CHAPTER - 5

Legal Protection to Child Labours

Introduction

Children are the future of the country. The prosperity of a country lies to a considerable extent upon the physical growth and intellectual development of children. They in fact need more care and greater protection. The society, therefore, can’t remain aloof from their state of affairs. The community has to provide certain legislative prescriptions to safeguard the interests of the children. Labour legislation is one of the instruments to regulate the child labour.

The employment of the children in industry, fixation of the minimum age for the employment under the different labour legislations, medical examination of the child labour before employment and their medical check up at regular intervals during the course of their employment is some of the issues which have been regulated by various legislations. But inspite of all these attempts the child labour is deprived of adequate rest and recreation which is essential for the proper mental and physical development of the child, with the result he matures into an adult without having enjoyed the blessings of childhood. He is either physically, weak or even if he enjoys normal physique, it is at the cost of mental development. Employment of children at tender age not only affects them physically mentally and morally but tends to retard the development of the child.\(^1\)

Childhood is a crucial period of life. During this period proper development of mind and body takes place. Improper and unhealthy working conditions and continuous working for hours together beyond their capacity retards the normal development of a child. Employment of the children deprives them from participating in cultural, social and physical activities, which act as catalyst for their development during the period of childhood. As child labour starts earning at a tender age

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age, because of his immaturity sometime he develops a feeling that he is not
dependent on his parents for his bread and butter and with the result that many a times
he starts disobeying them. This leads to disorganization of family life. Sometime
instead of helping them financially, he moves in the company of bad persons and
adopts bad habits like smoking, drinking, gambling and cinema going. Sometimes he
stops so low that he becomes addicted to drugs and other narcotics. All these bad
habits wreck him not only financially, rather at the same time deteriorates the
development of mind and body. Sometimes these bad habits inculcate in the child
criminal tendencies and ultimately he matures into a hardened criminal. It is more a
question of social and economic problem rather than a problem of legal regulation.
But legal aspect is no way less important¹.

**Child labour and the law in India**

Child labour is a wide spread phenomenon. It can be witnessed in one
form or another all over the world from ancient days. The genesis of child labour lies
in the Industrial revolution, which emerged in the middle of 18ᵗʰ century in England
and 19ᵗʰ century in India. The problem became more acute and incurable with the
sweeping industrialization, which placed the children further in many employments.
Children thus employed have been deprived of their natural and inherent potentiality
to development. Poverty of their parents, diminishing human values, lack of
educational and cultural facilities, easy availability of child labour and payment of
lower ages to children one some of the compelling factors is engaging child labour in
India.

In the pre-industrial eras, children were required to work in home or
field assisting elder members of their family. In some cases they earned for their
living. Thus, there were no social taboos as they work along with their parent. Further
it was accepted that the child would learn skills from his parents and prepare himself

¹ Dr. Varandani, Gurusharan (1981), “Minimum Age of Employment and Medical Examination of
for the future when he became an adult. But the industrial revolution has brought about fundamental changes in the mode of production. Viewed from this angle, the problem of child labour is local, national or regional but it is an international problem. In developing countries it is more serious than in the developed countries. Karl-Marx has rightly said:

"..... In so far as machinery dispense with muscular power, it become a means of employing labourers of slight muscular power or strength and those whose bodily development is incomplete, but whose limbs are all the more supply. The labour of women and children was there for the first thing sought for by the capital that used machinery. Thus, child labour problem became acute, gruesome, amplified and prominent with the rapid expansion of industry, commerce, trade and business oriented ideology of the society."

The problem of child labour has two dimensions. As an economic practice, it signifies employment of children in gainful occupations with a view to adding to the income of the family. As a social evil, it exposes child to the dangers of blocking development of his personality and growth. This aspect of child labour is perceptible internationally, wherever the phenomenon of industrialization exists. India is no exception to this general rule.

In India legislative attempt were made to eliminate child labour right from 1881. These measures were limited in scope. Thus when India; became independent the Constituent Assembly thought to incorporate to specific provision in the constitution on prohibition of child labour in line with the Universal Declaration of Human Right 1948. One provision is relation to prohibition of employment of children below 14 year in factories or mines or another hazardous employment. The state shall, in particular, direct its policy towards securing, that the health and strength of workers and the tender age of children are not abused and that citizens are not

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forced by economic necessity to enter avocations unsuited to their age or strength\(^1\). State should ensure that the children one given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that youth are protected against exploitation and moral and material abandonment\(^2\). The governments must also provide free and compulsory education to children below the age of 14 years\(^3\).

To put this constitutional philosophy into practice laws were passed to prohibit child labour besides amendments to earlier enactment. The Child Labour (Prohibition and Regulation) Act 1986 is the latest enactment. The main aim of this legislation is to prohibit engagement of child labour in certain other employment. Elaborate provisions added with schedules are made in this enactment’s. But a deeper analysis of this legislation reveals defects in many respects. For example, employment of children in unorganized sectors such as, agriculture, farming and poultry are still to be tackled through another appropriate legislation. Moreover, child labour continues illegally even in the organized sector. The available statistical data indicates that India has the largest number of working children in the world. There are more than 17.58 million working children in the country\(^4\). Virtually, there is no sector in which a child is not employed.

It is to be conducted that the problem of child labour is not confined to law; it has social and economic overtones. Despite the efforts of government to curb this malady the numbers of children employed are increasing day by day, Government of India and various state governments have failed to achieve the cherished goal of complete abolition of child labour\(^5\).

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\(^2\) Ibid. Article 24, P. 205.

\(^3\) Ibid. Article, 45, P. 309.


National and International Efforts to Regulate Child Labour

Attempts were made at the national as well as international level from time to time to eradicate child labour. The International Labour Organization has been playing an important role in the process of gradual elimination of child labour since its inception in the year 1919. Highest priority was given to the abolition of child labour in the activities of ILO. A series of conventions and recommendation have been formulated to regulate, limit and gradually abolish child labour\(^1\). Till now, 18 conventions and 16 recommendations have been adopted by the ILO in the interest of working children all over the world\(^2\). India has ratified 6 conventions\(^3\) out of the 18 conventions adopted by the ILO.

The United Nation is also taking steps to eradicate child labour. In fact international organisation of the Rights of children began with the League of Nations adoption of the Geneva Declaration of the Rights of Child in 1924. In 1948 the United Nations General Assembly approved, “A Universal Declaration of the Human Right”, within which the right of children were implicitly included. The United Nation Declaration of Right of the child was added in 1959. The year 1979 was designated as the International year of the child to commensurate the 20\(^{th}\) Anniversary of the Declaration. The United Nation Commission of Human Right has drafted the UN Convention on the Right of the child which has been adopted by the General Assembly on November, 20, 1989\(^4\).

International Labour Organization (ILO) and Labour Conventions on the Child Labour

With the establishment of the ILO in 1919, there has been greater impetus to prescribe international legal norms for child protection. In view of their

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2 Minimum Age (Industry) Convention, No. 6, of 1919.
3 Ibid.
4 It has been ratified or acceded by more states than required in minimum and has come into force on September 2, 1990.
exploitation and the indifference and insecurity shown by the national governments, it
is now being increasingly realized that the problem of child labour should not be
thrown at the mercy and direction of the nations.

It has become an important aspect of human rights. There are more than
100 million children engaged in employment often heavy and hazardous\textsuperscript{1}. India
contributes more than a quarter of the world's working children and one third of
Asia's child labour\textsuperscript{2}. The problem is of such a magnitude and multi-dimensional that
it requires International Corporation.

Efforts were made by the ILO for the protection of child labour at the
global level as is evident from the following conventions:

1. **Minimum Employment Age (Industry) Convention 1919(No.5)**

Which provided those children under the age of 14 year should not be
employed to work in any public or private undertaking. Even though India gave effect
to this convention by making provisions in the Factories Act, 1922 and the Mines Act,
1923, but the convention was ratified only in 1955\textsuperscript{3}.

2. **Night Work by Young Persons (Industry) Convention, 1919(No.6)**

Which prohibited employment of young persons less than 18 year of age
in any public or private undertaking during night? Though India had adopted this
convention in 1921, but its application for India was limited only to 'factories' and the
age limit were kept at 14 year. Thus the exploitation of children in other undertaking
like building construction etc. remained unabated\textsuperscript{4}.

\textsuperscript{1} Plan for Action for Implementing the World Summit for Children held at the United Nations, on 30\textsuperscript{th}
Sep. (1990), New York.
\textsuperscript{2} Singh, Mohinder (1992), "Child Labour and Law Constraints and Policy"-Work Shop on Child
Labour in UP Organized by Department of Labour and UNICEF in Oct.
\textsuperscript{3} Vaidyanathan, N. (1975), "ILO Conventions and India", P. 39.
\textsuperscript{4} See Ibid. See Also "An Overview of 100 years of Legislation Pertaining to Child Labour",
3. **The Minimum Age (Trimmers and Strokers) Convention, 1921 (No. 15)**

   It provided that young persons under the age 18 years shall not be employed on vessels as trimmers and strokers. Though India adopted this convention in 1922, the age limit for India was kept at 16 year.¹

4. **Minimum Age for Employment –1937 (No. 59 and 60)**

   To implement these conventions the Employment of Children Act, 1938 was passed to prohibit children under 15 years of age in occupations connected with transport of goods, passengers, mails and railways².

5. **Minimum Age for Admission to Employment 1973, (No.138³)**

   The convention has revised the earlier ILO convention prescribing minimum age for admission to employment. The convention aims at the effective abolition of child labour and to raise progressively the minimum age of admission to employment. The Minimum age shall not be less than the age of completion of compulsory schooling and in any case shall not be less than 15 years (Art. 2 & 3). For those member states whose economic and educational facilities are insufficiently developed may specify a minimum age of 14 year (Art 3 & 4). For those employments which one likely to jeopardize the health, safety or morals of young persons, the minimum age has been prescribed at 18 year (Art.18). This convention does not apply to employment of work of persons 13 to 15 year of age provided it is not likely to be harmful to their health or development or is not prejudicial to their attendance at school or vocational training programme (Article 7). India has yet to ratify this convention. However, there has been consensus of the South Asian countries including India to ratify this convention and to include it in their National Policy. Its goal is Elimination of all child Labour by 31st December, 2000⁴.

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² Ibid.
³ Consensus by the Asia Regional Training Workshop on Child Labour (UNICEF -Publication).
⁴ Ibid.
Efforts Made at the Universal Basis

Besides ILO conventions, the concern to protect the child at the international level for the special care and attention is manifest by Geneva convention of the Rights of the Child, 1924 the Universal Declaration of Human Rights, 1948 and the two convenants relating to Human Rights i.e., the international convenants on Civil and Political Rights (Articles 23&24) and the International Convention of Economic, Social and Cultural Rights (Art.10). Both of these convenants were adopted in 1966 and both of which came into force in 1976.1

U.N. Declaration on the Right of the Child, 1949

The first universal document was the Declaration of the Rights of the child adopted by the General Assembly of the U.N. on November 20, 1949. It categorically recognized that the child by reason of his physical and mental immaturity needs special safeguards and care, including appropriate legal protection. The Declaration contained only general principles and carried no legally binding obligations Principles 9 stated that the Child shall not be admitted to employment before an appropriate minimum age.2


Although there were more than 80 treaties and declarations particularly since the days of the League of Nations, they lacked comprehensive vision of children needs intoday's world. The 1970's witnessed an upsurge of interest in the Rights of the Child.3

In 1979 International year of the child followed during this year, the U.N. Human Rights Commission set up working group to draft a convention, which after ten long years was presented to and passed by the General Assembly in 1989. The U.N. Convention on the Right of the Child was unanimously adopted on

3 Ibid.
November 30, 1989. It came into force on September 2, 1990 when it was ratified by 30 states - 10 more than the minimum required under Article 49. The pace of ratification was much faster than any other human right convention. The convention became binding just weeks before the world summit for children was going to be held on September 30, 1990.

The convention modifies and consolidates the existing standards. The convention may be called the first binding statement on children’s rights emerging from the full partnership between developing and developed countries. The convention can be called a. ‘moral minimum’1.

Article 32 of the convention is relevant for our purpose it states2.

32 (1) 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 as to interfere with child’s education, or to be harmful to the child’s health or physical, mental, spiritual, or social development.

(2) State parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present—Article. To this end and having regard to the relevant provision of other international instruments, states parties shall in particular –

A. Provide for a minimum age for admission to employment.
B. Provide for appropriate regulation of the hours and condition of employment.
C. Provide for appropriate penalties or other sanction to ensure the effective enforcement of the present Article.

2 Cited in “Workshop on Child Labour in Uttar Pradesh”, held in October 1992.
The convention provides for the establishment of a committee on the Rights of the Child. States will be required to submit to the committee progress mode in fulfillment of the rights in the convention after two years.

World Declaration on the Survival, Protection and Development of Children

Later, the world summit for children was held at the United Nation on 30th September, 1990 and adopted “World Declaration on the survival, protection and development of children.” Over 150 nations, including India, participated in it. They made a commitment to implement the convention of the Rights of the Child. The nations committed themselves to work for special protection of the working child and for the abolition of illegal child labour (10 points Programme-point no. 7).

It was decided that there should be universal efforts to promote the welfare of children through U.N. and international and regional organizations. It was also stated that there should be a greater involvement of non-governmental Organizations (NGO’s). It was also decided to adopt and implement the plan for action.

Plan for Action

The plan for Action for implementing the world Declaration in the 1990s was also adopted. This plan for Action is intended as a guide for national governments, international organizations, non-governmental organizations (NGOS) in formulating their own programmes of action ensuring the implementation of the declaration of the World Summit for children. It was observed that it was true that the need and problem of children may vary from country to country, but there are certain common aspirations, throughout the world for the well being of the children. Their survival, protection and development were the pre-requisite for the development of humanity as a whole. It was asserted that the convention of the Rights of Child sets

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1 Cited in “Workshop on Child Labour in Uttar Pradesh”, held in October 1992.
2 Ibid.
universal international level, standards for the protection and well being of the children. The Plan for Action urged that every possible effort should be made in all countries to disseminate the convention and where ever it has been ratified to promote its implementation and monitoring (Article 8).

It was, further, asserted in the Plan for Action that more than 100 million children are engaged in employment often heavy or hazardous and in contravention of international conventions which provide for their protection from economic exploitation and from performing work that interferes with their education and is harmful to their health and full development. With this in mind, the states should work to end such child labour practices and to see how the condition and circumstances of children in legitimate employment can be protected to provide adequate opportunity for their healthy upbringing and development “(Art 23)1.

Both action at the national level and international level was considered necessary to enable developing and the least developed countries, (LDCs) to participate effectively in the worldwide effort for child survival, protection and development. All developmental agencies are to contribute to the achievement of goals enunciated in the Declaration and Plan of Action. The United Nations was requested to institute appropriate mechanism for monitoring the implementation of the plan for action through its agencies specially UNICEF.

Conference on Human Rights, Vienna, June, 1993

In June 1993, conference on Human Rights was held in Vienna. The world conference urged that the effort be made to achieve universal ratification of the UN Convention on the Rights of the Child by 1995 and universal signing of the world summit Declaration and Plan for Action as well as their effective implementation. The World Conference urged all government to take effective measures against harmful child labour.

The convention has since been ratified by 135 countries. It has also been re-affirmed by the SAARC conference on children in 1991 and 1992, where it has been resolved to eliminate child labour progressively and in accelerated manner. In its National Child Policy 1992, now India has stated that ‘No child under 14 year shall be permitted to be engaged in hazardous occupation on heavy work’.

Unfortunately, the U.N. convention 1989 also adopts a ‘regulatory’ model instead of the ‘prohibitory’ model. The child labour is perceived as an inevitable evil and attempts to provide adequate safeguards and a regulatory framework for it continuance. The ideal of absolute prohibition of child labour appears to be quite a distant goal to achieve on account of economic reality, social attitudes and family constraints. It is necessary there should be progressive movement towards a ban on child labour within a specified time. Meanwhile, protection of working children, especially by improving their conditions of work is absolutely necessary. Our Supreme Court in **M.C. Mehta Vs. state of Tamil Nadu** had held that the minimum wages for child labour have to be at least 60% of what is paid to adult labour. Similarly, the Child Labour (Prohibition and Regulation) Act 1986 provides 6 hours work in a day with a break after 3 hours. It also does not permit night work between 7.00 P.M. to 8.00 A.M. These measures should be of transitional nature till there is complete prohibition of child labour.

It may be remembered that ideal for free and compulsory education is dependent on the ideal of total probation of child labour. Till then child labour is likely to be the principal obstruction in the realization of the goal of free and compulsory child education. There is no doubt about the inter linkage of child labour

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2 AIR, 1991, SC., P. 417
and universal primary education. Children have to be withdrawn from the child market, lest their childhood will be confiscated. They have to be rehabilitated. The families below poverty line have to be given some economic incentives. The NGOs and other interested groups can make a major contribution in this direction.

It has also been suggested that the governments should ban import of product, which are manufactured, by exploitation of child labour. In fact, policy was made for all governments to enact suitable legislation’s banning import of goods made fully or partially by children during the Vienna Conference, June 1993. USA (Harkin Bill) and Germany are going to ban import of carpets from India, where children are employed. This may be extended to other goods and commodities as well.

**International Labour Conventions and India**

Besides implementing ILO convention on the child labour as stated above, certain other enactments were also passed in India for the protection of child labour- such as Children (Pledge of Labour) Act, 1933 prohibiting, pledging of children. The Plantation Labour Act, 1951, prohibiting the employment of children less than 12 year in plantations. Our national leaders did not leave the matter of child labour in the hands of politicians and made provisions in the Basic Document itself. Article 24 of our constitution provides that no child below the age of 14 year shall be employed to work in any factory or mine or engage in any hazardous employment. Art 39 states that tender age of children are not abused and the citizen, are not forced by economic necessity to enter avocations unsuited to their age and strength. The National Policy for Children adopted in 1974 also provided as one of the objectives that no child under the age of 14 years shall be permitted to the hazardous and heavy work. It is unfortunate that it took 36 years to our legislators since the commencement of the constitution to pass the Child Labour (Prohibition and Regulation) Act, 1986.

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banning the employment of children below 14 years of age in specific occupations and processes. The Act covers only 10% of the total-working children. Those working under the unorganized sectors are not protected. The Act does not cover child labour even in hazardous processes when they are carried out in any workshop by occupier with the help of his family or any school established by or receiving assistance or recognition from the government\(^1\). Is it not the violation of Act 24 of the constitution which explicitly prohibited the employment of children in any hazardous employment?

Inspite of the ILO conventions and the constitutional mandate and the Child Labour Act, 1986, 6.7% of the work force consists of children below 14 year. Most of them are bonded labour. As late as in 1985, the Union Labour Ministry conceded the existence of child labour as a harsh reality\(^2\). What is worse that this harsh reality is not only acknowledged by the state but is also justified by saying that ‘the poor parents get income of their children’. Is it not a matter of social injustice that only the children of the poor be allowed to work\(^3\). The child labour continues the bulk in prohibitive and non-prohibitive industry and areas of employment\(^4\). Perhaps, free and compulsory education upto age of 14 years (Article 45) could not be enforced till now as it would have come in way to the employment of children.

It has been observed that India has been slow in adopting International Labour Standards. India acceded to the convention on the Right of Child only on December 11, 1992. The delay was justified by our Foreign Secretary that before acceding to any International Convention, the Government has to examine whether there is any conflict between the International Convention and the provisions of domestic law. It has then to be approved by the Parliament\(^5\).

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It must be admitted that ratification on international labour standards has been effective mere as ‘status symbol’ and for upholding the country’s image abroad rather than for their sincere implementation and compliance in practice. Swami Agnivesh has called it ‘some window dressing’. It may be remembered that Article 51 of our constitution provides that India must honour its international obligations. Our Supreme Court has also held that international convention, if ratified by the Government of India would be binding on India. There is a lack of political will to enforce the binding international treaties and convention. Justice K.N. Singh, chairman, Law Commission has also pointed out that the laws have been there but there have been no will to enforce them effectively. There has been lack of genuine political commitments. Government departments are cautious, but there is lack of conscience.

**Constitutional Provisions for the Protections of child Labour**

The framers of the Indian constitution were fully aware of the problem of child labour. They incorporated some specific provisions to prohibit child labour in Part-III and IV of the constitution dealing with Fundamental Rights and Directive Principles of State Policy. Article 24 of the constitution prohibits child labour below 14 year in factories or mines or in other hazardous employment. It must be noted that this article does not create an absolute bar to the employment of children below fourteen years of age. Secondly, even in case of children below 14 years the article prohibits their employment in a factory, mine or in any hazardous employment. It clearly shows that the constitution does not prohibit child labour in non-hazardous employment. Therefore, it can be pointed out that Article 24 partially prohibits child labour. It does not prohibit their employment in any innocent or harmless job or work. However, they did not define the term “hazardous employment”. Therefore, it created

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a lot of ambiguity to the legislature and judiciary in defining the term hazardous employment. In this way many hazardous employments are left from the prohibition of child labour. In Asiad worker’s case\(^1\), the Supreme Court directed the State Government so as to include the construction work in the list of hazardous employment.

Further, Art., 39 (e), 39 (f) and Art., 45 are incorporated in Part-IV of the constitution dealing with the Directive Principles of State policy. These articles contain directive provisions pertaining to child welfare. According to Art.39(e) the state shall in particular, direct its policy towards securing, 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 avocations unsuited to their age or strength\(^2\). According to Article, 39(f), the state should ensure that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that youth are protected against exploitation and against moral and material abandonment\(^3\). Article 45 of the constitution provides that the state shall endeavour to provide within the period of ten years from the commencement of the constitution, free and compulsory education for all children below the age of 14 years\(^4\).

It is certainly clear from the above provisions that the constitutional provisions cast a heavy responsibility on the part of the state for the welfare of children. It Art.45 of the constitutions is effectively implemented there would be no problem of child labour in India. But the available statistical data indicates that India has the largest number of working children in the world. The National Sample Survey Organization estimated the number at 17.58 million in 1985\(^5\). There is virtually no

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\(^1\) Peoples Union for Democratic Rights vs. Union of India, AIR, 1982, SC, 1473, see also, Labourers working on Salal Hydro Projects Vs. State of Jammu & Kashmir, AIR, 1984, SC. 117.


\(^3\) Ibid P. 128

\(^4\) Ibid. P. 131.

sector in which a child is not employed. Many of these activities are dangerous to their physical as well as mental growth. Non-implementation of constitutional provisions, particularly, Art.45 even after 40 years of adoption of the constitution, clearly shows the scant regard of the Government towards welfare of the children. Thus, it can be pointed out here that the Government is not serious in eradicating child labour. It does not mean that government is totally ignoring the cause of children. The Government of India as well as the State Government have enacted some legislations in this sphere.

**Legislative Provisions for Protection of Child Labour**

Many enactments relating to child labour have been passed in India during the last century. To minimise the exploitation of child labour, these laws have been amended, repealed and revised from time to time. By these amendments various safeguards were provided to protect children, like minimum age, working hours, health and medical examination wage and leave, place of employment and physical conditions etc, were prescribed. But it was found that the existing legal frame work for the regulation of child labour is dispersed and patchy. Even then there remain anomalies on the above said issue. To meet this gap a significant legislative attempt to prohibit and regulate child labour was made in 1986. The Child Labour (Prohibition and Regulation) Act, 1986 was enacted by the Parliament with an objective to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments. The main provisions of the Act are (a) Prohibiting child labour in certain occupations (b) Regulating the conditions of work in permissible occupations and (c) Obtaining uniformity in the definition of child in various laws relating to child labour. Through this enactment government has tried to solve the problem of child labour in India. But the complete abolition of child labour is one of the cherished goals of a civilised society. The Act of 1986 ensured that child labour will continue; though the Government expressed its intention to abolish it. In this way legalizing the employment of children will be a retrograde step with adverse
implications for the society as a whole. In India following enactments were made for protecting interest of the child:

**Factories Act, 1948**

The main objectives of the Factories Act are (i) to regulate working conditions in factories, and (ii) to ensure minimum requirement for the safety, health and welfare of the factory workers. In addition the Act envisages to regulate working hours, leave, holidays, overtime, employment of children women and young persons etc. The Act has been drastically amended to lay down safeguards against the use and handling of hazardous substances and procedure for setting up hazardous industries.

 Particularly it prohibits employment of children below the age of 14 years. Besides, a child between 14th and 13th year of age or an adolescent (below 18 years) is not to be employed unless he is certified to be fit to work in a factory by a certifying surgeon. The certificate shall be valid for one year and is required to be kept in the custody of manager and the child concerned shall have to carry with him while at work, a token giving reference of such certificate.

Employment of young persons is prohibited on or near machinery in motion and on dangerous machines unless he has been fully instructed as to the dangers there of precaution to be observed and has received sufficient training in work at machine and is under adequate supervision. Further no young person shall be employed to carry out any mounting or shipping of belts and lubrication, etc., of machines in motion. The Act also prohibits employment of children for pressing cotton in which a cotton opener is at work. The maximum working hours for child works are four and a half hours a day and they are not allowed to work during the night. The Act requires to provide creches in every factory where in more than 30 women workers are employed. It is also required that notice of periods of work for children shall be displayed and registers containing prescribed particulars of child workers are to be maintained.
The State Government is under statutory duty to ensure enforcement of the Act through the inspectorate. In order to ensure enforcement of the Act penal provisions have been incorporated. For contravention of the provision by the occupier and the manager the penalty is imprisonment upto 2 years or fine upto Rs., one Lakh or both and in case of continuance of offence imprisonment upto 3 years and fine upto Rs., two Lakh (minimum fine Rs.10, 000) or both. The provisions are adequate to but enforcement is not proper.

**Mines Act, 1952**

Like the prohibitions contained in the Factories Act, the Mines Act, 1952 has provisions regulating the employment of children in mines. The provisions in the Mines Act are more strict than that Factories Act. It prohibits employment of persons below 18 years to work in any mine. However, apprentices and other trainees, not below 16 years of age, may be allowed to work, under proper supervision, in a mine by the manager, provided that in case of trainees other than apprentices, prior approval of the Chief Inspector or an inspector is required to be obtained before they are allowed to work.

It has been further provided that no person below 18 years of age shall be allowed to be present in any part of mine above ground where any mining operation is being carried on. The Central Government is the administrative authority under the Mines Act and it administers the Act through inspectors having usual powers. There are penal provisions to ensure observance of the provisions of the Act. If a person below 18 years of age is employed in a mine in contravention of Section 40, the owner, agent or manager of such mine shall be punishable with fine upto Rs. 500/. The relevant penal provisions are not adequate. They would prove to be only paper tigers.

**Merchant Shipping act, 1958**

It applies to sea going ships. It has also some provisions regulating employment of children. It bars employment in any capacity of a person below 14
years in a ship except schoolship or trainingship in accordance with the prescribed conditions or a ship in which all persons employed are members of one families, or in a home trade ship less than 200 tons gross, or where such person it to be employed on normal wages and will be in the change of his father or other adult near male relative. It further provides that persons below 18 years of age can’t be employed as a trimmer or strokers in any ship. No person below 18 years of age can be employed unless he has been granted a medical certificate of fitness by a prescribed authority. The Act makes provisions for modest penalty of a fine of Rs. 50 for violating three provisions.

**Motor Transport Workers Act, 1961**

The Act prohibits employment of children below 14 years. The Act regarding children who have completed 14 year but not completed their 18 years (adolescent) provides that such person shall be allowed to work as a motor transport workers after obtaining a certificate of fitness from a certifying surgeon and shall be required to carry with them a token giving a reference to such certificate. The certificate shall be valid for one year and can be renewed. The Act is administered through inspecting staff like Factories Act. The penal provisions are modest ones and can not ensure observance of the provisions of the Act in proper way.

The Act is applicable to every transport undertaking employing five or more workers and the State Government has been given power to apply the provisions of the Act even to transport undertaking employing children. A child is defined as a person who has not completed 15 years of age. An adolescent is allowed to work provided he has a certificate of fitness granted by a certifying surgeon.

**Plantation Labour Act, 1951**

It defines child to mean a person who has not completed his 14th year. However, the person who has completed his 14th year but has not completed his 18th year is adolescent within meaning of this Act. It applies to any land used or to be used for growing tea, coffee, rubber, cinchona or cardamom which admeasures 5 hectares or more where in 15 or more persons are employed. But the State Government has
been empowered to apply this Act to any land, which admeasures less than 5 hectares, and where in less than 15 persons are employed.

The Act provides that no child and no adolescent shall be required or allowed to work in any plantation unless a certificate of fitness has been granted by the certifying surgeon which is in the custody of employer and such workers are required to carry tokens giving a reference to such certificate. Such certificate remains valid for 12 months but may be renewed. Except with the permission of the State Government no child workers shall be employed between 7.00 p.m. and 6.00 a.m. The maximum working hours for such child workers are 27 hours a week. Where so or more women workers are employed or where number of children of women workers is 20 or more, the creches are required to be provided and maintained for such children. It has been further provided that where children between the ages of six and twelve of workers exceed 25 in number the Government may make rules requiring employer to provide educational facilities as well recreational facilities.

The Act contains penal provisions. It also makes provision for inspecting staff on the lines of Factories Act to ensure observance of the provisions of the Act. The Act also makes the provisions for education of children employed in plantation between the age groups of 6-12 if the workers employed in any plantation exceeds twenty five in number. The State Government may make rules requiring the employers to provide educational facilities in such standard as may be prescribed.

**Beedi and Cigar Workers (Conditions of Employment) Act, 1966**

This is a special legislation for regulating conditions of work of beedi and cigar workers. Although the Factories Act applies to such workers but the employers intentionally split the concerns into small units to escape the provisions of the Factories Act. The feature of this industry has been that the work is assigned to workers to be done at their dwelling houses are work is assigned to contractors In such circumstances the evasion of Factories Act was easily possible. This Act meets such difficulties.
It has several provisions dealing with child labour. No child (below the age of 14 years) shall be employed in any industrial premises subject to provisions of the Act. However, young persons who have completed their 14th year but not completed 18th year may be allowed to work but shall not be allowed to work during 7.00 p.m. to 6.00 a.m. Act required to provide creches for the use of children below the age of 6 years where more than 50 female employees are ordinarily employed. No difference has been made regarding maximum weekly hours of work between an adult and young person except that young persons will not be allowed over time work.

The Act contains provisions with regard to offences and penalties it, however, does not provide for severe punishment. The provision for Inspecting Staff like Factories Act has been incorporated to ensure observance of the Act.

**Children (Pledging of Labour) Act, 1933**

The Act prohibits agreement to pledge the labour of children for employment. An agreement to pledge the labour of a child is void under the Act. Child means a person below the age of 15 years for the purposes of the Act. It provides for fine to be imposed on guardian or parent making agreement to pledge labour of a child.

A parent or guardian making an agreement to pledge labour of a child is subject to fine of Rs. 50/- and wherever makes such an agreement with the guardian is subject to a fine upto Rs.200/-. A civilized society does not need such law but in India due to utter poverty the parents under compelling circumstances may do so.

This enactment was made to check the practice of mortgaging the child below 15 years of age. It made any such agreement void. However, under Section 2 of the Act allowed it where an agreement was made without determent to the child and not made in consideration of any benefit other than reasonable wages to be paid for child’s services and could be terminated by not more than a week’s notice.
For contravention of the provisions of the Act parents or guardians, the person making agreement and employer of such child are all liable to penalty prescribed by the Act.

**Apprentices Act, 1961**

The main objective of the Act is to regulate and control the training of apprentices and supplement the availability of trained technical personal for the industrial concerns. It provides for practical training to the graduate and diploma engineers. Any person who is not less than 14 years of age and satisfies the prescribed standards of education and physical fitness can undergo apprenticeship training in the designated trades under an employer. Such persons include graduate engineers and diploma holders. The Act defines graduate or technical apprentice technical vocational apprentice and trade apprentice. The Act applies to only designated trades notified by the Central Government after consultation with the Central Apprenticeship Council.

The Act deals with matters such as qualifications for being engaged an apprentice, contract of apprenticeship, period of apprenticeship, termination of apprenticeship contract, number of apprentice for a designated trade, practical and basic training, payment of apprentices, heath, safety and welfare, of apprentices hours of work, overtime, leave and holidays, conduct and discipline, obligations of employers and apprentices offer and acceptance of employment etc. There are various authorities under the Act such as Government, the National Council, Central Apprenticeship Council, the State Council, State Apprenticeship Council, All India Council, Regional Boards etc. These authorities are consulted on matters within the purview of this Act. It also contains provisions regarding offences and penalties.

The apprentices Act, 1961 regulates the training apprentices in industry, so that the programme may be organized on systematic basis and the apprentices many get the maximum advantage of their training. The Act provides that a person
who is less than 14 year of age will not be qualified for apprenticeship training. In other words only children between the age over 14 and below 18 years are commendable and will go a long way taking a sound training which would be an asset not only to the apprentices but also for the nation.

**Shops and Establishments Act**

Different states have enacted their own statutes regulating conditions of workers in shops and are establishments. These Acts apply to shops, commercial establishments, restaurants and hotels and place of an amusement. These Acts prohibits the employment of a child in shops and establishment and he can not be employed even as the family members of the employer. The age requirement varies from 12 to 15 year in states. The working house for children is generally from 6.00 a.m. to 7.00p.m. The State of Utter Pradesh has codified U.P. Dookan Aur Vanijya Adhishthan Adhiniyam 1962 to regulate conditions of work in shops and establishments subject to the provision of the act. The U.P. Act prohibits employment of children below 14 year. The children are not permitted to work during night. It may be submitted that now the central enactment namely child labour (Prohibition and Regulation) Act, 1986 shall prevail where there is conflict between the provisions of the States Acts to the extent of repugnancy.

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

In exercise of powers under Article 34(a) (ii) of the constitution Parliament passed this Act in 1976. The Act abolished bonded labour system and bonded labourers were freed and were discharged from any obligation to render any bonded labour and their bonded debts were also extinguished. The Act further affords protection to the freed bonded labourers from eviction from their homestead. Contravention of the provisions of the Act has been declared offence. The Act also makes provisions for follow up measures and economic rehabilitation of freed labourers.
The Child labour (Prohibition and Regulation) act, 1986

The intention of the Parliament to bring this legislation into existence is to prohibit the engagement of children into certain employment and to regulate the conditions of work of the children in other employment. It contains the directive that no child shall be employed or permitted to work in any occupation connected with:

1. Transport of passengers, goods or mail by Railways.
2. Cinder picking, cleaning of an ash pit or building operation in the Railway premises.
3. Work in catering establishment at a Railway Station; involving the movement of vendor or any other employee of this establishment from one platform to another or into or out of the moving trains.
4. Work relatively to the construction of a Railway Station or with any other work where such work is done within close proximity to or between the Railway lines and.
5. A port authority within limits of any port or in any workshop where in any process like bidi making, carpets wearing, cement manufacturing, cloth printing and fine work, mica-cutting and splitting, shell manufacturing, tanning, wool cleaning, building and construction industry are carried on by the employer.

The employer has been put under statutory obligation to the effect that he cannot permit the child to work in his establishment in excess of such number of hours as may be prescribe by law for such establishment from time to time. The Act lays down that no period of works as such shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour. He has been permitted to enjoy a holiday of one whole day in each week. The Act authorises the appropriate Government to make rules for the health and the safety of the children employed or permitted to work in any establishment by notification in official gazette. The Act also includes the penalty provision.
Whosoever employs any child to work in contravention of provisions of this Act has been made punishable with imprisonment or fine or with both? Provisions have been made to constitute Child Labour. Technical Advisory Committee with a view to extended advice on the occupation and the process to the schedule. The Government has been empowered to appoint inspectors for the purpose of securing compliance with the provision of this Act.

It is crystal clear that after independence a new brand of jurisprudence, the ‘child welfare jurisprudence’ has developed in our country. The intention behind all child welfare legislation is to safeguard their interest and promote the welfare in every walk of their life. All legislation dealing with child welfare is obligatory and binding on the employer even if they are in acceptable to him. The birth of child welfare legislations in our country may be describe to the constitution of India which made more articulate and clear philosophy of child welfare. Accordingly, Parliament and the State Legislature have helped a lot in shaping the entire child welfare jurisprudence through legislations.

A brief discussion of the constitutional mandates, different enactment dealing with child labour reveals that only a few statutes relating to children were enacted during the pre-independence era. Since independence, however, the state has become fully conscious of its welfare functions and of its responsibility to words children and consequently codified a number of enactments in consonance with the Directive Principles of the State Policy as enshrined in the Constitution of India, ILO convention and recommendations and adopted various measures for the betterment and welfare of children, nevertheless the child labour is ensuring day by day indicating black spots, ambiguities and deficiencies in the present legislative measure.

Child labour and other forms of child exploitation is an international reality. It is a blemish on the society in which it occurs. Many reasons are being adduced for the persistence of this reality. In the west, there may not be many tokens for the view that poverty is the cause or at least one of the major causes of this social evil. The reason for this perception may be because child labour exists even in
developed countries where poverty is supposed to have been eliminated. Whatever the position elsewhere, certainly poverty is one of the important reasons though not the only reason for child labour in India. Though child exploitation in the form of child labour is a social reality, the government does not do enough to eradicate social evil. Social activists feel a deep sense of shame and revulsion at the existence of child labour in the developing countries and seek to create awareness and arouse public opinion and appeal to the consciences of society against it. They seek to influence the law makers and policy makers in the comity to make suitable legislations. Unfortunately the law makers pass laws and the executive make policy statements. But they do very little to ensure the execution of the laws which they have themselves passed or piloted. The outcome of these is the continuous spurt in child labour. The Government should integrate child development with the major programmes of human development; poverty and child labour are so inextricable interwoven, that one can not be eliminated the other.

The Governmental has been making efforts consistently to protect the child labour by prohibiting their employment in absolute terms in hazardous employments as well as to regulate the employments of child labour in order to prevent their exploitation by the employer in other areas of employments by ensuring effective implementation of Child Labour (Prohibition and Regulation) Act, 1986. In order to accomplish this task in the year 1987, the Government of India announced three pronged National Policy on child aiming firstly to prevent exploitation in case of their withdrawn from prohibited areas of employment. This policy was mainly intended to ensure effective and meaningful implementation of the Child Labour (Prohibition and regulation) Act, 1986 and other relevant provisions of the labour legislation dealing with child labour under the legal action plan secondly, to formulate and implement project based plan of welfare and development for the child labour which provided for 30,000 children in 10 projects in the first phase having a budget of 11 crores with object of rehabilitating these children after being with drawn for prohibited areas of employment. The basic objective of the programme has been to
improve the health, nutritional status working conditions quantification and professional skill of the child labour. Regarding these programmes doubts have been expressed due to the fact that earlier programmes of the government enforced for the purpose of providing welfare facilities to the working children in various districts of Eastern Utter Pradesh e.g. Sivakasi, Mirzapur, Bhadohi, Varanasi, etc, failed to provide good and encouraging results.

Judicial Response to Child Labour

We, in India have given to ourselves a written constitution guaranteeing justice, liberty and equality. We attempted to achieve administrative and political unity and an economic and social revolution under a democratic constitution; we aimed at a ‘synthesis’ which could give economic justice with political safeguards and political justice with economic safeguards. For achieving these objectives, we have three organs of government, the legislature, the executive and the judiciary. Each of these is supreme within the sphere allotted to it. To interpret the constitution, keep the three organs of government within their allotted spheres and enforce the rule of law and independent authority is absolutely essential and this is furnished by the court of justice. The Supreme Court of India, at the apex has been assigned a very important role and constituted as a guardian of the constitution which is the yardstick of ground norms for other legislation.

Our constitution accords a dignified and crucial position to the judiciary. It is the greatest unifying and integrating force of our country. The Supreme Court is at the apex of the well ordered and well regulated judicial structure of the country. It expounds and defines the true meaning of law. It is the ultimate interpreter of the constitution and this puts a second break on the legislature and the executive the first being the political check of the people themselves. The constitution puts on

2 Ibid. P. 6.
3 Ibid. P. 6.
obligation on every organ of the state, including the judiciary, to usher in a new social order in which justice-social economic and political and equality of status and opportunity, prevail\textsuperscript{1}. The final burden of interpreting these elastic provisions is upon the courts\textsuperscript{2}. Courts are to contribute to law’s growth without overstepping the boundaries of the system in other words, how to reconcile tradition and convenience to the claims of stability and those of change. “It is the duty of the judiciary to recognize the development of the nation and to apply established principles of the positions which the nation in its progress from time to time assumes. The judicial organ would otherwise separate itself from the progressive life of the community and act as a clog upon the legislative and executive department rather than as an interpreter\textsuperscript{3}”. Indian judiciary is charged with the duty of holding the balance even between a state or states and the union and between the state and the citizen, and some times between the states and the individual. It has to hold the scales even in the legal combat between the rich and the poor, the mighty and the weak without fear or favour\textsuperscript{4}. The role of judiciary in India has been quite significant in promoting the child welfare. Mr. Justice Suba Rao, the former Chief Justice of India, rightly remarked,

“Social Justice must begin with child unless 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”\textsuperscript{5}.

It is in this spirit that the apex court has laid emphasis on the fact that the important task of social justice is to take care of child, for him lies the hope of nation’s future.

\textsuperscript{1} The Preamble of the Constitution of India.
\textsuperscript{2} Justice Khanna, H. R. Indian Express, July 28, 1981.
\textsuperscript{3} Sir Newton, Isaac (1992), quoted in Doctrine of Stare-Decisis, Prospective Overruling acquiescence- A critique, by Ram Lajput, (1968), 2 SCJ, I (Journal Section).
\textsuperscript{4} Supra Note 3, P. 11.
The constitution of India is a social document which imposes an obligation on every organ including the judiciary to transform the status quoante into a new human order in which there will be equality of status and opportunity for all. The judiciary has, therefore, a socio-economic destination and creative function. In the same spirit the judiciary in India has played a significant role in promoting the child welfare. It is in this spirit that the apex court has laid emphasis on the fact that the nation is to take care of the child, for in him lies the hope of nation’s future. The Supreme Court of India has rightly held in Vikram Deo Singh Tomar vs. State of Bihar\(^1\) that it is the constitutional duty of the state to abide by the constitution standard and provide at least the minimum conditions ensuring child’s dignity. Describing the ‘care home’ Patna as a crowded hotel in which a long number of human being had been thrown together, compelled to subsist in conditions of animal survival, the Supreme Court directed the state of Bihar to takes immediate steps to comply with the various directions given by the court for the welfare of the children of the care homes. The Hon’ble Court showed a particular regard for children and felt the need to afford them opportunities to live with the human dignity and maintain establishment for the care of these unfortunates who were the caste ways of an imperfect social order and for whom necessary provision, must be made for their protection and welfare. The court was highly critical about the miserable conditions of the establishment where the children and women were detained compelling most of them to sleep on broken floors in damp and dark condition with no covering whatever to protect them from the chilly wind and near freezing temperatures of the North India winter who were fed a wretched health denying diet, were denied the basic amenities of convenient toilets and a private bathing place, who if they complained, were beaten up although attacked by diseases and illness were unable to find timely medical relief. The court further directed the State Government to renovate the existing building, in which the inmates were housed and provide sufficient amenities by way of learning rooms, bathrooms, toilet within the building also to provide adequate water, 

\(^1\) AIR, 1988 SC 1782.
electricity, suitable range of furniture, including cots and adequate number of blankets and bed sheets$^1$.

The court was equally aware of the need to provide justice to these unfortunate fellow beings and thus the court held vehemently, "The time has come when the courts must become the courts for the poor and struggling masses off this country. They must shed their character as un-holders of the established order and the status quo. They must be sensitized to the need of doing justice to the large masses of the people to who justice has been denied by a cruel and heartless society for generation". In order to save the children from professional hazards, the court held that employment of children under the age of 14 years should be employed in the construction work and the Union of India and also every State Government must ensure that this constitutional mandate is not violated in any part of the country. Accordingly, the court directed every State Governments to amend schedule of Children Act, 1938 without any undue delay because construction work was clearly a hazardous occupation$^2$.

Frankly speaking the court has played a parental role while directing the Central Government to persuade the workmen to send their children to nearby school and arrange not only for the fee to be paid but also provide free of charge, books and other facilities such as transportation. The court also put forth the suggestion that whenever the Central Government undertakes a construction project which is likely to last for sometime, the Central Government should provide that the children of the construction's labourers who are living at or near the project sites should be given facilities for schooling and this may be done either by the Central Government itself or if the Government entrusts the project work any part their of to a contractor, necessary provisions to this effect may be made in the contract with the contractor$^3$.

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$^1$ AIR, 1988 SC 1782.
$^2$ People's Union of Democratic Republic vs. Union of India, AIR, 1982 SC. 1473.
The court, however, pleaded for the positive role to be played by the Government and desired that attempt must be made to reduce, if not eliminate the incidence of child labour, because it was absolutely essential that a child should be able to receive proper education with a view to equipping itself to become a useful member of the society and to play a constructive role in the socio-economic development of the country1.

Similarly, a sincere effort have been done by the Supreme Court to uphold the dignity of the children born to prostitutes by rejecting the submission that provision should be made for separate schools and hostels for children of the prostitutes2. The court was of the review that separating prostitutes’ children by locating separate schools and providing separate hostels would not be in the interest of such children and of society at large. The court further added that children of prostitutes should not be permitted to live in interne and the undesirable surroundings of prostitute homes. This is particularly so for the young girls whose bodies and minds are likely to be abused with growing age for being admitted into the profession of their mothers.3 Accordingly, instead of disposing of this writ petition with a set of direction, a committee, comprising of seven members, was constituted to examine the material aspects of the problem and submit containing recommendations to the court on the basis of which further orders were to be made4.

It is thus evident from the judicial trend that the issue of child welfare remained always under the active consideration of the apex court, Bhagwati; J.(as he then was) in Laxmi Kant Pandey vs. Union of India5 has expressed his viewpoint on the importance of children in the following words: “It is obvious that in a civilized

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2 Gaurav Jain vs. Union of India, AIR, 1990 SC. 292.
3 Ibid.
4 The Report of the Committee is Still Awaited. Also see Vishal Jeet vs. Union of India, AIR, 1990, SC. 1412 at 1417.
5 AIR, 1984, SC., 469.
society the importance of child welfare cannot be over-emphasized because the welfare of the entire community, its growth and development, depend on the health and well being of its children. Children are a supremely important national asset and the future well being of the nation depends on how its children grow and develop”. The question of the child welfare seems to have caused considerable anxiety to the court in eradicating sexual exploitation of children. Perhaps, it was due to this reason that the Supreme Court of India gave certain directions in this regard to State Governments and union territories. In the same case Supreme Court laid down the procedure to be followed in adoption of children. It quoted with approval of the report of the study team on social welfare where it was said: “The physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages”.

The Supreme Court also quoted with approval from the National Policy for the welfare of children where it was said: “The nation’s children are supremely important asset. Their nature and solicitude are our responsibility, children’s programme should find a prominent part in our national plane for the development of human resources so that our children grow up to becomes robust citizens, physically fit, mentally alert and morally healthy endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim for this would serve our larger purpose or reducing inequality and ensuring social justice. Thus, the judicial response to the child welfare is positive and progressive to secure in particular to education, economic exploitation, a healthy environment, nutrition, living condition and employment in like construction work.

The strength of any society depends on the health and welfare of the child. It is in this perspective that wise founding fathers of our constitution have envisaged many provisions for their welfare which cast an obligation on each any

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1 AIR, 1984, SC., 474.
2 Ibid.
3 Laxmi Kant Pandey vs. Union of India, AIR, 1993 SC. 118.
every instrumentality of the state, including the judiciary, to transform the status quo ante into a new human order in which there will be equality of status and opportunity for all the children, high or low\textsuperscript{1}. The constitution accords a dignified and crucial position to the judiciary which expounds and defines the true meaning of the law\textsuperscript{2}. There is no denying the fact that Indian judiciary has put earnest effort and shown deep interest in promoting the welfare of child workers in the light of philosophy and spirit contained in our National Charter. The apex court has introduced new method in the form of Public Interest Litigation to provide justice to the poor and weaker sections of the society. It is generally seen that all the working children come from the poor families and there are no means to ventilate their grievances that their fundamental rights are being breached with impunity. Thus, this method of Public Interest Litigation is available to those who are denied basic rights and for whom liberty and freedom have no meaning\textsuperscript{3}. The history of Public Litigation started when the Supreme Court entertained a letter, sent by post as Public Interest Litigation in \textbf{People's Union for Democratic Rights Vs Union of India}\textsuperscript{4}, popularly known as \textbf{Asiad Case}. It was contended that the employment of children Act, 1938 was not applicable in the case of children employed in the construction work of Asiad Project in Delhi. The activist Supreme Court rejected this contention and held that the construction work is hazardous employment and it is clear that the reason of constitutional prohibition that no child below 14 year can be allowed to be engaged in construction work\textsuperscript{5}. Further, a high water mark in the application of Article 24 of the constitution has been reached in the decision of the Supreme Court in \textbf{Labourers Working on Salal Hydro Project vs. Jammu & Kashmir}\textsuperscript{6}, where in the court

\textsuperscript{1} Jacob, Alice and Kumar, Kusum, “Child Welfare”, in Jain, S.N., (Ed.), Child and the Law (1979), Mittal, J.K. and Bansal, V.K., P. 441 and also see Austin, Granville, P. 50.
\textsuperscript{3} S. P. Gupta vs. Union of India, AIR, 1982, SC. 149; Fertilizer Corporation Kamgar Union vs. Union of India, AIR 1980, SC. 1622; Ram Kumar Mishra vs., State of Bihar, AIR 1984, SC. 537; and also see Bandhua Mukti Morcha vs. Union of India, AIR, 1984, SC. 802.
\textsuperscript{4} AIR, 1982, SC. 1473.
\textsuperscript{5} Ibid. P. 1480.
\textsuperscript{6} AIR, 1984, SC. 183.
reiterated the above ruling. It was held that whenever the Central Government under takes a construction project which is likely to last for some times, the Central Government should provide to the children of construction workers who are living at or near the work site facilities for schooling, and this may be done either by Central Government or through contractors if the work is entrusted to the latter.

In **M.C. Mehta Vs state of Tamil Nadu**\(^1\) the Supreme Court while expressing grave concern on the plight conditions of the child workers, observed that the provision of Article 45 in the Directive Principles of State Policy had still remained a forever, though according to this provision all children up to the age of 14 year were supposed to be in school. However, the court moved by the social reality, did not absolutely prohibit children to work in the prohibited occupation. The court recognized the socio-economic realities and held that children could be employed in the process of packing, it however, from the place of manufacturing to avoid exposure to accident. It held that every child must be insured for a sum of Rs. 5,000 and premium to be paid by the employer as a condition of service. Further, the Supreme Court in, **Sheela Barse Nurse vs. Secretary Children Aid society & others**\(^2\) held, “If there is no proper growth of children of today, the future of the country will be dark. It is the obligation of every generation to bring up children who will be citizens of tomorrow in a proper way. Today’s children will be leaders of tomorrow who will hold the country’s banner high and maintain the prestige of the nation.

Further, in **Laxshmi Kant Pandey Vs Union of India**\(^3\), the Supreme Court took active steps to abolish bonded domestic service and slavery of poor which had been in practice under the guise of foreign parents. The courts have shown vigorous courage to point out that both State and Central Governments have badly failed to execute the spirit of labour welfare legislations and with the result that there is witnessed a large scale violation of the provision and there by the employers have

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3 (1987), 1 sec. 667.
miserably exploited the innocent child workers. Similarly the Andhra Pradesh High Court in its momentous decision in Murali Krishna Public School Case\(^1\), held that “Right to education to Dalits is a fundamental right and it is the mandatory duty of the state to provide adequate opportunities to advance educational interests by establishing schools.” This landmark decision has paved the way for better educational opportunities for Dalits children. The Dalits, hitherto neglected specimens of humanity, who are dragging their earthly existence under a grinding poverty have now been encouraged to claim their right to education as their fundamental right and compel the state to take positive action to provide educational facilities to their children. Justice Kuldeep Sing has gone one step further while declaring the unequivocal words that right to education is concomitant to fundamental rights enshrined under part III of the constitution\(^2\). Similarly, in J. P. Unikrishnan vs. State of Andhra Pradesh\(^3\), the apex court maintained that right to free education up to the age of fourteen years is a fundamental right under Article 21 of the constitution. Thereafter, the right to education is subject to the limits of economic capacity and development of the state for the reasons that higher education call heavily on national economic resources and social circumstances. What is thus, transpired from the decision of Unikrishnan’s case is that the apex court has for the first time in the judicial history declared that the right to education up to 14 year as fundamental right with the result that it will necessarily enable the poor children to have access to education which will enable them in achieving social economic and political justice.

**Child Labour is Violative of Human Dignity**

The human dignity is an important aspect of the right to life guaranteed under Article 21 of the constitution of India. Its importance has been highlighted by C. J. S.M. Sikri when he observed that the supremacy of the constitution and its basic structure of the constitution which consists of secular and federal character,

\(^1\) AIR, 1968 A. P. 204.
\(^2\) Mohini Jain vs. State of Karnataka, AIR 1992 SCW 2100.
\(^3\) AIR, 1993, SC. 2178.
republican and democratic forms of government and separations of power are built on
the basic foundation i.e. dignity and freedom of the individual. Similarly
Chandrachud, C. J., also observed that the dignity of the individual could be preserved
through the liberty and equality. They V.K. Krishna Iyer, C. J. in the case of Inder
Singh Vs. State, held that the spiritual basis of our constitutional order is
human dignity and social justices and not the sadistic cruelty and hard confinement.

In Francis Coralis Mullin Vs. Administration, Union Territory of Delhi, The
Supreme Court observed that we think that right to life include the right to live with
human dignity and all that goes along with it, namely: the bare necessaries of life
such as adequate nutrition, clothing and shelter and facilities for reading writing and
expressing one self in diverse from, freely moving about and mixing commingling
with fellow being, right to protect against torture, cruel and inhuman and degrading
treatment. The child labourers are firstly children and then labourers so they should
also not be treated cruelly and inhumanly.

In Bandhua Mukti Morcha vs. Union of India, Justice P.N.
Bhagwati, observed: It is the fundamentals right to every one in this county assured
under the interpretation given to Article 21 to live with human dignity, free from
exploitation. This right to live with human dignity enshrined in Art. 21 derives its life
breath from the Directive Principle of State Policy and particularly clauses (e) and (f)
of Art 39, 41 and 42 and therefore, it must include protection of the health and
strength of workers, men and women and the tender age of children against abuse,
opportunities and facilities for children to developed in an healthy manner and in
conditions of freedom and dignity, educational facilities, just and human conditions of
work and maternity relief. There are the minimum requirements which must exist in
order to enable a person to live with human dignity and no state neither the Central

3 (1978), 4 SCC. 161.
4 (1981), 1 SCC., 618.
5 AIR, 1984 SC., 802.
Government for the States Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials which go to make up a life of human dignity

In the light of Supreme Court judgment in the cases of Maneka Gandhi and Sunil Batra, any kind of brutality constant fear of violence, psychological restraint, encroachment of person, destruction of any organ of the body through which the soul communicates with the outer world, physical assault, allotment of degrading labour, lack of adequate medical care, poor food service, inadequate or non-existent rehabilitative and educational facilities and payment of nominal subsistence allowance have been forbidden, under Article 21 of the constitution of India. However, it remains a bitter truth that in most of the case the little workers are not provided adequate medical care, rehabilitation and educational facilities good food service, payment of normal subsistence allowance and so on. Then the apex court in L. K. Pandey vs. Union of India, observed that welfare of entire community its growth and development depends upon the health and well-being of its children and that children need special protection because of their tender age and physique, mental immaturity and in a capacity to look after themselves.

The Supreme Court is of view that the construction work is hazardous employment and hence to child below the age of 14 years can not be allowed to be employed in construction work, in the case of M. C. Mehta vs. State of Tamil Nadu. This court has said that the children must be provided basic diet working period. However, the court could not maintain its activism and championship for the rights of the child in this case when it went out of tune with the constitutional spirit

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2 (1978), 1 SCC. 248.
3 (1978), 4 SCC. 494.
4 Art. 21, Constitution of India.
and aspirations envisaging a fair deal for children. It is a matter of surprise that Hon’ble Supreme Court in this case allowed children to be employed in match factories of Siva-Kashi in Madras, where admittedly hazardous manufacturing process of match and fire works is carried on the Hon’ble Court could not force that risk is also involved in sorting out and processing for the purpose of packeting of such objects, when it observed that tender hands of young workers are more suited to sorting out the manufactured products and process it for the purpose of packing. Going a step further against the rights of the child it considered children’s special adoptability working in match and fire works in sorting out and packing manufactured products and ruled that at least 60 parent of the prescribed minimum wages for an adult worker doing the same work should be given to the child worker.

**Judicial Interpretation of Life and Liberty of Child Labour**

With the changing attitude of the courts, there has been a realistic view of position of children and is in agreement with the prevailing condition of Indian society. Critical analysis of the judicial interpretation can be viewed in two angles, namely, the expression of personal liberty and the expression ‘condition of employment’.

1. **Personal Liberty**

The Supreme Court has magnified the scope of Article 21 to include with in its ambit the right to food, the right to clothing, the right to shelter, the right to decent involvement etc. But it seems the human rights syndrome of the Indian jurisprudence has yet not expanded enough to include the right of the child to live with dignity.

In yet another instance, an epoch making judgment was rendered by two judge bench of the apex court, comprising Mr. Justice M. M. Punchhi and Mr. Gupta, Sriniwas (1994), “Human Rights of the Child and Judicial Activism in India”, Published in the Central India Law Quarterly (CILQ), Vol. 7, P. 133-68.


Justice B.P.J. Reddy, in the case of Balmazdoor Union Vs. Registrar of Trade Union, it was held that the right to form a union being a fundamental right there should be no age limit. In the instant case, the union had approached Registrar of Trade Union, who refused to grant registration to the union under the Trade Union Act, 1926. A writ petition was filed in Delhi High Court, challenging the decision of the Registrar. The High Court refused to admit the petition as it found “no merit in it”. The Union’s counsel, Mr. Soli Sorabjee, moved the Supreme Court and stated that it was necessary to register the children’s union for child workers were not organized not were there any proper rules, working hours limit and health facilities. Further, it was argued that the Government’s refusal to do the same was violative of the United Nations convention on the Rights of the Child, ratified by India in the year 1992¹.

2. Conditions of Employment

The liberalized rule of locus standi has been reflected in various Supreme Court’s decision including Bandhua Mukti Morcha vs. Union of India. In People’s Union of Democratic Rights Vs. Union of India², commonly known as, Asiad Case. The Supreme Court ruled that Article 24 is enforceable against and by reason of its compulsive mandate and no one can employ child below 14 years in hazardous employment³.

While the Supreme Court in Bandhua Mukti Morcha vs. Union of India⁴, gave direction to the State Government of U.P. to frame a scheme for rehabilitation of children employed in carpet manufacturing industries.

While in M.C. Mehta Vs state of Tamil Nadu⁵, a petition under Article 32 of the constitution had been brought by way of Public interest litigation before the Supreme Court. It related to the problems of employment of children in match factories of Sivakasi. In this case, the question arose as to whether children

¹ Reported in, The Times of India, 28th, Nov., 1993.
² AIR, 1982, SC, 1473.
³ AIR, 1982, SC, 1474.
⁴ (1986), (SUPP) SCC. 553.
could be employed in the process of packing if such packing was done in an area away from the place of manufacture. The court was of the view that children should not be employed in factories as childhood is the formative period. However, the court opined that the compulsory insurance scheme should be provided for both adult and children employees taking into consideration the hazardous nature of employment. The State of Tamil Nadu shall insure that every employee working in these match factories is insured for sum of Rs.50,000/, and the Insurance Corporation, if contacted should come forward with a viable group insurance scheme to cover the employees in the match factories of Sivakasi area¹.

Various International provisions Indian constitutional provisions, welfare enactments and judicial verdicts are only teasing illusion and promise of unreality unless they are effective and make the right to life to the child driven to labour reality, meaningful and happy. Inspite of all the legal remedies for the elimination of child labour it is hard reality that due to poverty child is driven to be employed in a factory.

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¹ AIR, 1991, SC., P. 419.