CHAPTER 4

THE CHILD AND THE LAW
THE CHILD AND THE LAW

Children are recognised as the most important asset for the future of any society. The children are the most important factors to fulfil the requirements of society from time to time. In a country like India, a large number of children are at work for their survival as well as for the survival of their families. They are becoming earning members of the families of low incomes and poor. Poverty forces them to go for work instead of going to schools. Though state responded to this problem there is no cohesive thought on this issue, half heartedness and disinterest of the policy makers, legislators and intellectuals make this problem difficult. A number of act and legislations were enacted to alleviate the child labour. They can be divided into two parts i.e.

a) Constitutional Provisions and
b) Legal Provisions.

(a) Constitutional Provisions and

The Constitutional of India itself guarantees many rights to the child labour. This is two-fold: The Fundamental Rights and Directive Principles. Article 24 states that 'No child below 14 year of age shall be employed in any factory, mine or any other hazardous industry.

Article 39 (e) states that the State 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 vocations unsuited to their age or strength.
Article 39(f) states that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and the childhood and youth are protected against exploitation and against moral and material abandonment.

(b) **Legal Provisions.**

A Number of Acts was enacted to protect the interest of working children. Broadly these Acts deal with following aspects.

(a) Children working in Hazardous Employment  
(b) Maximum hours of work and rest interval  
(c) Prohibition of children working at nights  
(d) Minimum age for employment of children  
(e) Medical Examination of children and  
(f) Minimum wage for the child worker.

(a) **Children working in Hazardous Employment**

Different sections of Acts prohibit children from working in hazardous occupations. Under section 23 of Factories Act (148) 'no young person can be employed on dangerous machines unless he/she is fully instructed, and is under adequate supervision. The Employment of children Act 1938 prohibits employment of children in any workshop where the process of beedi making, carpet weaving, cement manufacturing, cloth printing, manufacture of matches, explosive and fire-works, mica cutting and splitting, soap manufacturing, canning is carried out. Under Beedi and Cigar Workers Act 1966 'no person can be employed in industrial premises'. According to the Mines Act (1952) 'no
person below 18 years shall be allowed to work in any mine Apprentices and other trainees, with the permission of the Child inspector/inspector may work, provided they are above 16 years’. The Child Labour (Prohibition and Regulation) Act 1986, intends to ban the working children in hazardous occupations and processes as listed in the Act and regulate the conditions of their work where they are not prohibited from working.

(b) Maximum hours of work and rest interval

The Child Labour (Prevention and Regulation) Act, 1966, regulates the major conditions of work of children, such as total six hours of work, including the time spend in waiting for work, rest interval of one hour after three hours paid weekly holiday and maintenance of register of child workers. The Factories Act and Mines Act provide four hours as the maximum limit for a child between 14 and 15 years, who is working in a Factory. Acts related to shops and other establishments, recommended 5 to 7 hours of work. The maximum hours of work as prescribed by the Transport Act and The Plantation Act are forty hours a week. The Minimum period of four hours for children.

The working child is assumed by law, a rest interval of half-an-hour after every four hours of work (Motor Transport Workers Act). Rest for at least one hour after every three hours of work (Child Labour (Prevention and Regulation) Act), Half-and-hour's rest after five hours work (Plantation Labour Act), half-an-hour’s rest after five hours work (Plantation Labour Act and Shop and Commercial Establishments Act). Most of these Acts also ensure one day a week leisure after every six day’s work, and annual paid leave after a period of 240 days of work.
(c) Prohibition of children working at nights

In the Acts, night work between 7pm to 6am is banned for children. Overtime is not permitted, and after work for 3-5 hours (depending on the Act) there should be a rest period of half-an-hour. The Factories Act mentions that children between 14 and 17 years cannot be asked to work i.e. between 10 AM to 6 PM. The Child Labour (Prevention and Regulation) Act has not allowed children for work at night (7 PM to 8 AM) and overtime is also not allowed. Motor Transport Workers Act mentions that no child (below 15 years age) is asked to work between 10 PM to 6 AM.

(d) Minimum age for employment of children

Almost all the acts define child as a person below 14 and 15 years. The minimum age prescribed for employment of children iffer in various acts. The Child Labour (Preventions and Regulations) Act, specifies that a child is one who has completed his 14th birthday. The minimum age of employment in shop and commercial Establishments Act in various States varies from 12 to 15 years. Under Section 67 of Factories Act, "no child below 15 years can work in a factory" and under Section 23"no young person cab be employed in dangerous machines, unless he is fully instructed, and is under adequate supervision. A young person could be either a child (below 15 years) or an adolescent (15-18 years). No child (below 15 years) cab be employed to work in any capacity : in any motor transport undertaking (Motor Transport Workers Act 1961). Children are not allowed to work in plantations till they complete 12 years (Plantations Act). Till they complete 14 years, they are not allowed to work in industrial premises or undergo apprenticeship training.
in any designated trade (Section 3 (a) of Apprentices Act). No person below 18 years shall be allowed to work in any mine (The Mines Act). A young person is defined as one under 18 years of age (Merchant Shipping Act). Section 109-113 of this Act are dealing with employment of young persons and the act prohibits children below 15 years of age to work in any capacity in any ship unless it is a School/Training ship, or a ship in which all persons employed belong to one family, or in a home-trade ship of less than 200 tonnes gross, or where such a child is to be employed on nominal wages, and is under the charge of his father or other adult near male relatives. All young persons under 18 years of age have to produce a medical certificate of fitness by a certifying surgeon.

(e) Medical Examination of children and

The Indian laws lay 18 years as the minimum age upto which the certificate of fitness would be required, whereas, International Labour Organisation Conventions clearly recommend that no person upto the age 21 years should be employed in health risk establishments without a certificate of fitness. In India, a certificate of fitness for the employment of a particular child was prescribed by the Factories Act, Motor Transport Workers Act, Plantations Labour Act, and some other Acts also provide for medical examination of the child at annual intervals.

(f) Minimum wage for the child worker.

The Minimum Wages (Central) Rules were made under the Minimum Wages Act. The Minimum Wages Act defined the child, adolescent and adult as the same meaning in the Factories Act. Under
Section 17 of this Act, each employer shall maintain registers and records giving details of employees, wages etc. The State Government will fix a minimum wage in all scheduled employments.

To deal with the above provisions, Government has enacted different acts over a period of time. The following Acts aimed at protecting the interests of children as listed above: -

**Convention on the Suppression of Slave Trade and Slavery, 1926**

This convention requires signatories to "prevent and suppress the slave trade" and "to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms." It also obligates parties to "take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.

**Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956**

The supplementary convention on slavery offers further clarification of prohibited practices and refers specifically to debt bondage and child servitude as institutions similar to slavery. It requires States Parties to "take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition of... debt bondage... [and] any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour. The convention defines debt bondage as follows:
Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

**Forced Labour Convention, 1930**

The International Labour Organisation (ILO) Forced Labour Convention requires signatories to "suppress the use of forced or compulsory labour in all its forms in the shortest period possible. In 1957, the ILO explicitly incorporated debt bondage and serfdom within its definition of forced labour.

**International Covenant on Civil and Political Rights (ICCPR), 1966**

Article 8 of the ICCPR prohibits slavery and the slave trade in all their forms, servitude, and forced or compulsory labor. Article 24 entitles all children to "the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

**International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966**

Article 7 of the ICESCR provides that States Parties shall "recognize the right of everyone to the enjoyment of just and favourable
conditions of work." Article 10 requires Parties to protect "children and young persons... from economic and social exploitation.

Convention on the Rights of the Child, 1989

The following three provisions mandate protections that are particularly relevant for the bonded child laborer:

Article 32: "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or... be harmful to the child's health or physical, mental, spiritual, moral or social development. States are directed to implement these protections through appropriate legislative, administrative, social and educational measures. In particular, they are to:
(a) provide for a minimum age or minimum ages for admissions to employment;
(b) provide for appropriate regulation of the hours and conditions of employment; and
(c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article.

Article 35: "States Parties shall take all appropriate. . . measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form. A significant portion of the bonded child labourers of India are trafficked from one state to another, and some are sold outright.
Article 36: "States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.

APPLICABLE DOMESTIC LAW

A plethora of national laws, some dating back to the 1930s, offer protection from exploitation to India’s working children. The Bonded Labour System (Abolition) Act of 1976, the most significant and far-reaching of these laws—it outlaws all debt bondage, including that of children, and it requires government intervention and rehabilitation of the bonded worker. It is further set apart from the other laws by the fact that it has none of the exemptions from compliance that virtually nullify many of India’s other labour laws. Unfortunately, lack of loopholes is no guarantee of enforcement. The Bonded Labour System (Abolition) Act, the Child Labour (Prohibition and Regulation) Act, and the other pieces of protective legislation that apply in varying circumstances to the situation of the bonded child labourer, are betrayed by an extremely low rate of enforcement.

Every industry discussed in this Act, and every individual case referred to, violates the Bonded Labour System (Abolition) Act and the constitutional provisions that underlie such an act. These violations represent the most severe and egregious of the many legal failings contributing to the persistence of bonded child labour in India. All of the cases and all of the industries mentioned in this report also violate the Child Labour (Prohibition and Regulation) Act: they all violate its regulatory provisions, and the largest and most significant industries—beedi, carpets, and silk—also violate its redhibitory provisions. In addition
to violating these two centrepieces of protective legislation, most industries also violate one or more of the following laws: the Factories Act; the Beedi and Cigar Workers (Conditions of Employment) Act; the Contract Labour (Regulation and Abolition) Act; and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act. All cases documented in this report also violate the Children (Pledging of Labour) Act, which is similar in its protections to the Bonded Labour System (Abolition) Act.

In addition, under the Indian Penal Code (IPC) rape, extortion, causing grievous hurt, assault, kidnapping, abduction, wrongful confinement, buying or disposing of people as slaves, and unlawful compulsory labour are criminal offences, punishable with up to ten years imprisonment and fines. Under the Juvenile Justice Act, 1986, cruelty to juveniles and withholding the earnings of a juvenile are criminal offences, punishable with up to three years imprisonment and fines.

**Indian Constitution**

Article 21 of the Constitution of India guarantees the right to life and liberty. The Indian Supreme Court has interpreted the right of liberty to include, among other things, the right of free movement, the right to eat, sleep and work when one pleases, the right to be free from inhuman and degrading treatment, the right to integrity and dignity of the person, the right to the benefits of protective labour legislation, and the right to speedy justice. The practice of bonded labour violates all of these constitutionally-mandated rights.
Article 23 of the constitution prohibits the practice of debt bondage and other forms of slavery both modern and ancient:

Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.

Begar is an ancient caste-based obligation, a "form of forced labour under which a person is compelled to work without receiving any remuneration. "Other similar forms of forced labour" was interpreted expansively by the Supreme Court in 1982, when it ruled in the seminal Asiad Workers' Case that both unpaid and paid labour were prohibited by Article 23, so long as the element of force or compulsion was present in the worker's ongoing services to the employer. Examples of force include overt physical compulsion and compulsion under threat of legal sanction (as for example in the case of an allegedly unpaid debt), as well as more subtle forms of compulsion, including "compulsion arising from hunger and poverty, want and destitution.

Given the dire economic straits of most Indians, this definition could bring hundreds of millions of people within its scope. The Supreme Court went on, however, to provide a helpful rule for determining exactly what situations constitute forced labour. "Where a person provides labour or service to another for remuneration which is less than minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the word 'forced labour'... All labour rewarded with less than the minimum wage, then, constitutes forced labour and violates the Constitution of India.
In another landmark case, this one brought on behalf of a group of bonded quarry workers in the early 1980s, the Supreme Court ruled that "[i]t is the plainest requirement of Articles 21 and 23 of the Constitution that bonded labourers must be identified and released and on release, they must be suitably rehabilitated.... Any failure of action on the part of the State Government[s] in implementing the provisions of [the Bonded Labour System (Abolition) Act] would be the clearest violation of Article 21 [and] Article 23 of the Constitution.

Article 24 prohibits the employment of children in factories, mines, and other hazardous occupations. Together, Articles 23 and 24 are placed under the heading "Right against Exploitation," one of India's constitutionally-proclaimed fundamental rights.

Article 39 requires the state to "direct its policy toward securing":

(a) that the health and strength of workers... and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength.

(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."

**Bonded Labour System (Abolition) Act, 1976**

The Bonded Labour System (Abolition) Act purports to abolish all debt agreements and obligations arising out of India's longstanding
bonded labour system. It is the legislative fulfilment of the Indian Constitution's mandate against begar and forced labour. It frees all bonded labourers, cancels any outstanding debts against them, prohibits the creation of new bondage agreements, and orders the economic rehabilitation of freed bonded labourers by the state. It also criminalizes all post-act attempts to compel a person to engage in bonded labour, with maximum penalties of three years in prison and a 2,000 rupee fine. The Bonded Labour System (Abolition) Act offers the following definition of the practices being abolished.

Sec. 2(g) "bonded labour system" means the system of forced, or partly forced labour under which a debtor enters...or is presumed to have entered, into an agreement with the creditor to the effect that,-

(i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or

(ii) in pursuance of any customary or social obligation, or

(iii) in pursuance of an obligation devolving on him by succession, or

(iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or

(v) by reason of his birth in any particular caste or community, he would-

(1) render, by himself or through any member of his family... labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or
(2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or

(3) forfeit the right to move freely throughout the territory of India, or

(4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him...

This definition is meant to, and does, cover all of the many permutations of the bonded labour system in modern India. There are differences from one part of the country to the next and from one industry or landlord to another in terms of wages paid, the amount advanced, whether the advance is considered a type of loan or a type of wage, the hours worked per day and days worked per year, and whether the worker has some freedom from the bond master or is kept under constant control. Some bonded labourers receive no wages at all, apart from meagre food stipends and a yearly change of clothing; some receive extremely low wages, constituting as little as 10 percent of the mandated minimum wage; some receive a standard wage in theory, but in fact lose 70 or 80 percent of it, sight unseen, back to the employer as "interest" on the advance. Some labourers are working to pay off a 500 rupee loan, others a 15,000 rupee loan. Some inherited their debt from their parents; others have contracted for a ten-month period of servitude. Some work sixteen hours a day, 365 days a year, every year of their lives. Others work ten hours a day, six days a week. Despite these differences, all are bonded labourers within the definition of the act.
It is what they have in common that determines their bonded status: they are working for nominal wages in consideration of an advance, and they are not free to discontinue their work. These three elements—an advance, low wages, and compulsion—are at the core of all bonded labour. The act defines "nominal wages" as those that are less than minimum wages or, where no minimum wage has been set, less than wages normally paid for the same or similar work in the same locality.

District magistrates—called district collectors, or deputy commissioners, in some states—are responsible for enforcement of the Bonded Labour System (Abolition) Act. The district magistrate, an appointed civil servant, is the top authority at the district level and as such oversees government administration, including the administration of justice. His duties are varied and many, and include overseeing the work of fifty to sixty distinct departments. In addition to these duties, he is required by the Bonded Labour System (Abolition) Act to identify all cases of bonded labour occurring in his district, free the labourers, and initiate prosecution under the act. He is also charged with making sure available credit sources are in place, so that freed labourers will not be forced into bondage again. Finally, the district magistrate is to constitute and participate in the functioning of a district-level "vigilance committee."

The statutory functions of this committee are:

(a) to advise the District Magistrate . . . as to the efforts made, and action taken, to ensure that the provisions of this act... are properly implemented;

(b) to provide for the economic and social rehabilitation of the freed bonded labourers;
(c) to coordinate the functions of rural banks and cooperative societies with a view to canalizing adequate credit to the freed bonded labourers;

(d) to keep an eye on the number of offences of which cognizance has been taken under [the] act;

(e) to make a survey as to whether there is any offence of which cognizance ought to be taken under the act;

(f) to defend any suit instituted against a freed bonded labourer or a member of his family... for the recovery of the whole or part of any bonded debt...

Very few such vigilance committees have been formed, and Human Rights Watch knows of no district in which such a committee is currently operative.

References to rehabilitation of freed bonded labourers occur twice in the Bonded Labour System (Abolition) Act-once in reference to the district magistrate's duty to "secure and protect the economic interests" of the bonded labourer (Sec. 11), and once in stipulating the vigilance committees' duty to provide for the "economic and social rehabilitation" of the bonded labourer (Sec. 14). The act itself, however, does not specify of what this rehabilitation should consist and left implementation of rehabilitation up to the state governments, and largely dependent on the initiative of District Magistrates.

In 1978, the Ministry of Labour launched a scheme that specified a "rehabilitation allowance" in order to assist state governments with rehabilitation. Under this scheme, the central government contributes half of the rehabilitation assistance allowance due to every freed bonded
labourer, and the state where the bonded labourer resides pays the other half. The allowance, determined by a Ministry of Labour Planning Commission, was originally set at 4,000 rupees. It has been raised once, to 6,250 rupees, in 1986. In 1982, cognizant of the reasons that lead to bondage and possibility of relapse if those released are not rehabilitated, the government expanded this program by adding guidelines for rehabilitation under Ministry of Labour Direct Order No. S.11011/20/82-BL, which stated that:

(i) Psychological rehabilitation must go side by side with physical and economic rehabilitation;

(ii) The physical and economic rehabilitation has fifteen major components namely allotment of house-sites and agricultural land, land development, provision of low cost dwelling units, agriculture, provision of credit, horticulture, animal husbandry, training for acquiring new skills and develop in existing skills, promoting traditional arts and crafts, provision of wages employment and enforcement of minimum wages, collection and processing of minor forest products, health, medical care and sanitation, supply of essential commodities, education of children of bonded labourers and protection of civil rights;

(iii) There is scope for bringing about an integration among the various Central and Centrally Sponsored Schemes and the ongoing schemes of State Government for more qualitative rehabilitation. The essence of such duplication, i.e., pooling resources from different sources for the same purpose. It should be ensured that while funds are not drawn from different sources for the same purpose, [funds] drawn from
different sectors [schemes] for different components of the rehabilitation scheme are integrated skillfully; and

(iv) While drawing up any scheme/programme of rehabilitation of freed bonded labour, the latter must necessarily be given the choice between the various alternatives for their rehabilitation and such programme should be finally selected for execution as would need the total requirements of the families of freed bonded labourers to enable them to cross the poverty line on the one hand and to prevent them from sliding back into debt bondage on the other.

In its 1994-95 Annual Report, the Ministry of Labour stated that funds for rehabilitation assistance would be increased from Rs. 6,250 to Rs.10,000 for each bonded labourer, and that "respective State Governments will undertake further surveys to identify bonded labourers as may still be in existence and report to the Government of India. The State Governments have also agreed to undertake selective follow-up studies to assess whether rehabilitated bonded labourers have relapsed into bondage and to set up Vigilance Committees, wherever they are not in existence.

However, the extent to which bonded labourers have been identified, released, and rehabilitated by government officials has been negligible; this is discussed in the chapter on the role of the government.

Children (Pledging of Labour) Act, 1933

This act predates Independence but remains in force. It is rarely used and rarely mentioned in discussions of bonded labour and child labour, probably because the more recent laws carry penalties that,
while lenient themselves, are nonetheless stiffer than those of the Children (Pledging of Labour) Act.

The act calls for penalties to be levied against any parent, middleman, or employer involved in making or executing a pledge of a child's labour. Such a pledge is defined as an "agreement, written or oral, express or implied, whereby the parent or guardian of a child, in return for any payment or benefit received or to be received by him, undertakes to cause or allow the services of the child to be utilized in any employment. Lawful labour agreements are limited to those made in consideration of reasonable wages and terminable at seven days' or less notice. The fines for violating this law are fifty rupees against the parent and two hundred rupees against either the middleman or employer.

**Child Labour (Prohibition and Regulation) Act, 1986**

The Child Labour (Prohibition and Regulation) Act was enacted in 1986 and defines a child as "a person who has not completed their fourteenth year of age. It does not prohibit child labour *per se*, nor does it set a minimum age for the employment of children. Instead, it regulates the hours and conditions of work for child labourers, while prohibiting the employment of children in twenty-five hazardous industries. Three of the enumerated hazardous industries rely heavily on bonded labour and were included in the Human Rights Watch investigation. These three industries are the beedi (hand-rolled indigenous cigarettes) industry, carpet-weaving, and cloth printing, dyeing and weaving. The other industries discussed in this report are subject to the regulatory aspects of the Child Labour (Prohibition and Regulation) Act. However, implementation of the regulatory provisions of
the act require each state to formulate an act-specific set of rules and regulations; the majority of states have not done so as of 1996, ten years after passage of the act.

For first convictions under the hazardous industries prohibition, the act prescribes imprisonment of three to twelve months or a fine of 10,000 to 20,000 rupees. Second offences are to be punished with a mandatory six months to two years in prison. There are no standing requirements for the filing of a complaint under the Child Labour Act. Any person, including but not limited to any police officer or government inspector, is authorized to file a complaint before any court of competent jurisdiction.

The act also authorizes central and state governments to appoint inspectors charged with securing compliance with the act. Rather than do this, most states have added responsibility for enforcement of the Child Labour (Prohibition and Regulation) Act on to the already-existing ranks of the labour inspectors. This is an undesirable arrangement for two reasons. First, requiring the labour inspectors to also investigate violations of the Child Labour (Prohibition and Regulation) Act saddles them with an unrealistic work burden. Even before the 1986 Child Labour (Prohibition and Regulation) Act was added to their responsibilities, a 1979 report by a government-appointed Committee on Child Labour found the inspectors overwhelmed by their duties:

The jurisdiction of individual inspectors was too extensive for them to keep a regular watch on activities within their purview. In several States one inspector was required to cover a group of several districts. He was also burdened with very wide ranging other responsibilities.
pertaining to labour legislation. [As a result of] this situation...there were practically no prosecutions... of any violation of existing laws pertaining to child labour.

In practice, some labour inspectors enforce the Factories Act while others enforce the Child Labour (Prohibition and Regulation) Act, a not very efficient division of labour. Furthermore, a 1995 government-mandated report on child labour found that "many inspectors were unclear about the import of laws.

In addition to being overextended, factory and labour inspectors in India are notoriously corrupt and susceptible to bribery. Against this background, there is little reason to expect them to vigorously find and root out instances of illegal child labour.

Even if inspection were reliable, glaring loopholes in the Child Labour (Prohibition and Regulation) Act allow manufacturers to escape application of the law quite easily. First, the Child Labour (Prohibition and Regulation) Act applies to all workshops which make use of child labour in prohibited processes, except those workshops "wherein any process is carried on by the occupier with the aid of his family. The vast majority of child labour takes place in agriculture and cottage industries in the informal sector. Often, the employer does have one of his own children or a niece or nephew working alongside the rest of the children, and this is enough to take his shop out of the purview of the Child Labour (Prohibition and Regulation) Act. Even if he does not have a family member working on the premises, he is likely to say that he does, according to labour inspectors, social welfare activists and others familiar with the informal sector.
This exception gives tacit government approval to the use of child labour, when the child is a relative of the family, under conditions that would otherwise be illegal. This exception includes the use of a child labour in hazardous occupations or industries. Nor is this the only exception to the application of the Child Labour (Prohibition and Regulation) Act. The act is also inapplicable to government-sponsored schools or training programs. Again, this means that work and conditions ordinarily deemed harmful to children are considered non-harmful so long as they take place under the auspices of an official government program. The best examples of this exception are the approximately two hundred government-run carpet weaving training centres. Carpet weaving is a hazardous and therefore prohibited industry under the Child Labour (Prohibition and Regulation) Act. Under the exception for government schools, however, thousands of children are enrolled in this industry, not only with government approval, but with government facilitation and encouragement.

These exceptions are clear violations Article 24 of the Indian Constitution, which states that "no child below 14 shall be employed in any factory or mine or engaged in any hazardous employment."

Another major loophole in the Child Labour (Prohibition and Regulation) Act concerns the proof of age of the child worker. One would expect the employer to carry the burden of proof that the working child is of legal age. This is not the case. Instead, the Child Labour (Prohibition and Regulation) Act effectively puts the onus of proof on the state, stipulating that, in the event of a dispute between the employer and the government inspector as to the age of the working child, "the question
shall... be referred by the Inspector for decision to the prescribed medical authority. What this means in practice is that on those rare occasions when labour inspectors do pay a visit to production sites, they must pay a doctor to accompany them and evaluate the age of the children. Even then the truth of the matter of age is not necessarily settled, as manufacturers are known to bribe the medical authorities—not to mention the inspectors themselves—in order to obtain favourable results.

These loopholes create daunting enforcement difficulties in the beedi, carpet, and silk industries—the three industries that are both heavily bonded and where child labour of any sort is outlawed by the Child Labour (Prohibition and Regulation) Act. The same difficulties would be noted in the other prohibited industries of the act.

Every industry studied by Human Rights Watch thoroughly violates the protective regulations of the Child Labour (Prohibition and Regulation) Act. These violated provisions include the right to an hour of rest after three hours of work; a maximum work day of six hours; a prohibition of child work before 8:00 a.m. or after 7:00 p.m.; a prohibition on overtime; a mandatory day of rest every week; and the requirement that various health and safety precautions be observed.

Factories Act, 1948

The Factories Act strictly forbids the employment of children less than fourteen years old in factories. It also includes a sizable loophole, in that the act only applies to factories employing ten or more people with the use of electric or other forms of generated power, or twenty or more
people without the use of power. Many small scale industries intentionally fragment the manufacturing process into separate units in order to circumvent application of the Factories Act. Others only employ small numbers of people on the books, bringing in dozens of others as unofficial "extras."

Scheduled Castes/Scheduled Tribes Prevention of Atrocities Act, 1989

This act defines any kind of forced labour, including bonded labour, as an "atrocity" if the victim is a member of a scheduled caste or tribe. Committing an "atrocity" is punishable with up to five years imprisonment and fine.

Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

This law regulates the employment of inter-state workers migrant workers. It requires that establishments employing such workers be registered, that contractors be licensed and keep records of all migrant workers recruited, that migrant workers be paid at the same rate as non-migrant workers, and that inspections be carried out to ensure compliance with these provisions.

Contract Labour (Regulation and Abolition) Act, 1970

This act regulates the use of contract labour and provides for its abolition in certain industries, at the discretion of the appropriate
government (state or central). Among its provisions are a requirement that no wage period exceed one month.

**Minimum Wages Act, 1948**

The Minimum Wages Act sets the minimum wage for certain enumerated occupations and requires that overtime be paid to all workers who work beyond a "normal working day." In the case of children under fourteen, a "normal working day" is four and a half hours.

**Plantation Labour Act, 1951**

This act regulates the work and wage conditions of plantation workers, including children over the age of fourteen.

**Apprentices Act, 1961**

The Apprentices Act regulates the rights and work hours of apprentices, and sets the minimum age for apprenticeships at fourteen years.

**Shops and Establishments Act, 1961**

This law, which applies to shops, hotels, restaurants, and places of amusement, regulates the hours of work and prohibits the employment of children below a certain age, to be determined by the states. In eleven states, the minimum age for a child worker is fourteen years; in thirteen states, the minimum age is twelve years.
To summarize, one may state that although there are numerous provisions in the law for ensuring that child labour is not practiced, strict implementations of the laws are required to facilitate the end of child/bonded labour in India.