in words. The earnings are never adequate due to low wages and non-enforcement of provisions of the Minimum Wages Act, 1948. The entire workplace is full of middlemen like thekedars and jamadars who demand a cut for every transaction. Their commissions are being deducted from wages in violation of the provisions of the Payment of Wages Act, further lowering the level of the minimum wages. This deprives women of their privacy and exposes them to the hazardous of sexual harassment at the workplace. It deprives children of their access to educational opportunity. Even if some minimal access to education through NFE centres is provided, rarely is there a literate environment in the home for children to reinforce what they have learnt in the classroom as their parents are nonliterate and non-numerate. Besides, the children of migrant parents would find it far more profitable to be taught in their mother tongue while the medium of instruction at the places of work could be quite different. There is little scope for self learning on guided learning in totally alien surroundings that are not at all conducive to this.

34 Lakshmidhar Mishra, op.cit., p.32.
Millions of innocent and guideless children of migrant parents are thus exposed to acute and heart-rending deprivation and exploitation for no fault of theirs. The joy and excitement of a normal childhood are totally lost to them.

VII. CHILD LABOUR IN INDIA:

Child labour in India is a new phenomenon in Indian industries. Though it is undesirable, it persists in various employments on account of socio-economic compulsions. Bulk of child labour is engaged in rural areas in agriculture and allied employments. Earlier the children were usually apprenticed to their parents in agriculture and form works and other crafts. During the harvest time even the service of the children of the household was utilized, the stray grains which might have fallen scattered during the process of harvest were collected by children, who also lent a helping hand in driving away birds and animals during the harvest.35

India is one of the countries where the problem of child labour is quite manifest. The Government of India had for sometime been viewing with concern the widespread existence of child labour in the country, both in the organized and unorganized sectors.

Though the practice of child labour is widely prevalent in many of the Third World countries such as China, Pakistan, Bangladesh, Nepal and Brazil, India has come to acquire the nasty distinction of possessing the largest child labour force.36 In India large scale employment of the children below the age of 14 is predominantly found in the following industries:

1. Beedi making,

2. Carpet weaving,

36 Y.S. Reddy, op.cit., p.48
3. Cement manufacture, including bagging of cement,
4. Cloth printing, dyeing and weaving,
5. Manufacture of matches, explosive and fire works,
6. Mica cutting and splitting,
7. Shellac manufacturing,
8. Tanneries,
9. Soap manufacture,
10. Wool cleaning,
11. Working as cleaners in workshops attached to motor transport companies,

The recruitment of children in the above industries is considered as necessity because of poverty, nature of work and industrialists desire to reduce the production cost. Hence no body was taking interest in the removal of the children from working. Day by day when new industries developed more children were recruited. In the meantime the necessity of regularization of their working condition, wages and working hours was realized and steps were taken. According to 1981 Census, the estimated figure of working children was 13.6 million whereas in 1991, it was reduced to 12.8 million as is indicated below.

State wise Distribution of Working Children According to 1981 & 1991 Census.\(^{37}\)

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<th>State/Union Territories</th>
<th>1981</th>
<th>1991</th>
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<tr>
<td></td>
<td></td>
<td>Workers</td>
<td>Main Workers</td>
</tr>
<tr>
<td>1.</td>
<td>Andhra Pradesh</td>
<td>1,951,312</td>
<td>1,537,293</td>
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<tr>
<td>2.</td>
<td>Assam</td>
<td>*</td>
<td>5,953</td>
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<td>Bihar</td>
<td>1,01,764</td>
<td>795,444</td>
<td>146,801</td>
<td>942,245</td>
</tr>
<tr>
<td>Gujarat</td>
<td>6,16,913</td>
<td>373,027</td>
<td>150,558</td>
<td>523,585</td>
</tr>
<tr>
<td>Haryana</td>
<td>1,94,189</td>
<td>89,030</td>
<td>20,661</td>
<td>109,691</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>99,624</td>
<td>30,771</td>
<td>25,667</td>
<td>56,438</td>
</tr>
<tr>
<td>Jammu &amp; Kashmir</td>
<td>2,58,437 *</td>
<td>*</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>Karnataka</td>
<td>11,31,530</td>
<td>818,159</td>
<td>158,008</td>
<td>976,247</td>
</tr>
<tr>
<td>Kerala</td>
<td>92,854</td>
<td>28,590</td>
<td>6,210</td>
<td>34,800</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>1,698,597</td>
<td>997,940</td>
<td>354,623</td>
<td>1,352,563</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>1,557,576</td>
<td>805,847</td>
<td>262,571</td>
<td>1,068,418</td>
</tr>
<tr>
<td>Manipur</td>
<td>20,217</td>
<td>13,478</td>
<td>3,015</td>
<td>16,493</td>
</tr>
<tr>
<td>Meghalaya</td>
<td>44,916</td>
<td>30,730</td>
<td>3,903</td>
<td>34,633</td>
</tr>
<tr>
<td>Nagaland</td>
<td>16,235</td>
<td>16,106</td>
<td>370</td>
<td>16,476</td>
</tr>
<tr>
<td>Orissa</td>
<td>702,293</td>
<td>325,250</td>
<td>127,144</td>
<td>452,394</td>
</tr>
<tr>
<td>Punjab</td>
<td>216,939</td>
<td>132,414</td>
<td>10,454</td>
<td>142,868</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>819,605</td>
<td>490,522</td>
<td>283,677</td>
<td>774,199</td>
</tr>
<tr>
<td>Sikkim</td>
<td>8,561</td>
<td>5,254</td>
<td>344</td>
<td>5,598</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>975,055</td>
<td>523,125</td>
<td>55,764</td>
<td>578,889</td>
</tr>
<tr>
<td>Tripura</td>
<td>24,202</td>
<td>13,506</td>
<td>2,972</td>
<td>16,478</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>1,434,675</td>
<td>1,145,087</td>
<td>264,999</td>
<td>1,410,086</td>
</tr>
<tr>
<td>West Bengal</td>
<td>605,263</td>
<td>593,387</td>
<td>118,304</td>
<td>711,691</td>
</tr>
<tr>
<td>Arunachal Pradesh</td>
<td>17,950</td>
<td>11,632</td>
<td>763</td>
<td>12,395</td>
</tr>
<tr>
<td>Andaman &amp; Nicobar Island</td>
<td>1,309</td>
<td>758</td>
<td>507</td>
<td>1,265</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>1,986</td>
<td>1,839</td>
<td>31</td>
<td>1,870</td>
</tr>
<tr>
<td>Dadra &amp; Nagar Harvel</td>
<td>3,615</td>
<td>2,677</td>
<td>1,739</td>
<td>4,416</td>
</tr>
<tr>
<td>Delhi</td>
<td>25,717</td>
<td>26,670</td>
<td>681</td>
<td>27,351</td>
</tr>
<tr>
<td>Daman &amp; Diu</td>
<td>9,378</td>
<td>741</td>
<td>200</td>
<td>941</td>
</tr>
<tr>
<td>Goa</td>
<td>*</td>
<td>3,938</td>
<td>718</td>
<td>4,656</td>
</tr>
<tr>
<td>Lakshadweep</td>
<td>56</td>
<td>17</td>
<td>17</td>
<td>34</td>
</tr>
<tr>
<td>Mizoram</td>
<td>6,314</td>
<td>6,314</td>
<td>10,020</td>
<td>16,411</td>
</tr>
<tr>
<td>Pondicherry</td>
<td>3,606</td>
<td>2,606</td>
<td>115</td>
<td>2,680</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>13,640,87</strong></td>
<td><strong>9,082,14</strong></td>
<td><strong>2,203,208</strong></td>
<td><strong>11,283,349</strong></td>
</tr>
</tbody>
</table>

* Census could not be conducted.

More than 90 per cent of child labour is engaged in rural areas, in agriculture and allied employments like cultivation, agricultural labour, livestock, forestry and fisheries.

The following sources show the magnitude of child labour in India as shown below.\(^38\)

<table>
<thead>
<tr>
<th>Sources</th>
<th>Year</th>
<th>Numbers in Millions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Census of India</td>
<td>1971</td>
<td>10.74</td>
</tr>
<tr>
<td>ILO</td>
<td>1975</td>
<td>15.10</td>
</tr>
<tr>
<td>Census of India</td>
<td>1981</td>
<td>13.60</td>
</tr>
<tr>
<td>Planning Commission, India</td>
<td>1983</td>
<td>17.86</td>
</tr>
<tr>
<td>Operation Research Group, Baroda</td>
<td>1983</td>
<td>44.00</td>
</tr>
<tr>
<td>National Sample Survey, India</td>
<td>1987-88</td>
<td>17.60</td>
</tr>
<tr>
<td>National Sample Survey, India</td>
<td>1993-94</td>
<td>13.50</td>
</tr>
<tr>
<td>Labour Ministry India</td>
<td>1994</td>
<td>22.00</td>
</tr>
<tr>
<td>ILO</td>
<td>1996</td>
<td>23.17</td>
</tr>
</tbody>
</table>

Despite the series of measures taken by the Government of India, NGOs and various International agencies, child labour continues to be a serious issue as seen here.

Distribution of Child Labour in Labour States: 39

<table>
<thead>
<tr>
<th>States</th>
<th>Percentage share to total child labour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>14.3</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>12.5</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>11.4</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>10.5</td>
</tr>
<tr>
<td>Karnataka</td>
<td>8.3</td>
</tr>
<tr>
<td>Bihar</td>
<td>8.3</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>8.1</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>7.1</td>
</tr>
<tr>
<td>Orissa</td>
<td>6.6</td>
</tr>
<tr>
<td>Gujarat</td>
<td>4.9</td>
</tr>
<tr>
<td>West Bengal</td>
<td>4.4</td>
</tr>
</tbody>
</table>

VIII. CHILD LABOUR IN TAMIL NADU:

In state wise distribution of the child labour Tamil Nadu occupies the seventh place with 8.1% of child labour. The higher incidence of child labour can also be attributed to the economic backwardness of the state. Some districts and cities have more number of child labours. For example in Kanchipuram, Thiruchirapalli, Tiruppur, Erode, Coimbatore, Chennai, Salem, and Karur districts, thousands of children are working in silk weaving industry, stone cutting industry, hosiery industry etc. Southern districts also have more child labourers in towns like Kovilpatti, Kadambur, Kadayam, Kayatharu, Tuticorin, Tirunelveli, Virudhunagar, Sivakasi, Madurai etc. In this region 86% of the child labourers are girl Children. The unofficial estimation is 30,000.

In Kanchipuram district the children are used as weavers of famous Kanchipuram silk sarees. In North Arcot the children are used is beedi manufacturing. In Madras ever silver polishing, Salem powerlooms; Tirunelveli mat weaving and beedi rolling; Sivakasi and other parts of Virudhunagar district match works and fire works. In Trichirapalli district, according to first survey report the number of children employed in hazardous occupation like, gem cutting, quarrying, and gem polishing is about 6000. Tirupur is a famous place for knit-wear. The Supreme court ordered the district authorities to enumerate the number. According to Non-Government figures around 30,000-60,000 child workers are employed. Karur, a major supplier of mosquito nets to Assam, Himachal Pradesh and North Eastern Hill areas, employs several thousands of

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children. They are loosing their childhood in mosquito weaving, dyeing, bleaching factories etc.\textsuperscript{43}

\textbf{IX. LEGISLATIVE FRAMEWORK IN INDIA FOR CHILD LABOUR}

The problem of child labour in India has attracted considerable attention of the social scientists, government and voluntary organizations in the mid-eighties.

The Government of India has adopted constitutional, statutory and developmental measures to deal with the problem of child labour. Several parts of the constitution, directly or indirectly, prohibit the practice of child labour. However, the goals of the constitution are far from being realized. Several laws have also been passed to deal with the problem of child labour. Despite these laws children continue to work in prohibited occupations and there is very little regulation of child labour in non-prohibited areas of work. This is largely due to ineffective implementation of child labour laws in India. The government has also launched development programmes for the benefit of child labour. The developments in India on the subject of legislation regulating child labour during the last hundred years or so can be conveniently considered under the following periods.

\textbf{Pre-Independent Period:}

1. The Period upto 1920:

This was the period of initiation. It was the Industrial Revolution which, though it came late to India, brought to the forefront the possibility of exploitation of labour, and the need for statutory protection against such exploitation. The Indian Factories Act, 1881, makes the beginning of such statutory protection in India. That Act,\textsuperscript{43} ibid.
inter alia provided for the protection of children as to employment in factories in respect of the following matters:

a. Minimum age – (seven years);
b. Successive employment (employment in two factories on the same day is prohibited);
c. Duration of employment (working hours not to exceed nine hours a day, and at least four holidays to be given in a month);
d. Factories employing 100 or more persons were covered by this Act.

In 1891, the factories legislation was revised. The Indian Factories Act, 1891 struck a small advance in respect of the following matters:

a. minimum age (increased to nine years);
b. hours of work (maximum seven hours per day with prohibition of work at night between 8 p.m. and 5 a.m.);

In 1901, the Mines Act was passed, prohibiting the employment of children under 12 years and in employment of industries of dangerous to children’s health and safety.

In 1911, the Factories Act of 1911 made the following salient provisions with regard to child labour:

a. hours of work (work between 7 p.m. and 5.30 a.m. was prohibited);
b. work in certain dangerous process was prohibited;
c. certificate of age and fitness for employment was required.

The protection given to children by these measures was the barest minimum.

2. The period from 1921 to 1930

The period from 1921 to 1930 may be described as a period of substantial progress and one of protective legislation. The formation of the International Labour Organisation, 1919 as also the establishment of the All India Trade Union Congress,
1920 gave an impetus to reform the law relating to conditions of labour in general and as a part of those reforms, certain measures relevant to child labour were also adopted.

The International Labour Organisation since its inception had included among its primary objects the safeguarding and promotion of the rights and welfare of youth. Its constitution in the original form in article 41 declared it imperative for the organizations to promote the abolition of child labour. Later, the Declaration of Philadelphia of 1944 recognises its obligation to further among the nations of the world, programmes which would achieve provision for child welfare and maternity protection and the assurance of equality of educational and vocational opportunity.

During the period under consideration, legislation in relation to factories, mines and ports gave increased protection against exploitation of children.

As to factories, the Amendment Act of 1922 (passed implement the ILO Convention of 1919) made important changes in respect of the following matters:

a. minimum age (15 years in general);

b. working hours (maximum 6 hours, and also interval of half an hour if employed for more than 5.30 hours);

c. scope of the Act (establishments employing 20 or more persons with mechanical power were covered with power to local government to exclude the provisions to premises employing 10 or more persons);

d. prohibition of employment of children below 18 and women in certain processes;

e. provisions for medical certificate plus certificate re-examination for continuing work.

44 Art.41, of Constitution of ILO.
The Amendment of 1926 (amending the Factories Act of 1911) imposed certain penalties on the parents and guardians for allowing their children to work in two separate factories the same day.

The Indian Mines Act 1923, raised the minimum age for employment from 12 to 13 years in mines.

The Indian Ports (Amendment) Act, 1931 laid 12 years as the minimum age that could be prescribed for handling goods in ports, a restriction previously applicable only to handling at “piers, jetties, landing places, wharves, quarys, docks, warehouses and sheds”.

3. The period from 1931 to 1949

The period from 1931 to 1949 represents a comparatively more concerned effort to deal with child labour. The scene was set by the well documented and comprehensive Report of the Royal Commission on Labour (1931) which recommended extensive reforms, many of which were carried out.

The Tea District’s Emigrants Labour Act, 1932 was passed to check migration of labour to the tea cultivating districts. One of its provisions laid down that no child under sixteen should be employed or allowed to migrate to districts with tea plantations, unless the child is accompanied by his parents or other adult relatives on whom the child is dependent.

In 1933 was passed the Children (Pledging of Labour) Act prohibiting pledging of a child for the purpose of getting certain work done. The Royal Commission on Labour has found evidence in such widely separated areas as Amritsar, Ahamedabad and Madras of the practice of pledging child labour, that is, taking of advances by parents or
guardians in return for bonds, pledging the labour of their children. In some cases, for example, in the carpet factories of Amritsar, and the beedi factories of Madras the children so pledged were subjected to very unsatisfactory working conditions. The Royal Commission, therefore, recommended that the expediency of penalizing the giving of advances to secure the labour of children and the exclusion of bonds pledging such labour should be examined by the Government of India and that in any case, the bond, pledging the labour of a person under fifteen years executed for, on account of any consideration should be void. In making its recommendation, the Commission observed as follows:

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

(The Government of India had eliminated by that time the system of indenture.)

The recommendation of the Commission was given effect to by introducing in the Legislative Assembly at the Centre in 1932 a Bill called the Children (Pledging of Labour) Bill. The Bill sought to eradicate the evil of imposing penalties on parties to agreement pledging the labour of children on persons knowingly employing children whose labour had been pledged.

The Bill was referred to a select committee which made certain major changes, such as, the introduction of a proviso to clause 2 of the Bill which related to the definition of "an agreement to pledge the labour of a child", so as to remove, from the scope of the definition, agreements of type essential to safeguard against the disabilities imposed by the Bill. The definition of the expression 'guardian' was suitably amended. A clause was inserted to provide that an agreement to pledge the labour of a child shall be void.
The committee also made suitable changes to provide for the making of such agreement an offence. This Bill was enacted as the Children (pledging of Labour) Act, 1933. Thus, the Act of 1933 was aimed at the most direct and blatant exploitation of children by adults.

Faculty legislation also underwent complete revision as a result of the Report of Royal Commission on Labour (1931). The Factories Act of 1934 evolved elaborate provisions regulating employment in respect of various age groups in regard to factories. The salient points may be thus stated:

a. Children under 12 years – employed generally prohibited;
b. Children between 12 and 15 years – employed restricted to 5 hours a day;
c. Children between 15 and 17 years (defined as adolescent) – certain restrictions were imposed.

Then followed the Indian Mines, (Amendment) Act, 1935 which amended the Indian Mines Act, 1923. In the reforms effected by this Act, children were divided into age groups, and the position stated, broadly stated, was as follows:

a. Children under 15 years – employment in mines was prohibited;
b. Persons between 15 and 17 years – employed underground permitted only on the production of a certificate of physical fitness granted by a qualified medical practitioner;
c. Working time restricted to maximum 10 hours a day and 54 hours a week for work above the ground, and 9 hours a day work done under the ground.

The twenty-third session of the International Labour Conference, 1937, had adopted a Convention in which a special article for India was inserted, fixing the
minimum age at which children may be employed or may work in certain occupation. That article reads as follows:

"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 goods at docks, quays or wharves, but excluding transport by hand. 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".

The Employment of Children Act, 1938, passed to implement this convention prohibited the employment of children under fifteen in occupations concerned with the transport of goods, passengers or mails on railways. It raised the minimum age for handling goods in docks from twelve years (the age fixed by section 6(1A) of the Indian Ports Act, 1908 to 14 years which was the age recommended the Royal Commission on Labour. A simple procedure enabling employers to safeguard themselves against transgressions of the legislation by providing themselves with, of requiring a certificate for employment to furnish a certificate of age was also provided in the legislation.

Employment is thus regulated according to the age group. The Act is not an exhaustive code of all provisions regulating the employment of children, though the title of the Act gives that impression. It deals with employment in industrial establishments not covered by the Factories Act and in railways and ports. In the main, however, it provides for the following matters:

a. age of employment (railways) – employment of children under 15, in occupations connected with the transfer of goods, passengers or mails on railways prohibited;
b. age of employment (ports) – for handling goods in docks minimum age raised from 12 (fixed by section 6 (1) of the Indian Ports Act (1908) to 14 as recommended by Royal commission.

c. Produce certificate of age.

Provisions were also introduced in 1939 in the Act of 1938 for verification of age in case of dispute.

By an Amendment of the Employment of Children Act, 1938 in 1949 the minimum age for employment in establishments governed by the Act of 1938 was raised to 14 years.

The Labour Investigation Committee (1946) examined the state of Indian labourers in depth. There followed a spate of legislations after its Report. In 1948, the Factories Act was passed, raised the minimum age for employment in factories to 14 years.

4. The period from 1950 to date:

The period from 1950 may be described as one of progressive activity. The wide ranging provisions laid down in the Constitution (1950), gave an impetus to the protection of weaker sections of society.

The Constitution of India recognizes the need for granted special protection to children. The provisions are two fold:

a. fundamental rights;

b. directive principles.

As regards fundamental rights, specific provisions in regard to children have been made in part III of the Constitution. While in general, the constitution prohibits discrimination on certain grounds, article 15, clause (3) saves the validity of laws making
special provisions for women and children. State action so taken can not be challenged on the grounds of discrimination.\textsuperscript{46}

Article 24 provides categorically that no child below the age of 14 years shall be employed to work in any factory or mine, or engaged in any other hazardous employment.\textsuperscript{47} "State" in this context includes the Government and Parliament of India and the Government and the Legislative of each of the states and all local or other authorities within the territory of India or under the control of the Government of India (Article 12).\textsuperscript{48}

As regards directive principles of state policy, it will be appropriate to refer to article 39 (contained in part IV of the Constitution). It incorporates a directive principle of state policy in those terms:

\begin{itemize}
  \item[a.] "that............tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age of strength;
  \item[b.] that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."
\end{itemize}

Article 45 directs the state to make endeavour to provide within a period of ten years from the commencement of the constitution, for free and compulsory education for all children until they complete the age of fourteen years.\textsuperscript{49}

Article 47 requires the state to raise the level of nutrition and the standard of living of the people.\textsuperscript{50}

\begin{itemize}
  \item[46] Art. 15 Constitution of India.
  \item[47] ibid.
  \item[48] ibid.
  \item[49] ibid.
  \item[50] ibid.
The Constitutional philosophy found concrete shape in the post 1950 legislative activity in the sphere of child labour as in many other spheres of social welfare.

The ILO Convention relating to night work of young persons led to an amendment in 1951 in the Employment of Children Act, 1938, which prohibits the employment of children between 15 and 17 years at night in railways and ports. The employers were required to maintain a register for children under 17.

The Plantations Labour Act, 1951, prohibited the employment of children under 12 years in plantations. The Mines Act, 1952 prohibited the employment of children under 15 in mines. An adolescent could be employed for underground work as adult on the satisfaction of two conditions – first he must have completed 16 years of age and secondly, he must have a certificate of physical fitness from a surgeon.

In 1954, the Factories Act was again amended to prohibit the employment of adolescent under 17 years at night. “Night” in this Act means a period of 12 consecutive hours which include the hours between 10 p.m. and 7 a.m.

By the Merchant Shipping Act, 1958, children under 15 were prohibited to be engaged or carried to sea to work in capacity in any ship, except in certain specific cases.


The Apprentices Act, 1961, provided for regulating and controlling of trainees. This was amended to protect the rights of apprentice trainees. The Act prohibited the undergoing of apprenticeship training by a person under 14.

The Beedi and Cigar workers (conditions of Employment) Act, 1966, prohibited the employment of children under 14 in any industrial premises manufacturing beedis or
cigars. Young persons between 14 and 18 were also prohibited to work at night between 7 p.m. and 6 a.m. in such establishments.

In 1978, the Employment of Children Act, 1938 was further amended so as to extend the prohibition of employment of a child below 15 years, in certain occupations in railway premises, such as, cinder-picking or clearing of an ash pit or building operation in catering establishment at a railway station or in occupation relating to construction of railway station or any other work where such work is done in close proximity to or between, the railway lines. These occupations were not covered before 1978.

The momentum generated by the constitutional philosophy of social justice which was the inspiration for the post-constitution legislation summarized above needs a more sustained and deliberate action both by way of legislative and administrative actions.

All of the legislation summarized above have not been concerned solely with children. Many of the legislative measures have been concerned with employment of persons in general, and protection of children appears there only as a small part of the general legislative scheme. The more recent legislative measures, however, do bear a different impression.

Justice Frankfurter once wrote, "children have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a state’s duty toward children”.

The soundness of this needs to be realized more seriously in respect of further action.
IX. ANALYSES IN THE LABOUR LEGISLATIONS:

The following enactments which relate either wholly or partially to the employment of children in India were examined in detail by the committee:

1. The Children (Pledging of Labour) Act, 1933
2. The Employment of Children Act, 1938
4. The Factories Act, 1948
5. The Plantations Labour Act, 1951
6. The Mines Act, 1952
7. The Merchant Shipping Act, 1958
8. The Motor Transport Workers Act, 1961
11. The Beedi and Cigar Workers (conditions of Employment Act 12), 1966
12. The Shops and Establishments Acts in various states.

It would be noticed that of the various central Acts above, two namely, the pledging of Labour Act – though the title is widely expressed is, in its scope, confined to certain specified employments. The Factories Act may be said to cover a wide range of establishments, but even that Act cannot be described as a kind of general law on the subject of child labour. The Plantations Labour Act, the Mines Act, the Merchant Shipping Act, the Motor Transport Workers Act, the Atomic Workers (conditions of Employment) Act are even more narrow in their scope.

Thus, there is no “general” law regulating child labour because historically legislation was passed not with a focus on the employment of children or for that matter, person falling under any other age group or any participation industry as and when such need arose.

\[51\] M.S. Gurubadhaswamy, op.cit., p.25.
\[52\] ibid.
It is necessary to analyse the existing legislative protection available to child labour, its adequacies and deficiencies, the statutory safeguards available for the welfare of children employed in factories and the extent implementation of these measures.

There are wide variations in the coverage of the various Acts. For instance an establishment which is a factory under one Act is not so under some other Act. This is illustrated below:

The term ‘factory’ is defined differently in different Acts as follows:

<table>
<thead>
<tr>
<th>S2 m (i) &amp; (ii)</th>
<th>E.S.I Act S2 (12)</th>
<th>E.P.F. Acts 2 (g)</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘Factory’ means any premises including the precincts thereof (i) where in ten or more workers in working on any part which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on or ii) where in twenty or more workers are working on any day of the preceding twelve months and part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952) of a railways running shed.53</td>
<td>‘Factory’ means any premises including the precincts thereof where in twenty or more persons are employed or were employed wages on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952) of a railways running shed.</td>
<td>‘Factory’ means any premises including the precincts thereof (i) where in ten or more workers in working on any part which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on or ii) where in twenty or more workers are working on any day of the preceding twelve months and part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952) of a railways running shed.</td>
</tr>
</tbody>
</table>

It will be seen from the above definitions that although an establishment using power and employing less than 20 workers but more than 9 would be a factory under the factories Act, it would not be a factory under E.S.I. Act for which the minimum number

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53 Reports of Thiru Harbans Singh, Member Board of Revenue on the problem of Child Labour in various factories and industries in Ramanathapuram District, 1976, pp.10-11
of workers employed should be 20 and should also be used. Again while a unit may be covered under the E.P.F. Act which does not stipulates any employment or the use of power it may not be covered under the Factories Act of the E.S.I Act. Further while registration of factory is obligatory under the factory act or E.S.I Act there is no such obligation under the E.P.F. Act.54

The Term ‘Child’ has been defined uniformly and it has different connotation in different Acts as follows:

<table>
<thead>
<tr>
<th>Factories Act 1948</th>
<th>Tamil Nadu Shops and Establishments Act 1947</th>
<th>Tamil Nadu catering Establishments Act 1958</th>
</tr>
</thead>
<tbody>
<tr>
<td>S.2(c) &quot;Child&quot; means a person who has not completed fifteen years of age.</td>
<td>S.2(1) “Child” means a person who has not completed fourteen years of age.</td>
<td>S.2(2) “Child” means a person who has not completed sixteen years of age.</td>
</tr>
<tr>
<td>The Plantations Labour Act, 1951</td>
<td>The Motor Transport Workers Act 1961</td>
<td>The Beddi and Cigar Workers (conditions of Employment)</td>
</tr>
<tr>
<td>S.2(c) “Child” means a person who has not completed fifteen years of age.</td>
<td>S.2(c) “Child” means a person who has not completed fifteen years of age.</td>
<td>S.2(b) “Child” means a person who has not completed fourteen years of age.</td>
</tr>
</tbody>
</table>

It is seen that under various Acts the age of a “Child” caries from 14 years to 16 years. Again the restrictions on the employment of children are not uniform in different acts.

54 ibid.
The above discussion shows how the child labours emerged in Indian industries and regulatory measures were taken to control the exploitation of child labours. But however, all those welfare measures were thrown into the wind by the concerned parties like the parents of the children, factory owners, and officials for different reasons. The successive chapters are discussing about the emergence of child labours in Match and Fire Works industries in the study area ie. Virudhunagar district, and how the Governments (Central as well as State) and International Forums like ILO, UNICEF etc., along with the Non-Government organizations and private persons fought for their release and rehabilitation.