5. CHILD LABOUR WELFARE LEGISLATION & JUDICIAL AWARENESS

5.1 INTRODUCTION
Various statutory provisions have been made with reference to welfare of child. It is a matter of fact that considering tender age, physical weakness and inability to take appropriate decision, the child requires utmost care and protection till he is capable to stand on his own legs. During the process of physical and mental development the children are more vulnerable and the manner of upbringing decides the future life of a child.

5.1.1 Indian Constitutional Provision for Children

The draftsmen of the Indian constitution have given great regards to the welfare of child while incorporating provisions. Dr. Babasaheb Ambedkar was the Chairman of Drafting Committee and the committee ensures that the right against exploitation is provided not only for adults but also to the children. Since the today’s child is tomorrow’s future, the appropriate provisions were incorporated in the directive principles for ensuring welfare of children. The courts time and again while interpreting various such provisions have given them true meaning and even keeping in view the need of time additional provisions were incorporated in Indian Constitution by amending the constitution, so as to ensure welfare of children with changing norms of the society.

Constitution of India contains various provisions which are directed towards protection and development of children. The relevant provisions can be found in part III and part IV of the Constitution of India i.e. fundamental rights and directive principles of state policy. It is further pertinent to note that in the year 2002 by amending constitution additional duty has been incorporated for betterment of children.

Article 15 (1) of the Constitution prohibits discrimination on the ground of religion, race, caste, sex of place of birth; however states that the very same article vice clause (3) carve out an exception for providing special status to the women and children and empowers state to make special provisions relating to
children. Therefore any provision specially made for children would not be against right to equality.

Article 21 of the Constitution give guarantee that no person shall be deprived of his life or personal liberty, except according to procedure established by law. This article has been interpreted by Apex Court from time to time and its scope has been expanded so as to achieve object of this article in later and spirit. The Supreme Court held that Right to Life includes protection from exploitation of any kind and it gives right to live a dignified life.

Article 21A of the Constitution gives rights to free education and it lays down that it is the obligation of the state to provide free and compulsory education to all children of the age of six to fourteen years by making appropriate legislation for fulfilling the said obligation. It has been further held by various judicial pronouncement that by virtue of this article, even if children are allowed to work in some establishment, as per the statutory framework, then also it is the duty of the employer to ensure that such working children are not deprived of their education.

Article 23 of the Constitution carves out specific provision for prevention of traffic in human beings and forced labour. The evil of forced labour has been dealt with by this article and it further provides that any contravention of this prohibition shall be an offence punishable in accordance with law.

Article 24 of the Constitution has made a specific provision of employment of children below 14 years of his age in factories, mines or other hazardous employment. Now the question arouse as to what could be termed as ‘hazardous employment’ and interpreting this article the Apex court has laid down that the term ‘hazardous employment’ includes fireworks, match boxes, construction work and such similar establishment and thus no child below 14 years of his age can be permitted to work in such hazardous employment.

In chapter IV directive principles of state policy, Article 39 (e) make it obligatory on the part of state to frame its policies so as to ensure that the health and strength of the worker and the tender age of children are not abused and that citizens are not forced by economic necessity to undertake occupation unsuited to their age or strength.

Further article 39 (f) of the Constitution cast a duty upon state to ensure that the children are given opportunities and facilities to develop in a healthy
manner and in conditions of freedom and dignity; and their childhood and youth are protected against exploitation and against moral and material abandonment.

Article 45 of the Constitution lays down that the state shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

In chapter V Fundamental Duties Article 51A (e) came to be inserted which requires performance duty by the citizen of India who is a parent or guardian to provide opportunities for education to his child or ward as the case may be, between the age of six and fourteen years.

Thus it can be seen that various important provisions have been made in Indian Constitution of betterment of the children and with the framework of the constitution, various legislation has been made to ensure compliance of constitutional provisions.

5.2 INDIAN STATUTORY PROVISIONS

Since ancient period India or Bharatvarsh is suffering from the problem of child labour and references of existence of child labours. The practice of child labour is ultimately affecting the progress of nation in long run, since due to practice of child labour, the child is prevented from overall development and hence after some years i.e. after attaining majority such under developed person cannot contribute much towards progress of our nation. It can be seen that much attention has been paid toward this issue even during pre and post independence and same thing was also kept in mind while drafting constitution. It can be seen that various legislation have been made for prohibiting practice of child labour and the number of central and state act come to approximately more than 300. However at the same time considering practical realities some concession has been given to children to work in some occupation and conditions have been imposed to ensure that such working children are provided proper facilities, proper payment and that there is no exploitation. Some important legislation with reference to topic in hand can be seen as under.
5.2.1 Children (Pledging of Labour) Act, 1933

Historical Background

Royal Commission of Labour was convey in 1930 to enquire into and report on the existing conditions of labour in industrial undertakings and plantations in British India, on the health, efficiency and standard of living of the workers, and on the relations between employers and employee. The shocking facts were reported were in respect of pledging of labour of young children by their parents to the employers in lieu of loans or advances and consequent exploitation of children. Considering the recommendation of commission, the Children (Pledging of Labour) Act, 1933 came to be passed of which the main object was to eliminate the evils arising from the pledging of labour of young children by their parents employers in lieu of loans or advances. As per the provisions of this Act any agreement to pledge the labour of children in any employment by the parents or guardian of child against any type of consideration was void. The Act further made provision to penalize any person for breach of this prohibition.

5.2.2 Employment of Children Act, 1938

Section 3 of this act prohibits employment of children below 15 years of age in hazardous occupation and it completely prohibits employment of children in transport of passengers, goods or mail by railway, or a port authority within the limits of a port. Excluding apprentices of trainees, this act further prohibits employment of child between the ages of 15 to 17 year in these occupations unless he is allowed a rest interval of at least 12 consecutive hours in a day.

This Act also prohibits the employment of children below the age of 14 years in occupation specified in the schedule of the Act. The said schedule enlist occupation viz. Bidi- making, Carpet-weaving, Cement manufacture, including bagging of cement, Cloth-printing, dyeing and weaving, Manufacture of matches, explosives and fireworks, Mica-cutting and splitting, Shellac manufacture, Soap manufacture, Tanning, Wool cleaning. However exception is also carved out to above restriction where work is done with the aid of his family.
5.2.3 Factories Act, 1948

This act has classified child in two categories. “Child” means a person below 15 years of his age and “Young Person” means a person who is between 15 to 18 years old. The Act is applicable to factory employing 10 or more worker with power or 20 or more worker without power. This act prohibits employment of children below 14 years of age in any factory and so far as young persons are concerned, they are allowed to work with some restriction subject to obtaining and possessing a medical certificate of fitness which was valid for one year.

That apart there were restrictions on working by young persons below 17 years in any factory during night hours. The said act also made provisions for certain restriction having regards to the safety of children. The provision of shift and brake between two shift was provided for. Young person was allowed to work on dangerous machine only if he had received specific training and he is informed about the dangers involved. This act also made provision for weekly day of rest to child workers and provisions were made for providing rest shelters, canteens at work place.

It is pertinent to note that provisions made under the act were required to be followed by all concern including parents of children/young person in letter and spirit and various penal provisions were incorporated in the act for breach.

5.2.4 Plantation of Labour Act, 1951

The Act is applicable to all tea, coffee, rubber, cinchona, cordamory plantation which covers specified area in the act which engages 30 or more persons on the date of the act or 12 month preceding. This act has made regulatory provisions for work by children and child below 12 years of age is prohibited from working in plantation. A child who has completed his 12 years of his age year and an adolescent is allowed to work only upon obtaining and possessing a fitness certificate from a duly appointed Certifying Surgeon and such certificate is valid only for one year. The Act also provide a special and very important provision for education development of children of worker and it mandates that when the children aged between 6 to 12 years of workers exceeds 25, the state Government may make rules for directing employer to provide educational facilities.
5.2.5 **Mines Act, 1952**

As per this act child means a person who has not completed 15 years of his age and it also prohibit employment of child in mines. Apparently the provisions made in this act relating to children are more stringent that those in Factories Act, 1948. Section 45 provided that no child shall be employed in any mine, nor shall any child be allowed to be present in any part of a mine which is below ground or in any open excavation in which any mining operation is being carried on. This act has laid down that an adult means a person who has completed 18 years of his age and this act further provided new definition i.e. “adolescent” which means a person who has completed his fifteenth year but has not completed his eighteenth year. Employment of adolescent was permitted by this act subject to procuring a medical certificate of fitness and such certificate was valid for a period of one year. The adolescent however were allowed to work between 6 am to 6 pm.

5.2.6 **Merchant Shipping Act, 1958**

The Act is applicable to vessel and it refer to some provision relating to children and prohibits employment of children below 15 years of age. The employment of young person below 18 years of age as trimmers & strikers was however possible subject to production of a fitness certificate which was valid for one year. The penalty provided for breach of provisions relating to child were very modest and thus does not offer any deterrent effect.

5.2.7 **The Motor Transport Workers Act, 1961**

This Act applies to the whole of India and applies to every motor Transport undertaking employing five or more workers. The Motor transport undertaking means a motor transport undertaking engaged in carrying passengers or goods or both by road for consideration. Since there was no any legislation in respect of motor transport workers for regulating the various aspects of their conditions of employment work and wages, this act was introduced. This act also defines two category of person who are not adult i.e. child means a person below 15 years of age and adolescent means a person who has completed 15 years of age but not completed 18 years of his age. This act
prohibits employment of children in any manner in any motor transport undertaking. The employment of adolescent is however possible subject to production of a fitness certificate which was valid for one year. It is pertinent to note that the adolescent however is not allowed to work for a period exceeding 6 hours including rest interval and so also adolescent is not allowed to work between 10 p.m. to 6 a.m. The penal provisions contained in this act are not much different than those in other statutory provision.

5.2.8 Apprentices Act, 1961
This act defines apprentice as a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. Truly speaking apprentice denotes a person who is learning a trade from a skilled employer before he can stand successfully on his own legs. Since there vacuum about the statutory provisions in this behalf there was every scope of exploitation of apprentice by his employer. Therefore the Government appointed an expert committee to make recommendation after examining this issue. ultimately the Apprentices Act, 1961 came to be passed. This Act provide for the regulation and control of training of apprentices in trade and for matters connected therewith. So far as age limit is concerned this act states that no person shall be qualified for engaged as an apprentice to undergo apprenticeship training unless he is at least 14 years of age and satisfies such standards of education and physical fitness as may be prescribed.

5.2.9 Beedi & Cigaar Workmen (Condition of Employment) Act, 1966
Even though the Factories Act, 1948 was in force, it was very easy for an employer to bypass the provisions of said Act by constituting smaller units and it was noticed that the beedi manufacturers gives contract to others or to smaller families and thus can escape applicability of the said act. Therefore in order to make specific legislation in this behalf, this act was introduced. This Act defines the child as a person who has not completed his fourteen years of age and prohibits employment of child in any industrial premises. This act further defines Young person as a person who has completed fourteen years of age but has not completed eighteen years of age. Considering physical and mental health, this act requires that no woman or young person shall be
permitted to work in any industrial premises except between 6 a.m. and 7 p.m. Unlike other Acts, there is no provision for examination of physical fitness of young persons. This act further makes provision for comfort and hygiene of employee and mandates making provision for canteen, first aid, ventilation, etc. It is pertinent to note the this Act provides for penalties for breach of provisions such as imprisonment upto three years and / or fine upto Rs. 500

5.3 Atomic Energy Act 1962
This Act makes provisions for the development, control and use of atomic energy for betterment of citizen of India and other useful objects. It is known that the radiation may be harmful and hence the employment of persons below the age of 18 years is prohibited except with the prior permission of the competent authority.

5.4 Shops & Commercial Establishment Act, 1969
The provisions related to shops and commercial establishments and working conditions of the employees are governed by the respective statutory provisions made by the State Government. These Acts made by the respective State Government make provisions for various condition of service of employee viz. wages, holidays, leave, working hours, etc. This act makes specific provisions for children and young person. The age of child and young person varies from state to state; however on an average the child is considered to be a person below 14 years of age. These Acts prohibits employment young persons during night hours. With changing norms of society and passage of time, the respective state government makes appropriate amendment to the statutory provisions, so as to ensure welfare of children and for regulating the working condition of children and ensuring development of child workers. These Acts apply to shops, commercial establishments, restaurants, hotels etc., and prohibit the employment of children in such establishments.

5.5 Radiation Protection Rules, 1971
These rules provide that no person under the age of eighteen years shall be employed as a radiation worker.
5.6 Child Labour (Regulation & Prohibition) Act, 1986

Neglecting the children would only result into the loss to the society at large. In case the children are prevented from happy childhood and there are not provided with proper social, economical, physical and mental support, then ultimately our nation would lose the potential human resources for social progress, economic empowerment, stability and good citizenry. In order to prevent menace of child labour, numbers of legislation were brought into existence. Still the said legislation failed to achieve the desire goal. Though numbers of law were made in this behalf, there was no uniform formula to deal with the issue of child labour and all the existing laws were operating in different field. There was grate need of a comprehensive legislation which could deal with multiple issues at the same time such as education of children, minimum age of employment, duration of work, wages, medical examination, penal provisions for breach of conditions, etc.

The Gurupadswamy Committee Report of 1979 requested the Government to bring make a comprehensive legislation for regulating the conditions of working children and providing a uniform minimum age of fifteen for children in any employment. Conversely Sanath Mehta Committee Report of 1983 opined that in view of variety in occupation and diversity in India it is not probable to have a single comprehensive law to deal with all aspects of working children in different industries. The Government accepted the reports of both the committees in parts and the Child Labour (Regulation & Prohibition) Act, 1986 was brought into existence. The Bill was introduced & parliament assented in August 1986 with view to prohibit the engagement of children in certain employments and regulate the conditions of work of children in certain other employments. To prohibit and regulate the child labour it classifies occupations into "hazardous" and "non-hazardous"

5.6.1.1 Statement of object & reason in the Bill

Various statutory provisions were made with prohibits children below 14 and 15 years in certain employments, but no procedure was laid down to determine as to which employment, occupation or processes could be treated as
dangerous to children. There was no any statutory provision to regulate the working condition of children for such occupation or processes where the employment of children was not barred and thus there was no mechanism to prevent exploitation of child labour. In order to overcome all these difficulties the Child Labour (Regulation & Prohibition) bill was drafted and the bill intended to achieve following objects:

1) Complete prohibition on employment of children below 14 years of age in specified occupations & processes;
2) to lay down the mechanism to determine modifications to the schedule of banned occupation or processes
3) to regulate the condition of work of children in such employments in which they are not prohibited from working
4) to provide deterrent penalties for employment of children in violation of the provisions of the act and other act which prohibits employment of children.
5) to obtain consistency in definition of term “child” in relevant legislation.

5.6.1.2 Features of Act
i. The Act aims to prohibit children’s employment in certain occupations and processes and regulate the working conditions in other occupations
ii. The Act ban employment of children below the age of 14 years in occupations and processes listed in the schedule that are classified as hazardous.
iii. The Child Labour Technical Advisory Committee constituted under the Act is empowered to advise the Central Government for the purpose of addition of occupations and processes to the Schedule.
iv. The act has defined ‘Child’ as a person who has not completed his fourteenth year of age.
v. The Employment of Children Act, 1938 was repealed and relevant provisions of Minimum Wages Act, 1948, Plantations Labour Act, 1951, Merchant Shipping Act, 1958, Motor Transport Workers Act, 1961 were amended so as to bring uniformity in age of child, age of adolescent. It states that adolescent means a persons who has completed his fourteenth year of age but has not completed his eighteenth year;
The act was made applicable to all such establishment which do not carry occupation or processes specified in the schedule.

The term ‘establishment’ came to be defined as to include a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment.

Hours and period of work came to be specified and it is specified that the child shall not work beyond prescribed period, the maximum period of 6 hours per day was fixed with interval of one hour after first three hours, the child is not permitted to work between 7 p.m. to 8 a.m.

The Act incorporated specific provision for weekly holiday.

Specific provision has been made with respect of health and safety of child and the appropriate government is empowered to make rules regarding certain specified subject so as to ensure health and safety of child.

Obligation has been imposed upon the occupier of establishment to maintain a register pertaining to all necessary details of child worker and such register must be available for inspection by the inspector.

Specific provision has been made for appointment of inspector, so as to ensure compliance of provisions of the act.

Penal provisions are made which are more stringent as compared to previous legislation and for first offence under the act is punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both and for subsequent offence imprisonment shall be for a term which shall not be less than six months but which may extend to two years.

The Act further makes provision of penalties under this act even when any person is found guilty and convicted of contravention of any of the provisions of Sec. 67 of the Factories Act, 1948, Sec. 40 of the Mines Act, 1952, Section 109 of the Merchant Shipping Act, 1958 and Sec. 21 of the Motor Transport Workers Act, 1961.
xv. Not only the inspector appointed under the act but also police officer or even any person is permitted to file complaint in the court of competent jurisdiction.

xvi. The schedule to the act has specified 16 occupations and 65 processes in which employment of child below 14 years of age is prohibited. Some of the occupations are - Transport of passengers, goods or mails by railways, Abattoirs/Slaughter House; Automobile workshops and garages; Work relating to selling of crackers and fireworks; Mines (underground and under water) and collieries; Domestic workers or servants and Dhabas (roadside eateries), restaurants, hotels, motels, tea shops, resorts, spas or other recreational centres and some of the processes are - Beedi-making, Carpet-weaving, Cement manufacture, Tanning, Building and construction industry; Mechanised fishing, Warehousing; etc.

5.6.1.3 Significant achievement of Child Labour (Prohibition & Regulations) Act, 1985

The Act was divided into four parts. Is has in all 26 sections. Part I deals with title, extent and definitions. Part II deals with certain prohibited occupations and processes with detail schedule which has specified 16 occupations and 65 processes in which employment of child below 14 years of age is prohibited and also deals with constitution of Child Labour Technical Advisory Committee. Part III deals with regulation of conditions of work of children and Part IV of the Act deals with the miscellaneous provisions relating to offences, penalty, administrative procedures and few amendments of other Acts.

Section 5 of the act has made provision for constitution of Child Labour Technical Advisory Committee to advise the Central Government for the purpose of addition of occupations and processes to the Schedule and by virtue of this power it has become very easy to make appropriate addition in the schedule having regards to changing norms of the society and in case it reveal that certain new occupation or processes are not suitable where a child can be permitted to work. The committee is further permitted to regulate its own procedure and even it can constitute sub-committees for its effective working.
As per section 17 of the Act the appropriate government is empowered to appoint inspector for the purposes of securing compliance with the provisions of this Act and most importantly the inspector so appointed has been given status of public servant.

It is pertinent to note that by virtue of section 9 every occupier of an establishment where a child has been employed is under obligation to give notice in writing within 30 days from the commencement of the act or from the date of employment to the Inspector having jurisdiction, specifying particulars such as the address of establishment, in-charge of the establishment, the communications address, the nature of the occupation or process. Further most importantly as per section 11 the occupier is duty bound to maintain a register with certain particular such as the name and date of birth of every child worker, his hours and periods of work and the intervals of rest to which he is entitled, the nature of work and such other specified particulars and such register shall be made available for inspection by an Inspector at all times during working hours.

The section 13 of the said Act provides that for the health and safety of the children working in an establishment the appropriate Government may, by notification make rules in respect of subject such as (a) cleanliness in the place of work and its freedom for nuisance; (b) disposal of wastes and effluents; (c) ventilation and temperature; (d) dust and fume; (e) artificial humidification; (f) lighting; (g) drinking water; (h) latrine and urinals; (i) spittoons; (j) fencing of machinery; (k) work at or near machinery in motion; (l) employment of children on dangerous machines; (m) instructions, training and supervision in relation to employment of children on dangerous machines; (n) device for cutting off power; (o) self-acting machinery; (p) easing of new machinery; (q) floor, stairs and means of access; (r) pits, sumps, openings in floors, etc.; (s) excessive weight; (t) protection of eyes; (u) explosive or inflammable dust, gas, etc.; (v) precautions in case of fire; (w) maintenance of buildings; and (x) safety of buildings and machinery.

Section 3 read with schedule to the act of the act make provision in respect of prohibition of employment of child below 14 years of age in certain occupation and processes and section 14 makes provision in respect of penalties for breach of provisions of the act. Section 12 of the act make it
mandatory on the part of occupier to display at workplace a notice in the local language and in the English language containing an abstract of Sections 3 and 14 of the Act.

So far as initiation of prosecution for breach of any provision of the Act is concerned, section 16 has provided that any person, police officer or Inspector may file a complaint of the commission of an offence under this Act in any Court of competent jurisdiction. This act has given power to any person to lodge complaint for violation of provisions of this Act and therefore it likely to have some deterrent effect.

5.6.1.4 Penalty under Act:
The penalties provided by this Act are more stringent that the penalties provided by the previous statutory provisions relating to children. Further it is pertinent to note that penal provision under the Act has been categorised in two parts i.e. a) First Offence and b) Subsequent offence and subsequent offence has been dealt with strict hands. the penal provision under the Act is summarised as under:

14. Penalties – (1) Whoever employs any child or permits any child to work in contravention of the provisions of Section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

(2) Whoever, having been convicted of an offence under Section 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

(3) Whoever – (a) fails to give notice as required by Sec. 9, or (b) fails to maintain a register as required by Sec. 11 or makes any false entry in any such register; or (c) fails to display a notice containing an abstract of Section 3 and this section as required by Section 12; or (d) fails to comply with or contravenes any other provisions of this Act or the rules made thereunder; shall be punishable with simple imprisonment which may extend to one
month or with fine which may extend to ten thousand rupees or with both

5.6.1.5 Critical analysis of The child labour (Prohibition and Regulation) Act 1986,

No doubt the child labour (Prohibition and Regulation) Act 1986 is a good step towards eradication of child labour; however there are some inherent flaws in the said act. The tile of the act at the one hand use word prohibition and at the other use the word regulation and thus the child labour is not completely barred. Even article 24 of Constitution of India lay down that child below the age of fourteen years shall not be employed to work in any factory or mine or engaged in any other hazardous employment. Thus the occupation which is not factory or mine or hazardous employment can be undertaken by a child below fourteen years of age. Thus the present Act of 1986 also permit employment of child labour in such occupations or processes which are not covered by section 3 of the act and thus the children may be employed in number of other occupation or processes.

Though the education of children is very important and even our constitution mandate the same, there is no provision made in the said Act in respect of education of children who continue to work in number of other occupation or processes uncovered by section 3 of the Act. At the one hand a child below is allowed to work in non hazardous employment and on the other hand Right of Children to Free and Compulsory Education Act, 2009 intended to provide free and compulsory education all the children of the age 6-14 years and this these two statutory provisions seem to overlap with each other in opposite directions.

The enormous lapse in statement of the act is absence of any measures for rehabilitation of child. The education of children is important and even our constitution mandate the same. Even though the Act of 1986 allows children to work in such employment which are not covered by section 3 of the Act, there is not provision in this Act to ensure education of such working children and no duty has been imposed upon the occupier of business.
It is further pertinent to note that section 3 of the Act prohibits employment of children in such occupations or processes which are enlisted in the schedule appended to the Act; however the said bar is not absolute and the children are still allowed to work in such occupation or processes in the schedule by virtue of proviso to said section 3, which states nothing in the said section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by or receiving assistance or recognition from, Government. Thus the occupier can easily escape the prohibition of section 3 by showing employment of members of the family of child and thus misuse of child can be continued and employer can easily escape from prosecution.

Thus, it appears that the child labour laws and policies are conflicting and education of children is left out of consideration by the said act

The maximum percentage of child labour in India is found in agricultural sector and considering physical weakness of a child, special reference ought to have been made to agricultural sector. The schedule only makes reference to processes in agriculture where tractors, threshing and harvesting machines are used and chaff cutting and thus number of other processes which may be hazardous to a child are not consider viz. fumigation, spraying pesticide, etc.

The said act make reference to health and safety of children and appropriate government is permitted to make rules in respect of various issues which are enlisted; however surprisingly most important issue i.e. nutrition or medical facilities is not included in the said list.

Another most important shortcoming of the said act is that the term 'Hazardous' is not defined in the Act and instead advisory jurisdiction in conferred upon the Technical Advisory Committee to suggest hazardous occupations and process so as to include the same in schedule. In absence of precise definition of term “hazardous” it is very difficult to find out which job is hazardous to a child and which is not and due to advancement of technology and modernization, the parameters of hazardous occupation may keep on changing and therefore it was necessary to formulate precise definition of term hazardous.
The Act is also not in conformity with the guidelines of ILO in respect of age at which child can be permitted to undertake employment. Whereas ILO has set minimum age of employment at fifteen years, the present act has reduced it to 14 years.

It is further pertinent to note that this act prohibits employment of children below 14 years, in the occupation and processes enumerated in schedule of the Act and thus permit children below 14 years to work in other occupation or processes; however the act has not set out any minimum age at which child cannot be permitted to do any kind of employment and thus this act fail short to achieve goal of complete eradication of child labour.

5.6.1.6 Analysis of 2006 Amendment to Child Labour Act

The Child Labour (Prohibition and Regulation) Act, 1986 lays down in its schedule occupation and processes where the employment of child below 14 years of age has been prohibited. Therefore several other occupation and processes not enlisted therein leave sufficient space for employment of children and their exploitation. The employment of children as domestic servant and servants in hotel industry, therefore continued without any control of the Child Labour (Prohibition and Regulation) Act, 1986. Thus the children were employed as servant in dhabas (road side eateries), hotels, fast food centers, restaurants motels, teashops, resorts, spas or in other recreational centers. The work as domestic servant at home or servant in hotel industries cannot be classified as hazardous occupation; however the number of incidents came to light where the child workers were abused while working as such and subjected to physical violence, mental harassment and even sexual abuse and in some cases issues of starvation and malnutrition also revealed. Therefore even though the said occupation does not appeared to be hazardous, the occupational hazard was equally harmful for the development of the children. In the circumstances having regard to these facts and circumstances on recommendation of technical advisory committee, on 10th October 2006 the Government in exercise of powers under section 4 of the
1986 Act, issued notification amending the schedule of the act and inserted two entries under the heading “occupation” i.e. (14) Employment of children as domestic worker or servants and (15) Employment of children in dhabas (road side eateries), restaurants, hotels, motels, teashops, resorts, spas or in other recreational centers.

Thus the 2006 amendment introduced very important change since there was number of child workers were employed in hotel industries. Thus the violating this prohibition would entail penalties as specified in section 14 of the act i.e. imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

5.6.1.7 Prevention of Child Labour amendment Bill, 2012 -

After constitutional amendment and enforcement of the Right of Children to Free and Compulsory Education Act, 2009, the provisions of the Child Labour (Prohibition and Regulation) Act, 1986 become conflicting. The education to the children between 6 years to 14 years came to be recognized as fundamental right and at the same time the Act of 1986 permitted the children below 14 years of age to work in such occupation and processes which were not enlisted in the schedule, without there being any provision for their education. Therefore in order to overcome this difficulty amendment were proposed to Act of 1987 by this bill.

The Bill seeks to amend the Child Labour (Prohibition and Regulation) Act, 1986, which prohibits the employment of children in occupation and processes mentioned in the schedule and permit employment of children in all other occupations and processes. The bill therefore proposes to prohibit employment of children below 14 years of age in all occupation and processes; however subject to exception where a child helps his family after school hours and during vacation.

The Adult means a person who is above 18 years of his age and therefore the child who is above 14 years of his age but below 18 years is classified as ‘adolescent’. The Bill prohibits employment of adolescents in hazardous occupations as specified (mines, inflammable substance and hazardous
processes). The Bill further proposes to enhance the punishment for employing any child in an occupation and also provide punishment for employment of an adolescent in a hazardous occupation. The proposed amendment further provides enhancement of punishment for subsequent offence.

The bill also empowers government to make periodic inspection where the employment of children and adolescents are prohibited. It further permit government to confer power upon district magistrate to ensure compliance of provisions of the Act.

Thus an important goal is proposed to be achieved by completely prohibiting employment of children below 14 years of age.

5.7 JUDICIAL DECISION ON CHILD LABOUR

The Role of Judiciary in giving correct and wide interpretation to all fundamental rights in the Indian Constitution in highly remarkable and in absence of judicial pronouncement by the Apex court, the citizen would not be in position to enjoy fundamental rights in letter and spirit. Even the supreme court has time and again ensure welfare of children through its judicial pronouncement. The Apex court has given correct meaning to the words used in the Indian constitution by the framers of constitution. Time and again, it has pronounced excellent judgments for minimizing the problem of child labour in India. With regard to child labour in India, Justice Subba Rao, the former Chief Justice of India, rightly remarked; “Social justice must begin with the child. Unless a tender plant is properly nourished, it has little chance of growing into strong and useful tree. So, first priority in the scale of justice should be given to the welfare of children. By invoking constitutional provisions and by expanding scope of right to life, the Apex Court has played vital role to control the issue of child labour and for ensuring welfare of children. Article 21 of the Constitution can be termed as ‘Magna Carta’ of human rights.

The Apex Court decided in Maneka Gandhi v. Union of India that limitations have to be posted on the formation of laws deprived individuals of life and liberty, the procedure prescribed by the law should also satisfy the test of reasonableness, justice and fairness. In the said case and in Francis Coralie
Mullin v. Union Territory of Delhi held that Article 21 included protection of health and strength of workers, men, women and tender age of children against abuse. According to the court, the chance and facilities for children to develop in a healthy manner and in conditions of freedom and dignity and educational facilities are included in Article 21.

The courts have always taken liberal view on the concept of locus standi to do substantial justice. The efforts made in this direction are quite evident from the decisions taken by the courts in some important cases like People’s Union for Democratic Rights, Bandhu Mukti Morcha, Neeraja Chaudhary in which the Supreme Court liberalized the rule of Locus Standi and held that a public interest litigation can be filed by any one, not only by the aggrieved persons.

In Peoples Union for Democratic Rights v. Union of India, commonly known as ‘Asiad workers case’, a grievance was made before the Apex Court that children below 14 years of age were employed in the construction work. The Apex Court entertained the grievance and held that the construction work is a hazardous occupation and the employment of children below the age of 14 years must be prohibited in every type of construction work.

Referring to Article 24, Justice P.N. Bhagavathi and Justice Bahrul have held that “apart from the requirement of International Labour Organization Convention No.59, we have Article 24 of the Constitution which even if not followed up by the appropriate legislation, must operate “proprio vigore” and construction work plainly and indubitably a hazardous employment, it is clear that by a reason of constitutional prohibition no child below 14 years can be allowed to be engaged in construction work”. It can also be seen from the provisions of the Employment of Children Act, 1938, no child below 14 years can be employed in construction work. The Supreme Court observed that “there can be no doubt that notwithstanding the absence of specification of construction industry in the schedule to the Employment of Children Act, 1938, no child below the age of 14 years can be employed in construction work and the Union as also every State Government must ensure that the constitutional mandate is not violated in any part of the country”. The Judgment was eye an opener about the lacunae of the law and the need to reform in order to be...
comprehensive. Subsequently in view of this judgment, the construction work came to be added in the list as prohibited, occupation in part ‘A’ of Schedule to the Child Labour Act, 1986.

The Judiciary has played a significant role in protecting child labour by delivering Judgments in situations where there is no proper child labour legislation. The judiciary in the country has shown its great concern for the working children by bringing occupations or processes under the judicial scrutiny by directly applying the constitutional provisions relating to children.

In this context another remarkable judgment of Apex Court can be referred too and i.e. Labourers, Salal Hydro Project v. State of Jammu and Kashmir. In the said case grievance was employment of large number of child labourers in the construction of Salal Hydro Project, a hazardous work. Justice Bhagavati with Justice R.S.Pathak and Justice Amarendra Nath Sen observed that the problem of child labour is a difficult problem and it is purely an account of financial reasons that parents often want their children to work for livelihood and this economic problem and it cannot be solved merely by legislation. So long as there is poverty and destitution in the country, it will be difficult to eradicate child labour. The court also accepted the fact that having regards to the socio-economic condition it is not possible to prohibit child labour completely and in fact, any such move may not be socially or economically acceptable to large masses of people. It can be seen that the intention of the framer of the constitution must be same and therefore Article 24 of our constitution have restricted prohibition against employment of child labour only to factories, mines or other hazardous employments. The Central Government was directed to persuade the workmen to send their children to a nearby school and arrange not only for the school fees to be paid but also provide free of charge, books and other facilities such as transportation etc. The Court also suggested to the Central Government that “whenever it undertakes a construction project which is likely to last for some time it should provide that children of construction workers who are living at or near the project site should be given facilities for schooling and this may be done either by the Central Government itself or if the Central Government entrusts the project
work or any part thereof to a contractor, necessary provision to this effect may be made in the contract with the contractor”.

In yet another important case the Supreme Court came to the rescue of the child workers working in Beedi Industry i.e. in the matter of Rajangam, Secretary, District Beedi Workers Union v. State of Tamil Nadu and others and K.C. Chandra Segaram v. State of Tamil Nadu and others. In these matters the grievance was regarding failure to implement the provisions of the labour laws, manipulation of records regarding employees, non-payment of appropriate dues for work taken etc. including the child labour and specifically the non implementation of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966. The Apex Court held that “tobacco manufacturing has indeed health hazards. Child labour in this trade should therefore be prohibited as far as possible and employment of child labour should be stopped either immediately or in a phased manner to be decided by the State Government and the provisions of the Child Labour Act, 1986 should be strictly implemented.” The Court observed that the exploitation of labour is rampant in the beedi trade and suggested that ‘in view of the health hazard involved in the manufacturing process, every worker including children, if employed, should be insured for a minimum amount of Rs. 50,000 and the premium should be paid by the employer.

In M.C. Mehta vs. State of Tamil Nadu and others the Honourable Supreme Court observed that working conditions in the match factories are such that they involve health hazards in normal course and apart from the special risk involved in the process of manufacturing, the adverse effect is a serious problem. Exposure of tender aged to these hazards requires special attention. We are of the view that employment of children in match factories directly connected with the manufacturing process like uplift of final production of match sticks or fireworks should not, at all, be permitted as Article 39 (f) prohibits it.

It is pertinent to note that in M.C. Mehta v. State of Tamil Nadu and others, Supreme Court allowed children to work in a prohibited occupation like fireworks. The Court opined that “the provisions of Article 45 of Constitution in the Directive Principles of State policy still remained a far cry and through
according to this provision”, all children upto the age of fourteen years are supposed to be in the school, but economic necessity forces grown-up children to seek employment. Children can, therefore, be employed in the process of packing of fireworks but packing should be done in an area away from the place of manufacture to avoid exposure to accident. It is a matter of surprise that the Supreme Court in this case allowed the children to be employed in match factories of Sivakashi in Madras and said that, the children must be provided basic diet during working period.

This issue again considered by the Apex Court after an accident in one of the Shivakashi crackers factories was published in the media, wherein several children reported dead. The Supreme Court took “Suo motu” cognizance of it. This case is popularly known as ‘Child Labour Abolition Case’. The Apex Court held that the children below the age of 14 years cannot be employed in any hazardous industry, mines or other work. The Court gave certain directions regarding the payment of compensation.

The other concern is that the Court appeared to give credence to the nimble fingers theory of children’s work. The Apex Court observed as under “We take note of the fact that the tender hands of the young workers are more suited to sorting out the manufactured product and process it for the purposes of packing. This nimble fingers theory has been criticized by a number of human rights organizations, including Human Rights Watch. In this view, child labor is not an evil, but a production necessity. This rationalization is a lie. In fact, children make the cheaper goods; only master weavers make the best quality carpets and saris.

The Landmark Judgment delivered by the Hon’ble Apex Court by its three judge bench comprising justice Kuldip Singh, Justice B.L. Hansaria and Justice Mujumdar on 10 December 1996 in writ petition (Civil) No.465/1986 is of paramount importance for far as public interest litigation and child jurisprudence are concerned. The decision has attempted to tackle the problem of child labour. The Court then noted that the manufacturing process of matches and fireworks is hazardous, giving rise to accidents including fatal cases. Therefore, keeping in view the provisions contained in Article 39(f) and 45 of the Constitution, it gave directions as to how the quality of life of children employed in the factories could be improved. The Judges further held that ‘it is
a stark reality that in our country like many others, children are exploited a lot and Child labour is a big problem and has remained intractable even after 50 years of country having become independent, despite various legislative enactments prohibiting employment of a child in a number of occupations and avocations. The Court held that the employment of the child below 14 years was unconstitutional and all these children below 14 years have a fundamental right for education.

The Hon'ble Apex court by this Judgment directed to conduct Simultaneous action in all districts of the country, directed to conduct Survey for identification of working children, suggested withdrawal of children working in hazardous industries and ensuring their education in appropriate institutions; ordered to pay contribution of Rs.20,000 per child to be paid by the offending employers of children to a welfare fund to be established for this purpose, directed to provide employment to one adult member of the family of the child so withdrawn from work, and if that is not possible a contribution of Rs.5000 to the welfare fund to be made by the State Government; directed to provide Financial assistance to the families of the children so withdrawn to be paid out of the interest earnings on the corpus of Rs.20,000/25,000.00 deposited in the welfare fund as long as the child is actually sent to the schools; directed to initiate measures for regulating hours of work for children working in non-hazardous occupations so that their working hours do not exceed six hours per day and education for at least two hours is ensured. The entire expenditure on education is to be borne by the concerned employer.

The supreme court noted that the international conventions relating to employment of children, has been ratified by the Government of India and same would be binding on India and thus in the matter of Sheela Barse vs. Union of India, the Apex Court expected the Indian Government to implement the united nation’s conventions since Art. 51 of our constitution provide that India must honour its international obligations.

In the matter of Bandhua Mukti Morcha v. Union of India & others sounding a note of caution, Justice Bhagwati observed, the Government and its officers must welcome Public Interest Litigation, because it would provide them an occasion to examine whether the poor and down-trodden are getting
their social and economic entitlements or whether they can continue to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether a social and economic justice has become a meaningful reality for them or it has remained merely a teasing illusion and a prome of unreality, so that in case the complaint in Public Interest litigation is found to be true, they can discharge their constitutional obligation to root out exploitation and injustice and ensure to the weaker sections their rights and entitlements. When the court entertains public interest litigation, it does not do so in a caviling spirit or in a confront national mood or with a view to titling at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic rescue programme, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive. The Court is thus merely assisting in the realization of the constitutional objective.

The Apex Court has also clarified that it is the duty of the State to ensure that the legislation made by the state are implemented and followed in letter and spirit. The matter of Neeraja Choudhary v. State of M.P, is one of the example of judicial activism where the apex court has taken a serious note of the indifferent and callous attitude of the State Administration in identifying, releasing and rehabilitating the bonded labourers in the country. While deciding the said case based on a letter of September 20, 1982 addressed to one of the judges of the apex court, the Court said it is the plainest requirement of Articles 21 and 23 of the Constitution that bonded laborers must be identified and released and on release, they must be suitably rehabilitated. The Bonded Labour System (Abolition Act, 1976 has been enacted pursuant to the Directive principles of State Policy with a view to ensuring basic human dignity to the bonded labourers and any failure of action on the part of the State Government in implementing the provisions of this legislation would be the clearest violation of Article 21 apart from Article 23 of the Constitution “and, hence Apex Court directed the State Government to provide rehabilitative assistance to the freed bonded labourers within one month from the date of order. The Apex Court has further observed that a sad and woeful tale is narrated in the writ petition about the plight of the bonded
labourers set free pursuant to the orders of this Court for not taking effective measures enjoined by law for their rehabilitation and hence it becomes the duty of the Court to see that the legislative provisions regarding their rehabilitation are properly implemented and these poor and miserable persons are allowed to enjoy the benefit which the law and the Constitution of the land afford to them.

In Bandhu Mukti Morcha vs. Union of India in this case a writ petition Under Article 32 has been filed by way of Public Interest Litigation seeking issue of a writ of mandamus directing the government to take a steps to stop employment of children in carpet industry in the State of Uttar Pradesh; to appoint a Committee to investigate into their conditions of employment, and to issue such welfare directives as are appropriate for total prohibition on employment of children below 14 years and directing the respondent to give them facilities like education, health, sanitation, nutritious food etc. The Apex court observed that child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to his social and physical health is assured to him. Every nation, developed and developing link its future with the status of the Child. Childhood holds the potential of the society. Children are the greater gift to the humanity. Mankind has been hold of itself. The parents themselves live for them. They embody the joy of life in them and in the innocence relieving the fatigue and drudgery in their struggle of daily life. Parents regain peace and happiness in the company of the children. The children signify eternal optimism in the human being and always provide and better equipped with a broader human output, the society will feel happy with them. Neglecting the children means loss to the society as a whole. If children are deprived of their childhood – socially, economically, physical and mentally - the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry.

In Mohini Jain vs. State of Karnataka Kuldip Singh J. held that the right to education was part of the fundamental right to life and personal liberty guaranteed by Article 21 and this view was confirmed by the larger bench of apex court in the case of Unni Krishnan vs. State of Andhra Pradesh. After this historic judgment Indian Constitution through its 86th Amendment inserted in
Fundamental Right one more article i.e. art. 21A Right to education which requires state to provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine. So also article 45 was also modified and article 51(A)(k) came to be inserted casting duty upon parent and guardian to provide opportunities for education to his child or ward between the age of six and fourteen years.

5.8 CONCLUSION

The framers of the Constitution have gave utmost importance to development of child since any compromise with the development of child has disastrous result in overall progress of nation and efficacy of the democracy and the rule of law. The Apex Court has time and again from its judicial pronouncement has ensure welfare of child is protected. The judiciary has always made concrete efforts to safeguard children against the exploitative tendencies of their employers, by regularizing their working hours, fixing their wages, laying down rules about their health and medical facilities. Yet at all material times Court cannot spring into action and the state as well must discharge its constitutional obligation by implementing the legislation in this behalf in strict sense. The Apex Court has time and again reprimanded the state it is the duty of the State to ensure that the legislation made by the state are implemented and followed in letter and spirit and even otherwise the state must discharge its constitutional obligation.