CHAPTER - 6

Child Labour Act, 1986

Introduction

It has been noted that India has enough of laws and international commitments to abolish begar system and bonded labour, to divert the childhood from the field of labour to premises of schools and to ensure a healthy environment for his all round development. So much so we have made right against exploitation a fundamental right enforceable in a court of law and right to free education though mentioned in directive principles, yet a decision of Supreme Court of India\(^1\).

In spite of all this the magnitude of the problem is almost the same. We have system of bonded labour and begar and the child labour is still being exploited, free education is still a mockery and statistics relating to drop outs from schools are alarming. Does it mean that we have no done any thing so far? Certainly it is not so. Much has been done in this direction. So far as system of begar and bonded labour is concerned our courts and social activist organizations have done a commendable work and legislation has also been enacted. But to eradicate any such evil legislation alone is not enough.

It does help in generating public opinion. What is more important is the preparedness of the society and political will. It can’t be said that society in general does not hate or does not want to eradicate the practice of the bonded labour, begar and evils associated with it. Though we have democracy sometimes will of the people does not coincide with the political will. All such evil practices are being adopted by those who have money and muscle power. They manipulate votes in election either by show of force, pursuasion or booth capturing. Almost all political parties are dominated by such elements. No party can afford to ignore them. They, therefore, violate laws with impunity. A few social activists have come out with courage and

judiciary has also in recent years used its tools to help them but their efforts are foiled by this dominating element. They will not be able to deliver the goods unless people at large come out with courage and determination.

So far as the problem of compulsory schooling and prohibition of child labour is concerned both are interrelated and success depends on eradication on poverty.

Those, who are on the verge of starvation and unable to make both ends meet, can't afford schooling of their children and will have to depend upon their contribution to the family income. By plenty of legislation forbidding child employment we have succeeded in stopping their employment in organized sector, but it could not force them to school. They have been diverted to unorganized employment, where there condition is still worse because there they have to work for a longer period daily and wages are comparatively less than in organized sectors. They are also denied other benefits such as better working condition, weekly rest, chances of promotion etc\(^1\).

To solve this problem it is necessary to examine the factors which compel the parents to engage him in employment rather than to send him to school for education. Of course, we had a social setup in which substantial section of the community was not supposed to receive education. Though under present setup there is no such ban on any section yet some lingering effect of the past deprivation is still there. Any how in post independence period there is a remarkable awakening and barring exceptional cases people by and large have a desire that there children should also be well educated and prosperous. What really comes in the way is their poverty and helplessness. Unless they have alternative source to feed the family over all efforts will be fruitless.

Object and Purpose of the Act

This is an Act to prohibit the engagement of children in certain employments of Hazardous nature and to regulate the conditions of doing work for the children in certain other employments of non-hazardous nature. Although there are few legislations which prohibit employment of children below 14 years and 15 years in certain specified employments but no specified procedure has been laid down in these legislations for deciding matters relating to employments, occupations or processes which necessitates the prohibition of employment of children therein. At the same time there is no law for regulating the working conditions of children in most of the employments where employment of the children is not explicitly prohibited and the children are working overthere under exploitative conditions. The Bill to the Act put forth the intention of this statutory enactment which is basically to ban the employment of the children below the age of 14 years in specified occupations and processes. Secondly to lay down a procedure for introducing modifications to the schedule of banned occupations or processes from time to time whenever need arises. Thirdly to regulate the conditions of work of children in employments where they are not prohibited from working, fourthly to prescribe enhanced penalties for employment of children in case of violation by the employers of the relevant provisions of this Act and other relevant Acts which prohibit the employment of the children and finally to bring informality in the definition of the 'child' in the related legislations.

Scope of the Act

It has been provided in Section 3 that the children shall not be employed or permitted to work in any of the occupations set-forth in Part-A of the Schedule. This part includes occupations connected with (a) Transport of passengers, goods or mails by railway; (b) Cinder picking, clearing of an ash pit or building operations in

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1 Received the Assent of the President on December 23, 1986 and Published in the Gazette of India, Extra, Part II, Section I, dated 23rd December, 1986, P. 1-9
the railway premises; (c) Catering establishments at railway station which may involve the movement of vendor or any other employee of the establishment from one platform to another or movement of a person into or out of a moving train; (d) It also includes doing of a work in connection with the construction of a railway station or any other incidental work where it requires some work to be done in close proximity to or between the railway lines and (e) such occupations would also include a Port authority within the limits of any port¹.

Such prohibited employments shall also include any workshop wherein any of the processes set-forth in Part-B of the schedule are carries on. The Term 'Workshop' has been defined under this Act any premises wherein any industrial process is being carried on but it shall not include any premises wherein prohibition is in force with regard to employment of young children under Section 67 of the Factories Act which explicitly provides that no child who has not completed his 14 years shall be required or allowed to work in any factory. Part-B of the Schedule includes following processes:

a. Bidi making
b. Carpet weaving;
c. Cement Manufacture including bagging of cement;
d. Cloth painting; dyeing and weaving;
e. Manufacture of matches, explosives and fireworks;
f. Mica cutting and splitting;
g. Shallac manufacture;
h. Soap manufacture;
i. Tanning;

Workshop wherein any process is carried on by the occupier with the aid of his family or if the process is carried on in any school established by or receiving assistance or has recognition from the Government are excluded.

This list of hazardous industries provided in the schedule is not comprehensive one due to the fact that many industries which expose child labour to hazardous working such as glass; slate and pencil industries etc., have not been included in the schedule inspite of the fact that in glass industry children are required to work at a high temperature which some times is in between sixteen to eighteen hundred degree centigrade. At the same time while they are working in slate and pencil industry they inhale dust and led particles which adversely affect in an injurious manner their lungs thereby endangering even their life. Surprisingly children are made to work in their own home as well as children are made to work in their own home as well as children working in family employments which means that children working in schools which receive assistance from the Government are not included within the purview of this Act inspite of the fact that such children are exposed to same type of hazardous working as the common child labour exemption provided to home industries in this manner adversely affect the interest of such children who are being exploited by their own parents. This problem is more common, particularly, in case of child labour working in their own agricultural forms. Keeping in view all these factors, it would not be wrong to state that this legislation mainly, Child Labour (Prohibition and Regulation) Act, 1986 has limited scope rather than having extensive application as intended by the legislature at the time of the enacting and enforcing this statutory enactment. Therefore, an urgent need is being felt to amend this legislation extensively.1

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Although, under section four of the Act the Central Government has been empowered to add any occupation or process to the Schedule providing for the list of hazardous establishment after issuing official notification in the official Gazette and giving notice of three month to the concern party before adding any occupation or process to the schedule but for the last so many years, it has been experienced that only few industries have been included in this schedule for the last seven years as provided in the Section 4 of the Act.

**Child Labour Technical Advisory Committee**

Power is vested in the Central Government to constitute an Advisory Committee to be called the Child Labour Technical Advisory Committee for the purpose of rending advice to the Central Government in respect of inclusion of more occupations and processes to the Schedule providing a list of hazardous industries. Thus committee is to comprise of a chairman and members not exceeding ten who may be appointed by the Central Government, as provided in section 5 of the Act. The Term of Office of the members of the Committee is for a period of one year from the date on which notification for their appointment is made in the official gazette. The Central Government has been empowered to extend the term of office of the members of the committee for a maximum period of two years but a member continue to hold office unless his successor is appointed\(^1\). The Secretary of the Committee is to be appointed by the Central Government who should be a Government official not below the rank of an Under Secretary to the Government of India\(^2\).

**Term of Members of the Committee**

Although term of each member of the committee is for a period of atleast one year at the first instance but the Central Government has been empowered to remove any member of the committee including the chairman after giving such

\(^1\) Rule 3 of Child Labour (Prohibition and Regulation) Rules, 1988.
\(^2\) Ibid. Rules. 4.
persons a reasonable opportunity of showing cause against the proposed removal of such persons. A member would cease to be member of the committee if he fails to attend without the permission of the Chairman three or more consecutive meetings of the committee or has been declared to be of unsound mind by a competent court or has been convicted of any offense involving moral turpitude or has been adjudicated to be insolvent at any time or has been suspended his debts or compounded with his creditors. In place of such member the Central Government would be empowered to appoint another person who shall hold office for the unexpired part of the term of a predecessor.

**Essential Requisites of a Valid Meeting**

The time and place of the meeting is to be fixed by the Chairman. The Secretary to the committee is required to give notice of at least 7 days to each member of the committee regarding the time and place fixed for each meeting along with the agenda of the business to be transacted at the said meeting. The Chairman of the committee is to preside over the meeting of the committee and in case of his inability to attend a meeting; the members present in the meeting may elect a member for presiding at the meeting. At least three members of the committee in addition to Chairman and Secretary should be present by constituting the quorum for the meeting otherwise no business can be validly transacted at the meeting of the committee. In the absence of quorum the Chairman may adjourn the meeting and notify other members regarding the dates and the place of adjourned meeting and the Chairman shall be legally empowered to dispose of the business at such adjourned meeting irrespective of the number of members attending the meeting.

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2. Ibid. Rule 8.
3. Ibid. Rule 10.
4. Ibid. Rule 11.
5. Ibid. Rule 12.
Decision by Majority of Members

All questions considered at meeting of a committee are required to be decided by majority of votes of the members present and voting and in the event of equality of votes, the Chairman, or in the absence of Chairman, the member, presiding at the meeting shall have a second vote which may be casted by him for deciding majority.¹

Power is vested to the committee under Section 5 of the Act to constitute one or more such committee for considering any particular matter which may comprise of even any person who may not be member of the committee. The sub-committee so constituted may be required to discharge such functions as may be delegated by the committee to such subcommittee.

The matters relating to the term of office of each member and the allowances payable to the Chairman and other members of the committee, the conditions and restrictions subject to which the committee may be appointed and all other related matters are to be decided in accordance with the prescribed procedure.

The Child Labour Technical Advisory Committee is expected to play a significant role, particularly, by declaring from time to time different occupations or processes is as hazardous one on the basis of nature of the work to be done by the child labour over there and the impact of working conditions on the health and development of the children working overthere in order to protect the health of such children. But the committee had not been in a position to play this role to the desired extent.

Scope of Child Labour Act, 1986 for Employing Children

Section 6 of the Act provides that children can be employed in an establishment or class of establishments in which none of the hazardous occupations

or processes are carried on as explicitly provided in Section 3 and the Schedule to the Act. On interpreting Section 6 in context of Section 3 of Act it could be inferred that on the one hand employment of children in hazardous occupation or processes is totally prohibited while their employment in other establishment is permitted subject to regulation of conditions of work such children. The term 'establishment' has been provided liberal meaning as defined in Section 2 Clause a (iv) of the Act and it includes a shop, commercial establishment, workshop, farm, residential hotel, restaurants, eating house, theatre, or other place of public amusement or entertainment. On the one hand this definition is quite exhaustive and on the other hand it is intended to cover within its purview all such establishments wherein employment of the children is quite common and the employees of such establishments are not having effective Trade Unions in order to ensure admissibility of proper working conditions to them or in other words majority of such establishments and the employees engaged therein do not constitute part of the organized labour. Therefore, the legislature at the time of enactment and enforcement of this Act intended to provide protection to such child labour. At the same time from the definition of the 'establishment' it could be conveniently inferred that the child labour engaged in factories, plantations, motor transport, etc., would not be covered within the ambit of Child Labour (Prohibition and Regulation) Act, 1986, but it would not be improper to infer that this Act, 1986 would be supplemental to the Factories Act, 1948, Plantation Labour Act, 1951, Motor Transport Workers Act, 1961, Particularly, in such circumstances where these legislations are silent in respect of regulation of terms and conditions of the employment of child labour.

1 Child Labour (Prohibition and Regulation), Act, 1986, Sections 2, 3 & 6.
Section 7 of the Act explicitly provide that no child shall be required or permitted to work in any establishment in excess of prescribed number of working hours for the child labour. The children will not be required to work at a stretch for a period exceeding three hours and in case he is required to work on any working day for more than three hours he should be compulsorily provided with rest intervals for at least one hour. The total daily working period of the child labour should not exceed and spread over more than six hours inclusive of permissive waiting period for which he is not provided any work but the time is spent by him while waiting to get work. Child labour shall neither be permitted nor be required to work between 7 p.m. at night and 8 a.m. in the morning. From this provision it may be presumed that the child labour can be engaged only during normal working hours in between 8 a.m., in the morning upto 7 p.m. in the evening. Child labour can be required or permitted to do work after normal working hours as overtime. If a child labour has already been working in one establishment he shall not be required or permitted to work in another establishment on the same day. It means a child labour can be engaged for work on any day only in one establishment and not in two or more establishments\(^1\).

Under section 8 of the Act obligation has been imposed on the occupier to provide a holiday of one whole day to child labour in each week and he is required to specify holiday of each child in a notice which may be displayed permanently in conspicuous part of the establishment and such holiday so specified by the occupier can't be altered by the occupier more than once in three months. In part III of the Act which deals with Regulation of Conditions of work of children the legislature has used the term 'occupier' instead of employer so as to impose liability on the person who may be having ultimate control over the establishment. The term 'occupier' has been defined in Section 2 clause (vii) in relation to an establishment on workshop, as

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\(^1\) The Child Labour (Prohibition and Regulation), Act, 1986, Section 7.
the person who has ultimate control over the affairs of the establishment or workshop.

**Service of Notice to Inspector**

(a) Every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of this Act in relation to such establishment shall within a period of 30 days from such commencement, send to the inspector within whose local limits the establishment is situated, a written notice containing the following particulars, namely.

i. The name and situation of the establishment.

ii. The name of the person in actual management of the establishment.

iii. The address to which communications relating thereof should be sent; and

iv. The nature of the occupation or process carried on in the establishment.

(b) Every occupier, in relation to an establishment, in which a child has been employed or had been permitted to work prior to the date of commencement of this Act would be required to send the Inspector within whose local limits the establishment is situated, a notice in writing specifying the name and situation of the establishment, the name of the person having actual control or management of the establishment, communicating address of the establishment and the nature of the occupation or the process being carried out in that establishment within a period of 30 days. This obligation is imposed on the employer under Section 9 of the Act.

Clause 2 of Section 9 imposes obligation on each employer employing or permitting to work any child after the enforcement of this Act all the aforesaid particulars to the inspector within whose local limits the establishment is situated.

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1 The Child Labour (Prohibition and Regulation), Act, 1986, Section 7& 8.
2 Ibid. Section 9.
Exemption to Family Occupation and Schools

Relevant provisions relating to working hours, holidays and other procedural formalities required to be complied with by the occupier as laid down in Section 7, 8 and 9 of the Act would not be applicable in case of occupations carried on by the members of the family including the children as well as by any school established or receiving assistance from the Government or having its recognition. Although legislature intended to exempt aforesaid occupations and establishments to encourage such activities keeping in view peculiar nature but in reality children working over there are subjected to similar type of harassment and exploitation as is applicable in their case in other occupation engaging them. If basic object of this legislation is to prevent their misuse then it is imperative that this exemption should be withdrawn by deleting clause (3) of Section 9 of the Act.

Dispute as to Age

Section 10 of the Act has been enacted with an object to prevent employment of the children in hazardous establishments and to regulate their employment in other occupations. For this purpose age of the child in question operates as a basic factor. Many a time employers procure wrong medical certificates with regard to the age of the children engaged by them with the object of minimizing such misuse power has been conferred on the concerned inspector of the area to challenge such medical certificate by referring the same to the prescribed medical authority so that wrong certification regarding the age of the child could be deleted in a desired manner\(^1\).

Exclusion of children of the aforesaid category from the purview of the Act operates as serious lacunae due to the fact that children working over there are not protected under the umbrella otherwise extending over child labour of same category

\(^1\) The Child Labour (Prohibition and Regulation), Act, 1986, Section 10.
but employed in other occupation. In no respect it could be stated that they are comparatively subjected to less degree of rigorous and adverse working conditions.

**Maintenance of Record of Each Child in Register**

An obligation has been imposed on every occupier to maintain a register in respect of children employed or permitted to work in any establishment providing the particulars regarding the name and date of birth of every child, hours and periods of work of each child and the intervals of rests admissible to them in the register and the particular regarding the nature of work done by each child has to be mentioned. The occupier has to make these registers available for inspection at all times during working hours to an inspector for the purpose of inspection by him. It is mandatory for the occupier of each establishment under section 11 of the Act to maintain complete record of each child in the aforesaid manner as provided in section 11 in respect of each child employed in such establishments.

Obligation has been imposed on every occupier of each establishment including every railway administration, every port authority to display in a conspicuous and accessible place at every station on it railway or within the limits of a court or at the place of work of an establishment in local language as well as in the English language which should contain an abstract of Section 3 and Section 14 of the Act.

**Health and Safety of the Child Labour**

Appropriate Government has been empowered under Section 13 of the Act to make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishment by issuing notification in the official gazette. The rules made by the appropriate Government are mainly intended to protect health and to provide safety to the child labour working in such establishments and clause (2) of Section 13 provides that such rules would be on the

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1 The Child Labour (Prohibition and Regulation), Act, 1986, Sections. 11 & 14.
matter mainly relating to cleanliness in the place of work and its freedom from nuisance, disposal of wastes and effluents; proper ventilation and maintenance of optimum temperature; prevention of dust and fumes inhalation; artificial humidification; lightning; availability of drinking water; construction and maintenance of latrine and urinals under hygienic conditions, availability of spittoons; fencing of machinery; work at or near machinery in motion; prevention of employment of children on various machines; instructions; training and supervision in relation to employment and doing work at or near machinery in motion, fencing of machinery, use of proper device for cutting of power, self acting machines; easing of new machinery; provision for floors, stairs and means of access to the place of work; prohibition for lifting of excessive weights by the child labours; prevention of occurrence of accidents due to explosive of inflammable material and their proper handling as well as proper control of dust and gas produced by such material; use of requisite devices for protection of eyes; requisite precautions in case of occurrence of fire maintenance and safety of buildings and machinery. It may not be out of place to mention that rules framed by the appropriate Governments are on the same pattern as that of health and safety provisions including in the Factories Act, 1948 for the protection of health and safety of industrial workers. Legislature has intentionally left to the direction of appropriate Government to frame rules on the aforesaid subject as it would not be feasibly possible to incorporate statutory provisions under this Act, keeping in view diversity of occupations or establishments covered within the purview of the Act which on the one hand include railways, courts, manufacturing processes and other similar occupations on the one hand and hotels, restaurants, domestic employments, agricultural farming, home based rural and urban employments within its purview. In order to ensure effective implementation of this Act, it is imperative that specific provisions should be incorporated either in the Act or provided in the Schedule appended to the Act as long term policy in order to provide precise and specific guidelines for the protection of health and availability of
safe working conditions to the child labour employed in non-hazardous occupations or employments covered within the purview of the Act¹.

The exemption provide in respect of children working for families operates as serious lacunae in the context of scope of the legislation and it has been quite appropriately observed by some of the experts that proviso legitimises child labour engaged in family business as well as in schools getting grants or having recognition from the Government. This infirmity has rendered the existing enactment ineffective to some extent. At the same time child labour engaged in unorganized sector do not fall within the purview of the Act so statutory protection is not available to such unorganized child labour. All these defects necessitate substantial amendment in the Act so as to widen the scope of the Act.

**Penalties for Violation of Provisions of the Act**

Any occupier employing any child or permitting any child to work in contravention of the provisions of Section 2 is liable to be punished with imprisonment for a term which may be between three months to one year or fine may be imposed on him which shall not be less than Rs. 10,000 but it could also extend to Rs. 20,000 or conviction as well as fine could be imposed against the defaulting occupier as provided in Section 14 of the Act. In case of repeated default, conviction is the only penalty and it shall be for a period of not less than 6 months and could extend to two years².

Section 14 clause (3) of the Act provides for penalties for the violation of obligation imposed upon the employer or occupier being incharge of the establishment in case of non-compliance of procedural obligations imposed under Part III of the Act. For that purpose it is explicitly provided in clause (3) of Section 14 that in case any occupier or person acting on his behalf fails to give notice as required

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¹ The Child Labour (Prohibition and Regulation), Act, 1986, Section. 13.
² Ibid. Section 14.
under Section 9 or fails to maintain a register as provided under Section 11 or makes any falls entry in any such register or fails to display notice containing an abstract of Section 3 and Section 14 as required by the occupier under Section 12 or the occupier contravenes any other relevant provision of this Act or the Rules made thereunder such person shall be punished with simple imprisonment extending to one month or fine may be imposed against him upto Rs. 10,000. Penalty in terms of conviction as well as imposition of fine could also be imposed under Section 14 against the defaulting occupier.

**Imposition of Penalty for Contravention of other Related Labour Legislations**

Section 15 of the Act provides that in case any person is found guilty of contravention of section 67 of the Factories Act, 1948 which explicitly prohibits employment of children of less than fourteen years of age in any factory or any person incharge of the mine engages any person below the age of 18 years to work in any mine or any part thereof in contravention of Section 40 of the Mines Act, 1942, or if any person violates Section 21 of the Motor Transport workers Act, 1961 which prohibits employment of the children in any capacity in any motor transport under taking or if any person violates Section 109 of the Merchant Shipping Act, 1958 which prohibits the employment of the children in merchant shipping in all such cases the defaulting occupier shall be liable for the penalty in the same manner and to the same extent as provided under Section 14 of the Act and not under the Acts in which those provisions are contained. From Section 15 of the Act it is quite evident that Section 14 is having wide implications in terms of imposition of penalties due to the fact that relevant provisions of other labour legislations which pertain to prohibition of employment of children in factories, plantation, motor transport undertaking, etc. In this regard, it would not be wrong to say that Child Labour (Prohibition and Regulation) Act, 1986, operates as basic legislation in terms of prohibition of employment of children in hazardous establishments and regulate there working
conditions and other terms of employment in order to prevent their exploitation but the intended object is not being achieved due to lack of coordination for implementing this legislation in case violation of other aforesaid legislations prohibiting employment of the children. For that purpose it is imperative that a comprehensive legislation on child labour be enacted which should include within its purview not only the child labour employed in unorganized sector rather child labour employed in organized Sector also such as factories, plantation, motor transport undertaking, dock Yard works. It would be convenient to ensure effective implementation of the comprehensive legislation if all child labour are covered under the single umbrella of comprehensive legislation and panel provisions could be enforced in an effective manner¹.

Another basic drawback with regard to penal provisions of the Act is that conviction and fine are the alternative penalties and generally employer is in a position to get rid of the problem with which he is confronted with on account of violation of statutory provisions simply by paying the fine and so far as the memory goes there is hardly any case where an employer has been convicted for the serous violation of the statutory obligations. An occupier or who is incharge of an establishment has also been rarely convicted for such statutory violation with regard to misuse and exploitation of child labour There is an urgent need that an amendment should be introduced in section 14 and 15 wherein so far serious violation conviction of the occupier of the establishment should be the mandatory penalty so that it may have deterring effect on all such occupiers who employ child labour and exploit them excessively with the sole object of earnings more profits and have scant regard for the statutory obligations imposed upon them. This rampant exploitation of child labour particularly in unorganized sector is undoubtedly and outcome of ineffective

¹ The Child Labour (Prohibition and Regulation), Act, 1986, Sections. 14 &15
implementation of the existing legislation on the subject as well as lacunae and deficiencies involved therein\textsuperscript{1}.

**Inspection Machinery under the Act**

Under section 17 of the Act, the appropriate Government has been empowered to appoint inspectors who shall be deemed to be public servants within the meaning of Section 45 of the Indian Penal Code of 1860. Under this provision wide powers have been conferred on inspecting officials in terms of visiting the establishments collecting evidence against defaulting occupiers and detaining them within the premises of the establishment or preventing them from going to other part of the establishment for fleeing the child labour from the place of employment or to temper with the register and other records to be maintained by them in respect of child labour but all these vast powers prove to be futile in terms of prevention of exploitation of the child labour.

Under Section 16 of the Act any person, police officer or inspector as the case may be is required to file a complaint of the commission of an offence under this Act in a court of competent jurisdiction. With regard to age of a child the certificate granted by prescribed medical authority is treated as conclusive evidence as to the age of the child\textsuperscript{2}.

The lower courts do not have jurisdiction to try any offence under this Act and only a Metropolitan Magistrate or a Magistrate of the 1st class has jurisdiction to try offences committed by the occupier as provided in Section 17-clause (3) of the Act.

The existing conditions pertaining to child labour highlight in clear and undisputed terms that the exploitation of child labour has become a rule rather than an exception and ineffective enforcement machinery has been one of the basic reasons

\[\text{\textsuperscript{1} The Child Labour (Prohibition and Regulation), Act, 1986, Section, 15 \& 16.}\]

\[\text{\textsuperscript{2} Ibid. Section. 17.}\]
for the plight of child labour. One basic reason is that the inspectors operate as hand in gloves with the employers engaging child labour for getting personal gain either in cash or in kind at the same time such employers including occupations of such establishments particularly in unorganized sector operate in organized manner and offer stiff resistance to the Inspectors or persons working on their behalf and in some cases they even turn violent thereby endangering their lives. Such attitude creates demoralizing impact on inspecting officials, it becomes essential at the first instance to provide requisite safeguards to them in order to enable them to work effectively and at the same time serious action which may even amount to dismissal of corrupt officials should be taken so that they may work efficiently and sincerely for providing requisite protection to the child labour in consonance with the statutory provisions of the Act. Under Section 17 (3) jurisdiction for the trial of defaulting occupiers has been conferred only on the Metropolitan Magistrate or a Magistrate of 1st class thereby. Sub-Judge and other lower courts and Munsiffs are not having jurisdiction to try offences committed against child labour, this provisions creates working difficulties for the inspecting staff in the sense that for statutory violations committed by the occupiers of establishments engaging child labour who face much difficulties for initiating criminal proceedings and waste much time and energy in proceeding against the employers during their trial in the courts of Metropolitan Magistrate or Magistrate of 1st class. Therefore, it is essential that jurisdiction should also be extended to Munsiffs and lower courts and requisite measures may be taken for avoiding corrupt practices in case such need arises.

Power for Making Rules

At the time of enactment of Child Labour (Prohibition and Regulation) Act, 1986 the legislature was fully aware with the fact that this Act has not covered all the aspects relating to employment of the children. Therefore, legislature under

1 The Child Labour (Prohibition and Regulation), Act, 1986, Sections. 16 & 17(3)
Section 18 of the Act has conferred wide powers to the appropriate Government for making rules with regard to such matters on which the Act has failed to provide specific provisions. These matters mainly include the term of office, the mode of filling casual vacancies, payment of allowances to the chairman and members of the Child Labour Technical Advisory committee. The appropriate Government has also been empowered to make rules relating to conditions and restrictions subject to which a non-member may be appointed to a sub-committee to the Child Labour Technical Advisory Committee as provided in Sub-Section (5) of Section 5. It may also make rules regarding the number of hours from which a child may be required or permitted to work under Sub-Section (1) of Section 7. The procedure for grant of certificates of age in a respect of young persons in employment or seeking employment, the competence of Medical authorities for issuing such certificates, the form of such medical certificates may also be prescribed by the appropriate Government by making rules as provided in section 18 of the Act but no charge shall be made for the issue of any such medical certificate if the application of the child in question is accompanied by evidence of age which is otherwise deemed to be satisfactory by the concerned authority required to deal with it as provided in Section 10 of the Act. The appropriate Government has also been empowered under this Section to make rules for the other particulars which are to be included in a register required to be maintained by the employer as provided under section 11 of the Act\(^1\).

**Laying of Rules and Notifications before Parliament or State Legislature**

Obligation has been imposed on the Central Government for laying every notification issued under section 4 as soon as it is made before each House of Parliament while it is in Session for a period of 30 days which may be comprised in one Session or in two or more successive sessions. In case both Houses agree in making any modification in the Rule or modification or both Houses agree that the

\(^1\) The Child Labour (Prohibition and Regulation), Act, 1986, Section. 18.
Rule are Notification should not be made or issued, in such a situation the concerned Rule or Notification shall thereafter have effect only in such modified form or it may be of no effect, as the case may be; so, however, that any such modification or annulment may be without prejudice to the validity of anything previously done under the Rule or Notification. It means any modification proposed to be made in any existing Rule may not be carried out if such proposed rule made by the Central Government is not approved by both the Houses of the Parliament or both the Houses are of the view that the existing Rule or notification already in vogue on that matter is appropriate one and no modification or change is needed in that rule or notification¹.

Sub-Section (2) of section 19 provides that every rule made by State Government under this Act shall be laid as soon as such rule has been made before the legislature of each concerned State. In the context of validity of the rules framed by the appropriate Government it was held by the Supreme Court in the case of Jon Mohammad vs. State of Gujrat² that the relevant Rules framed by the appropriate Government would be valid from the date on which they were made and failure to place the rules before the Houses of Legislature did not effect the validity of the Rules in terms of their enforcement. It means that rules framed by the appropriate Government would be enforceable from the date on which they are made and not from the dates on which approval of the Houses of the Legislature is accorded to the Rules so made.

**Power for Removing Difficulties**

The Central Government has been authorized under Section 21 of the Act to make provisions which should not be inconsistent with the provisions of this Act already existing under this Act for the purpose of removing difficulties which may arise while giving effect to the existing provisions of this Act, whenever it is felt to be necessary or expedient for removal of the difficulties which could arise while...

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¹ The Child Labour (Prohibition and Regulation), Act, 1986, Section. 19.
² AIR 1966, SC., P. 385.
interpreting any provisions of the Act. At the same time it has been explicitly provided in Section 21 that no such order or provisions for the aforesaid purpose shall be made by the Central Government after the expiry of a period of three years from the date on which this Act receives the assent of the President

It means that section 21 of the Act had validity only for a period of three years or in other words upto only the year 1986 as the Child Labour (Prohibition and Regulation) Act was enacted and enforced in the year 1986. It may be inferred from the contents of Section 21 that interpreting provisions in the context of existing provisions of the Act were needed to be enacted only at the initial stage of enforcement of this legislation for a initial period of three years only and the legislature did not feel its relevance or necessity after words.

**Supplemental Effect of Provisions of this Act in Context of Other Concerned Legislations**

It has been explicitly provided in section 20 of the Act that subject to the provisions contained in section 15 which deal with modified application of certain laws in relation to imposition of penalties with reference to Section 14 of the Act that the provisions of this Act and the Rules framed under it are required to be interpreted in addition to and not in contravention with or derogation of the relevant provisions of the Factories Act, 1948 such as Section 67 which provides that no child below the age of 14 years should be required or allowed to work in any factory and it imposes duty on the employer or occupier of the Factory to ascertain the age of the child who may be allowed to work in any factory and he can’t totally rely on the statement of the child in question or his parents in this regard. It means concerned provisions of these two legislations dealing with child labour have to be interpreted in consonance with

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1 The Child Labour (Prohibition and Regulation), Act, 1986, Section. 21.
each other and in no case or in no respect none of the two legislations should contravene the other concerned legislation¹.

Similarly in the same manner relevant provisions of this Act are required to be interpreted in consonance with the relevant provisions of the Plantation Labour Act, 1951, such as Section 24 of this Act provides that a child who has completed the age of 12 years only can be employed to work in any plantation. It means in the context of children working in plantations the minimum prescribed age would be 12 years only².

In the same manner relevant provisions of the Mines Act are to be interpreted in consonance with the relevant provisions of this Act. In this context section 40 of the Mines Act, 1951 explicitly provides that a child who has not completed the age of 15 years would be presumed to be a child within the meaning of this Act and only an adolescent who has completed the age of 16 years could be employed in any part of the Mine which is under the ground. On the same pattern and in order to ensure that a child is not permitted to work under the ground in a mine it is provided under section 43 of the Mines Act that if any inspector is of opinion that any person employed in a mine other than an apprentice or trainee is not an adult person or is either below 16 years of age, the inspector is empowered to serve on the manager of the mine a notice requiring that such person shall be examined by a medical surgeon in order to ascertain his exact age so as to ensure that he is an adult person and in case of an apprentice or trainee he is not below the age of 16 years and is otherwise fit to work therein. These powers have been conferred on an inspector in order to ensure that only adult person should work under ground in a mine and apprentice or trainee should also not be below 16 years of age³.

¹ The Child Labour (Prohibition and Regulation), Act, 1986, Section. 20.
² The Plantation Labour Act, 1951, Section 24.
³ The Mines Act, 1951, Section 40.
Section 21 of the Motor Transport Workers Act, 1961 also explicitly provides that no child shall be required or allowed to work in any capacity in any Motor Transport undertaking. At the same time it is provided in Section 22 of the Act that no adolescent may be required or allowed to work as Motor Transporter worker in any Motor Transport undertaking unless certificate of fitness is obtained by the employer and which is in his custody in which it should have been certified by the certifying surgeon that concerned adolescent is fit for doing work as Motor Transport Worker, such Certificate of fitness would be valid for a period of 12 months\(^1\).

On the basis of language used in section 20 of the Child Labour (Prohibition and Regulation) Act, 1986 it may be inferred that there should not be any conflict between section 15 and other concerned provisions of this Act and related provisions of other legislation dealing with child labour and for that purpose they are required to be interpreted in consonance with each other and not in conflict with each other. Rather contents of section 15 of this Act would be taken into account in addition to the relevant provisions of their concerned legislation as discussed above.

It is quite apparent that the legislature while enacting section 20 of the Act has kept in view corresponding provisions of other related legislations dealing with child labour and has quite appropriately laid down in an explicit manner that this provision would not have dominating effect rather it would be interpreted in consonance with corresponding provisions of other related enactment. It is mainly due to the fact that each type of establishment employing a child labour namely, factory, plantation, Motor Transport undertaking or a mine has its own peculiar features as well as intricacies involved therein. Accordingly, the relevant provision of the concerned legislation should regulate the employment of the child labour and Section 20 of the Child Labour (Prohibition and Regulation) Act, 1986 should operate as an additional provision for protecting the interest of the children and adolescents employed therein. It would not be out of place to mention that uniform pattern could

\(^1\) The Motor Transport Workers Act, 1961, Sections 21 & 22.
be evolved by enacting comprehensive legislation on child labour which may provide for basic requisite conditions for the employment as well as in respect of working conditions admissible to such persons keeping in view the nature of the work required to be done by the child labour as well as the degree of risk involved in the work required to be done by them.

**Amendments in Section 2 of the Minimum Wages Act, 1948**

Section 23 of the Child Labour (Prohibition and Regulation) Act, 1986 explicitly provides the necessary amendments which are to be incorporated in Section 2 of the Minimum Wages Act, 1948 in order to interpret both these legislations in consonance with each other. In Section 2 clause (a) the word 'Adolescent' would mean a person who has completed his 14 to 16 years of age but has not completed his 18 years or in other words unadolescent means a provision who is between 14 to 16 year in age while in clause (bb) child means a person who has not completed his 14 years of age. This provision which is required to be interpreted in consonance with each other in both related legislations, it could accordingly it may be inferred that a child below the age of 15 years can't be employed in any establishment irrespective of the nature of the work required to be done therein and special protection laid down relevant provisions of the concerned legislation has to be extended to an adolescent who has completed his age of 14 years but is below 18 years¹.

In the same manner in section 24 of the Child Labour (Prohibition and Regulation) Act, 1986 it has been explicitly provided that in section 2 of the Plantation Labour Act, 1951 for the word 15 years 14 years shall be substituted and in section 26 of the Act the words who has completed his 12th years shall be omitted. By the aforesaid amendment introduced in the Plantation Labour Act, 1951² in order to

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¹ The Child Labour (Prohibition and Regulation) Act, 1986, Sections 23 (a), 23 (bb).
² The Plantation Labour Act, 1951, Section 2.
remove discrepancy and to bring infirmity the prescribed age for the employment of the child is 14 years rather than 12 years as prescribed prior to this amendment.

In the same manner by virtue of Sections 25 of the Child Labour (Prohibition and Regulation) Act, 1986 in Section 209 of the Act which prescribed earlier the age of 15 years for the employment of the child the word 14 years has been substituted. In the same incorporated in Sections 26 of the Child Labour (Prohibition and Regulation) Act, 1986 in Section 2 clauses (a) and (c) of the Act.

The aforesaid amendment introduced an intended to bring uniformity in respect of employment of the children in various establishments. Prior to those amendments for the purpose of employment of the children in the Plantations the Minimum prescribed age was 12 years which has been raised to 14 years. On the same pattern minimum prescribed age for the employment of the children under the Merchant Shipping Act, 1958 was 15 years which has been reduced to 14 years. In consonance with this approach the Minimum age for employment in Motor Transport Workers Act, 1961 has been reduced to 14 years instead of 15 years. It may be rightly pointed out that after the aforesaid amendments disparity with regard to employment of the child labour in various establishment, processes or avocations has been done totally away and now the minimum prescribed age for the employment of children has been uniformly prescribed to be that of 14 years and employment of the children below the age of 18 years has been prohibited in absolute terms in hazardous occupations or processes involving work of hazardous nature.

**Repeal of the Employment of Children Act, 1938**

It is explicitly provided in section 22 of the Act that the employment of the Children Act, 1938 is replaced after the enforcement of the Child Labour (Prohibition and Regulation) Act, 1986 as it is intended by the legislature that the later

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1 The Child Labour (Prohibition and Regulation), Act, 1986, Section 24.
legislation should be substituted in place of former legislation. At the same time it has been provided in Sub-Section 2 of Section 22 that anything done or any action taken under the employment of the Children Act which is not inconsistent with the provisions of the Child Labour (Prohibition and Regulation) Act, 1986 would be deemed to have been done or taken under the corresponding provisions of this later Act. This explicit provision has been incorporated in Section 22 of the Act with the sole object of avoiding causation of loss or harassment to the concerned parties on account of introduction of the new Act in place of the earlier Act provided that there is no conflict between the two corresponding provisions and their impact on both the parties to the dispute is the same.¹

It would not be out of context to state that the employment of the Children Act, 1938 regulate the terms and conditions of the employment as well as the working conditions admissible to the child labour but due to drastic changes taking place in respect of the nature and the mode of doing work by the children in various types of establishments this earlier Act failed to keep pace with the sole object of protecting the interest of the child labour and due to this fact it was felt necessary to replace this old legislation with the suitable new legislation. This object has been to some extent served by the enactment and enforcement of the Child Labour (Prohibition and Regulation) Act, 1986. Undoubtedly this legislation has introduced uniformity in terms of minimum prescribed age for the employment in terms of minimum prescribed age for the employment of the child labour and the working conditions available to them in order to ensure their safety at the place of the work but it may be pertinently highlighted that there are many lacunae and deficiencies involved in this legislation which are being confronted with in its day today working. Therefore, it urgent need of the time that appropriate amendment should be introduced in this Act as short term policy and as a long term policy efforts should be made in a planned and systematic manner for enacting and enforcing comprehensive

¹ The Child Labour (Prohibition and Regulation), Act, 1986, Sections 2 & 22.
legislation for the protection of the child labour. Enactment of the legislation is one vital aspect but its effective implementation is another important factor and it would not be wrong to say that no legislation how so ever well and exhaustively drafted on the well defined lines would loose its relevance and proved to be futile one in case it is not effectively implemented in accordance with its object and spirit. For the effective implementation it is very essential that and awakening and involvement has to be created among the employers and consciousness has to be imbibed among the child labour and their parents and sense of fear the insecurity among the children as well as their parents has to be removed by the Government which operates as welfare State by providing financial security to them. It is an urgent need of the time to provide free education to the children below age of 14 years at least up to 8th standard and some stipend or cash allowance should be paid to the children in order to compensate the loss being caused to them1.

After making an exhaustive analysis of the relevant provisions of the Child Labour (Prohibition and Regulation), Act 1986 it could be stated with certainty and full confidence that object and purpose of the Act is laudable and its scope in terms of coverage of child labour engaged in different types of establishments is quite extensive. At the same time it could be pointed out that some of the provisions incorporated in last part of the Act as discussed above are intended to bring uniformity in terms of minimum prescribed rates for the employment of the child labour under the existing labour legislation on the subject. But in spite of all these positive aspect of this Act it could be safely commented in the context of scheme of the Act that this Act has been enacted in hasty and peacemeal manner and many provisions laid down in the Act are not well drafted and they lack coehsion and nexus with each other. Therefore, in order to remove such flaws in the Act, the only feasible solution is to enact a comprehensive legislation on the subject of the child labour

which should incorporate all the relevant provisions of the Factories Act, 1948, the Plantation Labour Act, 1951, the Motor Transport Workers Act, 1961 and the Merchant Shipping Act, 1958 as a long term policy. At the same time the relevant provisions of the Act prescribing the minimum age of employment should be suitably amended in order to make them more clear and explicit one in order to put forth in clear terms their connection with the relevant provisions of the already existing legislation on the subject of the child labour, it would not be out of place to mention that the clear, explicit, extensive and self-explanatory language highlighting the intention of the legislature has to be used while drafting the relevant provisions of the Act only then it may be expected to accomplish the desired goal by ensuring effective enforcement of the proposed legislation on the subject of the child labour which should be duly and in an effective manner protect the working children¹.

Recommendations of the Task Force Committee on Child Labour

It was recommended by the Task Force Committee on Child Labour under the Chairmanship of Dr. L.M. Singhvi an eminent jurist the report of which was placed before the Parliament on 29th December, 1989 that a uniform definition of the child with reference to age is required to be provided under the Act. There is no doubt that the present definition of the term ‘child’ provided in Section 3 is not at all exhaustive in the sense that it merely provides that child means a person who has not completed his age of 15 years. At the same time it was recommended by the Task Force that there should be a provision to extend the definition of establishment provided in Section 2 of the Act by means of notification and there should be no loophole for the organized sector or the units to exploit the child labour. At the same time it was recommended that provision to Section 3 of the Act which excludes processes carried out by the occupier with the aid of his family or to any school

established by or receiving assistance or recognition from the Government should be excluded from the purview of the Act. In this regard it has been recommended that there should be an enabling proviso to Section 3 to check exploitation of child labour under the guise of the occupier carrying on processes with the aid of his family. So far as the definition of the child under this Act is concerned, it might be stated that it would not at all be justified to prescribe a uniform age under the definition of term 'child' because it is subjective and related term prescribing the minimum age of employment in order to determine as to who could be set to be a child but it would be more appropriate that varying age may be provided for defining the term child depending upon some basic factors viz., age of puberty of a child, nature of the work expected to be done by a child and its impact on his health, economic position of the parents and financial standing of the country, school leaving age of the children, custom of the community and the local usage of the area on the region and above all sex of the child. Therefore, there is an urgent need that a detailed and indepth study should be made in order to provide comprehensive definition of the term 'child' which should prescribe varying age for employment in each profession or in other words which should define the term 'child' in a flexible manner prescribing different age for each occupation or employment keeping in view nature of the work required to be done by the children in such establishment and impact of the work, required to be done by the children in such establishment and utility of the work, required to be done by the child, on the health and the growth and development of the child so that it might be possible to ensure that work required to be done by the child labour should not in any respect have injurious impact on them. It has been quite appropriately recommended by the Task Force that definition of the employment or undertaking or establishment given in Section 2 (4) of the Act should have no loopholes for the organized sector or the units thereby enabling the employer to exploit the child labour. In fact nature of the work required to be done by the child would enable to determine the basic issue whether he is being exposed to exploitation by the employer or not. In
this regard employment and exploitation are corelated terms and the nature of work required to be done by the child should be understood in terms of its social and economical impact on the child labour in the sense that the work required to be done by the child worker retards the growth and development of such child or adversely affects his health or not. At the same time it has to be ensured as to how much work is required to be done and what would be the duration for which the child labour is required to work and work is to be done either continuously or intermitently. All these factors would enable us to determine whether there had been exploitation of the child by the employer or not. With regard to family business it has been quite appropriately observed by the Task Force that the enabling provisions should be incorporated in Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986 so that the State may be in a position to take regulatory measures even in case of family business or domestic work where child is required to work.\footnote{Varandani, G. (1994), “Child Labour and Women Workers”, Ashish Publishing House, New Delhi, P. 113-15.}

In fact any type of work could have adverse and injurious impact on the health of the child and could thus amount to exploitation of the child and nevertheless it would not be justified to draw a different inference simply due to the fact that he is not doing such work for any employer rather he has been engaged for such work by his family members. There are glaring instances, particularly in rural areas that the children are engaged in varied activities such as grazing of cattles, providing fodder to animals at house as well as feed to bird like cocks, hens and other poultry birds, ploughing the field irrigating and protecting the crop, spraying insecticides on the crops as well as harvesting the crops and also accompanying the male members to the grain market for the sale of the crop. All such activities in which children are engaged are having adverse impact on their health and thus amount to exploitation of such children and it could not be justified to presume otherwise simply due to the fact that such children are engaged not by any employer rather by their parents. Similarly there
are some family businesses which are of traditional nature being pursued by the members of the certain castes and communities from generation to generation and a child who takes birth in such families starts doing such work at a tender and early age. Such family businesses mainly includes carpet weaving, woollen cloth weaving, metal utensils as well as brass show pieces making, etc. It is high time that a suitable amendment should be incorporated in Section 3 of the Act so as to bring such family businesses within the scope of the Act and to implement regulatory measures aiming to prevent exploitation of the children by their own parents. It has been generally observed that exploitation of child labour is more in unorganised sector as compared to the organised sector because in organised sector trade unions are having recognition of their respective employers and trade union leaders protect the interest of the working class including the child labour. At the same time relevant labour legislation are in vogue for protecting the interest of the workers including the child labour but working conditions are just adverse in the unorganised Sector as it is also called informal or unstructured sector. These terms generally connote small scale activities carried on by the employers with nominal capital investment and engaging a large labour force\(^1\).

**The Righteous Approach to Combat Child Labour**

The most of the studies pertaining to the child labour conducted so far have brought forth the reality that prevalence of child labour is mainly due to poverty and other economic compulsions of the parents due to the fact that child work may not be morally natural but it is due to the economic compulsions of the parents on account of extreme poverty and resultant starvation to which they are generally exposed. Therefore, it could not be feasible in a country like India to think on the lines of elimination of child work, keeping in view, economic conditions and financial

constraints involved therein, with regard to the working class, in general and the child labour, in particular. Under the existing conditions and keeping in view, limitations and reservations of the parents of the working children it could only be proposed to regulate the employment of the children above a specified age and to abolish employment of the children in hazardous employments and this has been the basic object and purpose of Child Labour (Prohibition and Regulation) Act, 1986, which is quite balanced and meaningful one. But experience gained during the last seven years with regard to working of this statutory enactment goes to establish that the results obtained so far are far away from being satisfactory and resultantly it becomes imperative to find out the various reasons for such failure and to take requisite measures to accomplish the desired goals for combating the child labour in consonance with the object and purpose of the Act. In this context it was brought out by Ram Vilas Paswan while answering the question of Ratna Bahadur Rai pertaining to steps proposed to be taken by the Government to stop the inhuman exploitation of the children in various industries in the country in Rajya Sabha that the Child Labour (Prohibition and Regulation) Act, 1986 prohibits the employment of children below 14 years of age in totality and above 14 years in certain specified occupations and processes. It also seeks to regulate their conditions of work in employments in which they are not prohibited from working. There are provisions in several other labour laws such as the Factories Act, 1948; The Mines Act, 1952; The Beedi and Cigar Workers (Condition of Employment) Act, 1966; The Shops and Commercial Establishments Acts of the States / Union Territories, etc., which either prohibit or regulate the employment of children in specified areas. All these Acts are in force at present. He could further bring forth the reality that the Government had also formulated the National Policy on Child Labour in the year 1987 which provides for a number of welfare measures to minimise the exploitation of working children.

1 Unstarred Question No. 2181 of Rajya Sabha answered on the 13th March 1990 on the Subject of Child Labour in the Country.
Another question was posed by Satya Prakash Malviya regarding the main recommendations of the Task Force on Child Labour headed by eminent Jurists Dr. L.M. Singhvi and he further enquired about the reaction of the Government on the report and steps to be taken by the Government in this regard. Ram Vilas Paswan the then Labour Minister replied that the report of the Task Force would be placed before the next meeting of the Advisory Board on Child Labour before taking appropriate action in the matter.

It was recommended by the Task Force that the problem of Child Labour should be considered to be a problem of the children and such problem of the children should be viewed keeping in view, all the ramifications such as mortality, nutrition, employment, education facilities, population exploitation, poverty, etc. It was further recommended that there should be more resources for welfare scheme which should be given over-riding priority. It was also recommended that a Joint Committee of the Houses of Parliament and a similar committee in State Legislatures should function as a standing Committee to represent children. It was also brought out that all problems relating to the children should be dealt with by single Ministry. It was also recommended that a Statutory Child Labour Ombudsman or Commission for investigation, resolution of grievances and disputes for giving direction to employers and other officers should be constituted, to deal with the problem of child labour.

It would be quite appropriate to expect that it could be possible to achieve better results in case problem of child labour is not taken into account in isolation rather as general problems of the children including other problems viz., educational facilities, nutrition supply, population control, role of poverty along with the working and living conditions of the child labour and for that purpose the basic requirement would be that additional resources should be tapped under various

1 Unstarred Question No. 513 answered on 16th March 1990 Regarding Recommendations of Task Force on Child Labour
2 Summary of the Recommendations of the Task Force on Child Labour under the Chairmanship of Dr. L.M. Singhavi.
welfare schemes on top priority basis. In case one special Ministry for children is created as suggested by Task Force, it could be possible to focus attention on the problem of child labour in a requisite manner and it may be possible to improve the lot of child labour by enforcing action plan in a proper and systematic manner. If the statutory child labour Ombudsman or Commission for investigation is specifically constituted as per suggestion of the Task Force for the purpose of resolving grievances and disputes between the child labour and the employers, it could be possible to ensure redressal of grievances of the child labour in an effective and expeditious manner thereby enabling the child labour to enjoy improved working and living conditions and this could ultimately result in prevention of exploitation of the child labour. It was also suggested by the Task Force that a National Policy and Action Plan should be formulated which should bring forth details of the objectives of the policy and for this programme voluntary agencies should also be actively associated in this regard for combating the child labour. It is imperative that a specific strategy should be exclusively adopted to tackle the problem of paid family workers who are generally exposed to excessive exploitation in family employments and same approach should be adhered to with regard to wage earning workers and workers in certain establishments of the unorganised sector who are also being subjected to too much exploitation by their employers.

**Coverage of Small Scale Establishments under the Act**

Similarly there are small scale urban employments engaging number of children for various activities such as shoe-shining, car washing, newspaper selling, automobile workshops, restaurants, tea vendor shops, dhabas, etc., wherein child labour is exposed to excessive exploitation, same is the position with regard to domestic servants. It is urgent need of the time that such informal sectors of employment of the child labour in rural as well as urban areas should be covered within the purview of the Child Labour (Prohibition and Regulation), Act, 1986 by introducing suitable amendment in this regard.
It has also been recommended by the Task Force that the advisory function of the Technical Advisory Committee under Section 5(1) of the Act should be expanded and it should be able to receive petitions from individuals, etc., for addition of occupations and processes to the Schedule. There is no doubt that if power vested in the Technical Advisory Committee are made more broad-based in order to enable it to receive petitions from specific individuals which may be supported by convincing reasoning for being included in the list of scheduled occupations and processes so as to extend the scope of the Act of such employments, by this process it would be possible to expand the horizons of the Act more expeditiously thereby extending legal protection to more and more categories of the child labour. It has also been suggested by the Task Force Committee that the penalty for violation should be increased under Section 14(3) so that the penalty imposed might have deterring effect on the defaulting employer. At the same time a valuable recommendation has been made by the Task Force Committee that under Section 15 of the Act the three-fourth of the fine imposed should be payable to the children or the guardians. By such amended provision it would be possible to compensate the loss caused to the child labour on account of their excessive exploitation by the defaulting employer in case a substantial part of the fine is diverted for compensating the concerned child labour.

**Expeditious Disposal of Disputes Involving Child Labour**

Under Section 16 of the Act no time period has been prescribed within which metropolitan magistrate of 1st class is required to complete the proceedings. On a complaint of the commission of an offence under this Act. It has been quite appropriately recommended by the Task Force Committee on Child Labour that such proceedings should be completed within 6 months. One of the basic objects of providing justice to the aggrieved party is that there should not be unreasonable delay on the part of judiciary or concerned administrative authority and by incorporating suitable amendment in Section 16 of the Act thereby prescribing the maximum time limit it would be possible to impart justice expeditiously to the victims of the
defaulting employers exploiting the child labour in contravention with the relevant provisions of this Act. At the same time in order to combat with the child labour powers of the inspector provided under section 17 of the Act should be vested in non governmental organisations (NGOs) as recommended by the Task Force Committee. There is no doubt that such organisations are playing significant role in preventing the exploitation of the child labour and the only handicap with such organisations is that they do not enjoy enforcement powers as are vested in Inspectors under Section 17 of the Act who have been declared to be the public servants within the meaning of the Indian Penal code of 1860. The non-governmental organisations would be in a position to play an effective role if they also enjoy such powers. The Task Force Committee on the subject of the child labour was strongly of the view that existing disparities and varying definitions of important terms dealing with the child labour provided under statutory legislations relating to the child labour create confusion and ambiguity in respect of the intended objectives to be achieved. Therefore, it has become essential that all laws relating to employment of children should be consolidated into a single comprehensive legislation on the subject of the child labour and a uniform definition of the expression ‘child’ and ‘adolescent’ and there should be uniformity with regard to the prescribed hours of work as well as conditions of work. It would not be out of context to state that comprehensive legislation on the subject is bound to provide positive results by combating the child labour because ambiguities created due to varying definitions provided for various important terms create ambiguity and hamper effectiveness of the legislative measures. It has also been quite appropriately recommended that flexibility of extending the scope pf the Act to other occupations such as mechanised agriculture, horticulture, forestry, fisheries would prevent exploitation of child labour engaged in all these occupation which are not for the time being covered within the scope of the Act.

The Task Force Committee also recommended that the Government should initiate dialogue with the Trade Unions at early date so that some institutional
frame work could be evolved for encouraging collective bargaining in respect of the needs of working children. It is quite certain that if trade unions are actively associated by the Government for framing the basic schemes and policies for combating the child labour their involvement would prove to be quite gainful and their involvement would result in requisite acceptability of the scheme so framed in this regard.

It is a well known fact that the employer commits gross violation of the statutory provisions having scant regard to the enforcement machinery and the prescribed penalties. It is high time that stringent penalties should be prescribed under Section 14 of the Act. In this regard as recommended by the Task Force Committee such prescribed stringent penalties are likely to have deterring effect on the defaulting employers. It has also been quite appropriately recommended by the Committee that there was urgent need for a more systematic efforts for identifications of hazardous occupations and for detecting occupational diseases and their treatment. There are several areas both in the organised sector and unorganised sector where children are exposed to serious hazardous working. The various studies conducted with regard to the child labour have unanimously brought forth the reality that the child labour in many employments are exposed to working hazards quite frequently and the concerned employer do not have any sort of inhibition or reservations mainly due to the fact that activities have not been declared to be hazardous one under the concerned legislation or such employments have not been declared to be hazardous one. Due to these reasons the aforesaid recommendations of the Task Force Committee on child labour if adopted by the Government are bound to play meaningful role in terms of protecting health of the child labour and ensuring their normal growth and development otherwise the child labour would continue to suffer from dreadly diseases like tuberculosis, asthma, blindness, etc., resulting basically due to employment hazards. It would not be out of context to put forth that ignorance on the part of concerned people as well as the common masses is having serious impact in an
adverse manner so far as the problem of child labour is concerned. Therefore, the urgent need of the time is to create greater social consciousness in respect of evils of child labour in the general public including the employers as recommended by the Task Force Committee. There is no doubt that social awakening and self-realisation, if created among the employers, is bound to play a meaningful and significant role for eradicating the evil of the child labour which is assuming serious dimensions with the advent of the time and which has become a complex necessitating immediate an urgent redressal not only in India rather at international level particularly in third world countries.