Chapter 3

Analysis of Provision under Child Labour (Prohibition and Regulation) Act, 1986
“The first general laws against child labour (Indian Factory Act) was passed in Britain in 1881, which prohibits engagement of children below 7 years old and restricted the hours of work for children of 7-12 years, to nine hours a day.”

(Photograph Showing a Child Slave)
3.1. Constitutional Provisions: - The vision of a nation is made through its children and youth. According to 2011 census, about 43% of the country's population (below 18 years) are children. Therefore, they deserve to be cared and protected through different constitutional safeguards as mentioned at page 19. Article 24 of the constitution of India say, no child below the age of 14 years is to be employed in any factory, mines or any hazardous employment. Article 39 empowers the states to direct its policy towards ensuring that these tender petals are not abused and they are not forced by economic necessities to enter into vocation unsuited to their age or strength. With the recent insertion of article 21-A, the states has been entrusted with the task of providing free and compulsory education to all the children in the age group of 6-14 years. Consistent with the constitutional provisions, the Child Labour (Prohibition and Regulation) Act was enacted in 1986, which seeks to prohibit employment of children below 14 years in hazardous occupations and processes and regulates the working conditions of children in other employments. This act replaced the Employment of the Children Act, 1938, which was rather restrictive in scope and content. The replaced act divides children into three categories, i.e. below twelve years, twelve to fifteen years and fifteen to seventeen years. Subsequently, different legislations were passed that progressively extended legal protections to children as given in appendix-1. The Child Labour (Prohibition and Regulation) Act, 1986 was the culmination of efforts and ideas that emerged from the deliberations and recommendations of various committees on child labour, mainly National Commission on Labour (1966-69), Gurupadaswamy Committee (1979) and Sanat Mehta Committee (1984).

At the time of enactment of the Child Labour (Prohibition and Regulation) Act, 1986, there were only 6 occupations and 13 processes listed as hazardous. Presently 18 occupations and 65 processes as given in Appendix-6, are listed in the schedule ‘A’ and schedule ‘B’ of the child labour act. On 10/10/2006, government has decided to include children working as domestic servants and those working in dhabas/roadside eateries/motels etc; in the category of hazardous occupations. Further, on 25/09/2008, ‘Diving’ occupation was declared as hazardous and recently on 08/10/2010 use of children in circus and caring elephants are categorized as hazardous. Realizing the multifaceted and complex nature of this problem, government has embarked on a holistic and multi-pronged programme to eliminate child labour from the country in a phased manner beginning with children engaged in hazardous works and progressively covering the children working in other works too.

3.2. Child Labour-The Legislative Provision:-
the Child Labour (Prohibition and Regulation) Act-1986, Orissa Child Labour
(Prohibition and Regulation) Rule-1994 was passed on 24/02/1994.
Salient features of the act are as below:-
1. Defines 'child' as a person who has not completed 14 years of age.
2. Prohibits the employment of children below 14 years in specified 18 occupations
   and 65 processes. (Section-3)
3. Under the act a technical advisory committee is constituted to advice for inclusion
   of further occupations and processes in the schedule.
4. This act regulates the condition of employments in all occupations and processes
   not prohibited under the act. (part-III)
5. Violation of act will attract imprisonment of three month, extendable to one year
   or fine not less than Rs.10000, extendable to Rs.20000 or both. (Section-14)
6. The central and state governments enforce the provisions of the act on their
   respective spheres. (Section 2-i).

3.3. The Judicial Activism:-
(a) Supreme Court Judgment on Child Labour (M.C. Mehata v/s State of Tamil
Nadu) on 10/12/2006: - The court sought to involve the power of the judiciary under
article 32 of the constitution of India in the matter of gross violation of the article 24 by
the employment of children in the match industries of Sivakasi. The court observed:
'Sivakasi has ceased to be the only center employing child labour. The malady is no
longer confined to that place ... By now (child labour) is an all India evil, through its
acuteness differs from area to area. So, without a concerted effort, both of the central
government and various state governments, this ignominy would not get wiped out. We
have, therefore thought it fit to travel beyond the confines of Sivakasi to which place this
petition initially related. It would be more appropriate to deal with the issue in wider
spectrum and broader perspective taking it as a national problem and not pertaining to
any one region of the country'
Following directions were issued in this judgment: -
1. The court avers that providing an alternative source of income to the family is a pre­
   requisite to eradicate child labour.
2. Release child labour engaged in hazardous occupations.
3. File prosecution against the employer of hazardous occupations and processes.
4. Payment of compensation of Rs.20000/- by the offending employers for every child
   employed in contravention of the provisions of the act.
5. The fine is to be deposited in the 'Child Labour Rehabilitation-cum-Welfare Fund'.
6. Employment should be provided to an adult member in the family in lieu of the child
   working in a factory or mine or any other hazardous work or payment of Rs.5000/-
   for each child employed in hazardous occupations by the appropriate government to
   corpus fund and interest earned on this corpus fund be paid to the parents/guardians

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for meeting the education expense of the child. The payment will cease, if the child is not being sent for education. In case of non-hazardous employment the employer will bear the cost of education.

7. Fresh surveys to be conducted in the child labour endemic districts of the country for the identification of the working children with in six month.

8. Regulating hours of work for children working in non-hazardous occupations so that their working hours do not exceed six hours per day and education for at least two hours is ensured. All expenditure on education is to be borne by the employer.

9. More studies/research on child labour.

10. Constitution of a separate cell in the Labour Department/Ministry.

11. The states were directed to set up enforcement measures. Following table shows state wise enforcement data between 1997-1998 and 2005-2006.

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It is observed from the above table that the rate of prosecutions and convictions is very poor. Prosecutions are initiated only in 35.95% of the violations of the act; where as
38.2% of the prosecution resulted into convictions. Several reasons like legal complicity, weak inspections, and casual preparations of charge sheet etc; are responsible for it. But the major one is proper birth registration of the children, which prove to be an important factor to know the actual age of the child before the law. Sometime even parents are unable to tell the right age/date of birth of their child. Violators of the act in most cases able to prepare fabricate document of age proof/date of birth, which favors them before the court/law, thus resulting poor conviction.

The incident of employment of child labour in central sphere is negligible and the number of prosecution is also comparatively on lower side. In no cases, conviction for the maximum punishment of imprisonment of two year is awarded. During 1997-1998 to 2007-2008, there are 31.55 lakh inspections conducted in both central and state sphere, 89,076 prosecutions were lunched, resulting in 23,233 convictions. (Annual Report, 2010-2011, Ministry of Labour) As desired by the apex court, District Child Labour Rehabilitation and Welfare Funds were created at different districts, where in Rs.34.40 crore have been deposited and more than 1.21 lakhs adult members of the families of child labours have been provided employment by the state governments by March, 2011. The implementation of the direction of the Hon’ble Supreme Court of India is being monitored by the ministry by issuing guidelines to states/UT governments. A special cell in the ministry has been created and an officer at the level of Joint Secretary is placed to comply the directives of the apex court. Since the date of its verdict, apex court is continuously monitoring and labour ministry is submitting its stands in the form of affidavits before the court.

The three member bench, while disposing the case, hope that the closing years of twentieth century would see us keeping the promise made to our children by our constitution about half century ago. Let the child of twenty-first century find himself into that 'heaven of freedom' of which our poet laureate Rabindranath Tagore has spoken in 'Gitanjali'. (www.judis.in, date-10/12/1996) The stanza spells out as follows:-

"Where the mind is without fear and the head is held high,  
Where knowledge is free,  
Where the world has not been broken up into fragments,  
By narrow domestic walls
Where words come out from the depth of truth,  
Where tireless striving stretches its arms towards perfection,  
Where the clear stream of reason has not lost its way,  
Into the dreary desert sand of dead habit,  
Where the mind is led forward by thee,  
Into ever-widening thought and action,  
Into that 'heaven of freedom', my Father, let my country awake"

'Where the Mind is Without Fear- Gitanjali'

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In a similar case for violation of article 39 (f) and 45 of the constitution by the matches and fireworks industries of Sivakasi, the court gave certain direction as how the quality of life of children employed be improved. Subsequently, suo moto cognizance was taken in this case, when an unfortunate accident in a cracker factory of Shivakasi was published. The court ordered Government of Tamil Nadu to file a detailed counter affidavit, which inform death of 39 persons. The court on 14/8/1991 gave certain directions for payment of compensation and constituted a committee consisting of advocates Sri. R. K. Jain, Sri. K.C.Dua, and Ms.Indera Jaisingh. The committee on 11/11/1991 recommended following points in pages 24-25 of the report:-
1. Tamilnadu state should be directed to ensure that, no children are employed in fire works factories.
2. Separate premises to children for packing work in match’s factory.
3. Employees can not take work of more than six hours a day from children.
4. Proper transport facilities to children from home to factory and back provided by the employers and state government.
5. Recreation, socialization and education are provided in the factory or near the factory.
6. Employers must provide basic diets to the children. If they fail, state government may direct to do so. One meal a day programme of the Tamilnadu state for school children may be extended to child workers.
7. Piece-rate wage be abolished and payment be made on monthly basis. It should be commensurate to the work done by the children.
8. Insurance scheme to all workers working in the industry, whether registered or un-registered, cottage industries or contract basis.
9. A welfare fund be created and employers must pay Rs.2 per worker per month. Similar matching contributions by the state. Employers of all industries, whether registered or un-registered, cottage industries or contract basis, must pay Rs.2 per worker per month.
10. For Sivakasi area, a committee headed by a retired judge of a high court or person of equal status, who should be answerable to this court or a high court as may be directed by this honorable court.
11. A national commission for children’s welfare is set up to prepare a scheme for child labour abolition in a phased manner. This commission is answerable to this court at periodical intervals about directions of court. (www.judis.in, date-10/12/1996)

(b) J. P. Unni Krishanan & others v/s State of Andhra Pradesh on 04/02/1993:-
Constitution of India, 1950, article 21, 41, 45 and 46, right to education –whether a fundamental right- the apex court state that citizens/children has a right to education up to the age of fourteen years and there after it is the subject of economic capacity and development of the state. In the wake of above judgment, 86th amendment of the constitution in 2002 was made and right to education bill was introduced in the Parliament and passed by the Rajya Sabha on 19/07/2009.
(c) In the month of May 1997, in a judgment related to employment of children in the carpet industries of U.P., the apex court gave a number of directions on the identification, release and rehabilitation of child labour.

(d) In February 2000, on order of the apex court, Central Government amended All India Service (Conduct) Rules-1968 prohibiting the employment of children below the age of 14 as domestic workers by government servants.

(e) Bandhua Mukti Morcha v/s Union of India and others:- The apex court on 07/05/1997 has directed under article 32 of the Constitution of India to investigate the condition of employment of children, provide health, education, nutritive food and sanitation and issue appropriate directions for total prohibition on employment of children below 14 years.

(f) Public Interest Litigation (PIL) filed in Delhi High Court in 2005 demanding clear plan of action on the procedure of identification, release and follow up of rehabilitation of child and bonded labours in the capital.

(g) On 15/07/2009, Sri. A. P. Shah, Chief Justice of Delhi High Court asked the National Commission for Protection of Child Rights (NCPCR) to formulate an action plan.

(h) Employing Children aged 14-18 Not an Offence: - Bombay High Court said employing children between 14 and 18 years of age does not amount to an offence. As per the provisions of section 3 and 7 of the Child Labour (Prohibition and Regulation) Act, 1986 an offence is constituted only if children below 14 years of age are engaged in employment, Section 3 and 7 of the said act were wrongly applied against the petitioner Manoranjan Saha (48), who was booked by the Malad Police after six children were rescued from his restaurant ‘Bhartiya Jalpaan Griha’ outside Malad Railway Station in Mumbai. (Hindustan Time, 26/11/2010)

(i) Public Interest Litigation (PIL) filed in the apex court by Bachpan Bachao Andolan (BBA) on children used in sex trade. On 29/01/2010, the apex court directed Sri. Gopal Subramanian, Solicitor General of India, to constitute a special investigating agency for children used in sex trade and not to grant bail to the persons employing children in sex trade.

Draft legislation (Offences against Children -Prevention Bill) to address all issues pertaining to child abuse (offences against children) was prepared and circulated to the states governments for their comments and views. After obtaining the comments of concerned ministries and departments, a second working draft of the Protection of Children from Sexual Assault Bill, 2010 was prepared. It is pending with the government.

3.4. Analysis of Constitutional/Statutory Provisions: -

Constitutional provisions made in the article-24 and 21(a) seems to be contradictory. Article 24, prohibits employment of children below the age of fourteen years in hazardous works, there by leaving enough scope to the employment of the children in non-hazardous works or works not listed as hazardous one. Similarly, articles 21(a)
expect every child between 06-14 years of age to be in schools. These two articles relating to child protection and child development seem to be contradictory to each other. Now question is, if a child is permitted to work in any non-hazardous work or work not listed as hazardous one, how she/he can go to school and avail her/his right to education. The combination of education with work and learning with earning is a myth for the children. Child labour is a biggest impediment to the fundamental right of education and both cannot exist at a time. As education is now a constitutionally guaranteed fundamental right of all children of 06-14 years of age, it is very much required for a total prohibition of child labour and it should not combines with other regulation. (Mishra 2009)

Despite of the Child Labour (Prohibition and Regulation) Act -1986 and other protective legislations for children, the stark reality is that, in our country like many others, children are exploited a lot. This has been a subject of study by good numbers of authors. The problem is universal but in our case it is more crucial, as we are world’s second heavily populated country, after China and credited with having second highest number of child labour in the world, after Africa. Over 40% of the children of Africa are working, mainly as slaves in private households, apart from other industries. (www.huright.org) China stood third as China’s law considers a minor is an individual below the age of sixteen-years. (www.childlabour.in) Child labour is a big problem and has remained intractable even after 64 years of independence and despite various legislative enactments. The Act of 1986 has not served the purpose of its own. It has targeted a small amount of children working only in hazardous sector and forgotten many others, assuming that children from poor family continue to be in work and out of schools as an excuse. Even after 86th amendment to the constitution of India in 2003, making education as a fundamental right, there has been no attempt to change the child labour act to make it conformed to the text of the amendment. More ever, the word ‘regulation’ should be removed from its title so that child labour abolition becomes non-negotiable. (Acharya2000)

This act was criticized by NGOs and child labour activists as soon as it was passed in 1986. It was branded as a toothless piece of legislations as it fails for short of the demand for radical changes in the 1938 Act. This act was viewed as a contunition of policy to tolerance and thus perpetuates the practice of child labour, which amounted virtually to a negation of provisions in the constitution and the philosophy underlying them. One commentator described it as the most farcical piece of social legislation. (Economic and Political Weekly, 1986)

Out of six studies groups constituted by 2nd National Labour Commission, the group on ‘women and child labour’ was headed by noted activist, Ms. Renana Jhabvala of SEWA, Ahmedabad. This group is first to submit its report to commission’s chairman Dr. Ravindra Verma. The group defined child labour as ‘work done by a child outside their home/family for a minimal wage and the conditions in which they work are detrimental to their well being and safety’. It means work done by the child within their home/family,
even if it is being exploitative, can not be termed as child labour. Perhaps the group had made difference between child labour and child work. While child labour is associated in employment with possibility of exploitation, child work shall have positive contributions to the development of the child. Work, which does not interfere with child education or detriment to child health, cannot be construed as child labour. In other words, if work is properly structured for the development of child’s body and mind, it will not be termed as child labour. On the contrary, child labour is work which impairs the health and development of a child.

Neera Burra (1995) in her book ‘Born to Work: Child Labour in India’ pointed that occupations and processes dealt by the Act of 1986 are more or less same in nature and characteristic and the act itself is the repealed statute of Employment of Children Act-1938. There are a number of loopholes in the act which has made it completely ineffective instrument for the removal of children working in the industry. The first one is that ‘children can continue to work, if they are a part of family labour’. Second, the act does not use the word ‘hazardous’ anywhere. She tried to show how impracticable and unrealistic it is to draw a distinction between hazardous and non hazardous process in a particular industry and suggested listing the whole industry ban for child labour, which would make the task of enforcement simpler and strategies of evasion more difficult. She thinks that if there is at all a blue print for tackling the problems of child labour, it is education.

Convention on Rights of Child (CRC) defines children as persons below the age of 18 years; however different laws stipulate different cut-off ages to define a child. Only the Juvenile Justice (Care and Protection) Act, 2000 is in consonance with the CRC. This confusion of age still remains unaddressed. In the absence of a clear definition of a child, it is left to various laws and interpretations, which creates problems of enforcement and other legal consequence. Similarly, the distinction between legitimate and illegitimate children depending on the status of their parents' marriage or relationship is outdated. A child born out of wedlock or of a void or illegal marriage is considered 'legitimate'. Children become silent victims of decisions taken by their parents and are denied inheritance rights. Still worse, a child born of rape is stigmatized and treated as 'illegitimate', by own family, society and law.

3.5. Violation of Child Labour Act: -
Both union and state governments are the appropriate authorities for enforcement of the Child Labour (Prohibition and Regulation) Act-1986, in respect of establishments under their control. As for example, railways, major ports or mines or oilfields etc; under union and all other cases respective governments are appropriate authorities. In Odisha, state government is the appropriate authority in state sphere under Orissa Child Labour (Prohibition and Regulation) Rule-1994. Table no-3.2 shows the details of inspections,

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Child Labour (Prohibition and Regulation) Act-1986 bans the employment of children below 14 years in occupations such as transport of goods. There is gross violation of this act by the District Election Officer/Returning Officer of Bhagalpur, Bihar in third phase of Lok Sabha Poll-2009. National Commission for Protection of Child Rights (NCPCR) has brought this to the notice of the Election Commission of India (ECI) and accordingly Chief Electoral Officers/Chief Secretaries of all states/UT are warned by ECI, that District Election Officers/Returning Officers will be personally held responsible for any such violations, apart from facing the consequences of laws. NCPCR writes a letter to Sri. R.J. Mohan Pillai, the then Chief Secretary, Government of Bihar, on 30/04/2009 stated that, glorious democratic process of India cannot be at the cost of children and their rights and instructed him to investigate into the matter and send action taken report.

Acting on a complaint filed by a Supreme Court lawyer Radhakanta Tripathy, in the above case, the National Human Rights Commission (NHRC) has issued a notice to the District Magistrate, Bhagalpur, asking him to submit a report. This violation was reported by Sri. Ranjeet Kumar. A photo showing children carrying electronic voting machines published in The Hindu, Delhi Edition, page-11, Thursday, 30/04/2009, under the heading “heavy duty on tender heads” is shown below.(www.ncpcr.gov.in)

If authorities, who were supposed to enforce the provisions of the Child Labour (Prohibition and Regulation) Act-1986, themselves engaged in such violations and that to in the largest democratic process of world, the Lok Sabha Poll, with in the premises of a government building, then who else will held responsible for the execution of the Act. It will give a wrong signal to all the stake holders involved in the child labour elimination programme and general public in large, if some commendable action is not taken against those authorities. Similarly, Vikram Cement, a unit of Aditya Birla Group found to be employing children as young as 10 years. In a raid conducted on 28/02/2009 by Ms. Babita Singh of Child Welfare Committee along with local police more than 100 children under 14 years of age were found to be working in the most dangerous and inhuman conditions.
3.6. **The Child Labour Act: Proposal for Amendment:**

There is a need to amend the Child Labour (Prohibition and Regulation) Act, 1986 as per the provision of ILO Convention No. 138 on minimum age of employment. An attempt in this direction has already been initiated and a draft bill was prepared by National Labour Institute for amending the Act in 1998. The bill has been referred to all the states for their comments and views have been received only from a few states and it is still pending with the government. Detail of the draft bill is as follows:

3.7. **Draft Legislation on Child Labour:**

As desired by government, in 1998 V.V. Giri National Labour Institute, Noida prepared a draft legislation for amending the Child Labour (Prohibition and Regulation) Act, 1986. One of the ideas mooted in the draft of NLI is the introduction of light work for children in the age group of 12-14 years, a practice followed in many developed countries, including US where children are permitted to take up jobs in occupations like paper vending, shop assistants in departmental stores etc. These occupations are considered as light work and children above 12 years of age are allowed to work as part time workers, provided they work beyond school hours and do not affect their schooling, for which they are required to get NOC from their schools. NLI draft also proposes to redefine the term ‘occupier’ under section 2 of the act. The idea behind this is to include even those situations where work is undertaken by families etc; on behalf of or under orders of the employer. In many such cases (as in beedi making) raw materials and other specification are provided by a third
party, i.e. the main contractor or the supplier. This practice leads to carry out such hazardous activities in the house hold, where children are also engaged in great number, especially since the payment is made on piece rated basis. By amending the definition of occupiers, the act would be able to cover even such contractors or suppliers who are getting their work done through families, where children are also engaged in carrying out these jobs.

There is a need to impose stiffer penalties for violation of the act. The act may be amended so as to make imprisonment compulsory by replacing ‘or’ by ‘and’ in the section 14 of the act. This amendment would add more teeth to the act and make it more deterrent. The task force committee set up by the Department of Women and Child Development suggested following amendments in the Child Labour (Prohibition and Regulation) Act, 1986:-

1. Fixing 11 years as minimum age for employment in non-hazardous occupation. (section 3)
2. To provide 50% of the members on the Child Labour Technical Advisory Committee (TAC) as women. (section 5)
3. Inclusion of education as one of the objectives for framing rules under the act for regulation of working condition. (section 13)

Considering the above suggestions, the Central Monitoring Committee in its meeting held on 5-6th June 2006, made following recommendations:-

1. Fixing 14 years as minimum age of employment in non-hazardous occupations.
2. Minimum age of employment in hazardous occupations from present level of 14 years may be increased to 18 years.
3. 33% of the seat in the Technical Advisory Committee to be reserved for women.
4. Inclusion of education as one of the objectives for framing rules under the act for regulation of working condition.

Ministry has agreed to the recommendations for reservation of 33% of the seat for women in the TAC and inclusion of education as one of the objectives for framing rules under the act for regulation of working conditions. Regarding the complete ban on all form of child labour in the country, it may be mentioned that in many of the communities engaged in traditional professions, children are imparted family skills and trades, which help them to earn livelihood in their later life. These children are not necessarily out of school children and may be learning these traditional skills simultaneously while attending schools. It is however, essential that the process of imbibing traditional skill does not affect their regular education. Provision of education and child labour in this form are not mutually exclusive and considering the socio-economic conditions in the country, children would continue to assist parents at home. But what is not negotiable is
the children’s right to education and hence, government’s endeavour is to ensure that all children up to 14 years of age are provided education. The elimination of child labour in totality from the country is an ideal situation and government is making all efforts to move in this direction. However, imposing a blanket ban on all forms of child labour or raising the minimum age of working from 14 to 18 years would not be practical and would be very difficult to implement, particularly keeping in view the diverse level of economic development in the different area of the country. Therefore, the provisions of the act have to be such which are uniformly enforceable in all part of the country. Such flexibility as per the local conditions also exists under NCLP and SSA. As elaborated above government’s endeavor during the 11th plan period would be to cover all children working in hazardous occupations in all districts of the country where it is prevalent and keep them under the education net. There is an argument from some quarters that with the insertion of article 21(A) in the constitution, the Child Labour (Prohibition and Regulation) Act, 1986 has become unconstitutional. It may be mentioned that article 21(A), only states that it is responsibility of the government to provide free and compulsory education to all the children between the ages of 05-14 years. It does not presuppose prohibition of child labour or else. Article 24, which specially prohibits child labour in factories, mines and hazardous occupations, would have been suitably amended to extend this ban to all forms of child labours. Since the rightful place of the children is in school, the government has to ensure that all the children in the age group of 05-14 years are provided education, which is being pursued specifically under the Sarva Shiksha Abhiyan since 2001-2002.


|---------|--------------------------------------|----------------------------------|
| 1.      | Part-I  
It shall be the duty and obligation of the appropriate government to ensure compliance of part III of this act in a manner so as to ensure total prohibition of all forms of child labour with in a period of five years from the commencement of this act.[section 1(4)] | No such specific provision exists in the CL (P&R) Act, 1986. |
| 2.      | Provides that while interpreting the sections under this act, court, tribunal, board or other forum, shall consider international law, including international covenants and may consider foreign law.[section 3] | Provides that the court can merely interpret the section (fulfilling the object of the legislation), it cannot re-write, re-cast or re-design the section. [comments below section 2] |
| 3.      | ‘Child’ means a person who has completed twelve years of age and not completed fourteen years of age and ‘Young Child’ means a person who has not completed twelve years of age.[section 2(iii)] | ‘Child’ Means as a person who has not completed his fourteen years of age. [section 2(ii)] |
| 4.      | Part-II  
For the purpose of this act, the term “state government” shall | No such specific provision exists in the CL (P&R) Act, 1986. |

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5. The term ‘establishment’ expanded to include factory, agricultural or horticultural farm and including an establishment ancillary thereto or places where works incidental to the establishment are carried on and such other work places as may be notified by the appropriate government in the official gazette. [section 2(vi)]

No such specific provision exists in the CL (P&R) Act, 1986.

6. ‘Hazardous Occupations’ with reference to a child means any occupation or vocation or process which when a child is employed in it could prevent the child from seeking education or interferes with the child’s education or from seeking opportunities and facilities to develop in conditions of freedom and dignity. [section 2(ix)]

‘Hazardousness’ of an occupation/process to be decided by the child labour technical advisory committee. [section 5(1)]

7. The term ‘Occupier’ in relation to an establishment expanded to include owner or agent(s), persons on whose behalf or under whose orders processes or occupations are being undertaken, or person who is found in charge of employing or supervising the work in the establishment at the time of inspection. [section 2(x)]

Provides that ‘Occupier’ in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop. [section 2(vi)]

8. Occupation’ in relation to the child has been defined to include any vocation, processes or job work undertaken by such child, either independently or for or on behalf of any other person under whom there exists a subordinate labour relationship. [section 2(xi)]

No such specific provision exists in the CL (P&R) Act, 1986.


The term ‘Family’, ‘Port Authority’ and ‘Workshop’ which were defined in the CL (P&R) Act, 1986, has left out.

10. Section 5 provides that no young child shall be employed or permitted to work in any occupation or processes, in any capacity, under any circumstance.

Section 6 prohibits employment (*) of child in hazardous occupations, occupations, vocations and processes set forth in part A and B of the schedule to the act.

It prohibits employment of children in occupations and processes set forth in schedule to the act. It permits employment of such children in workshop where in any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from government.

No such specific provision exists in the CL (P & R) Act, 1986.

11. Section 7 provides that no child shall be employed or permitted to work (#) in any capacity during school hours on school working days. The school working hours shall be deemed to be between 10 a.m. to 3 p.m. except when determined otherwise by the appropriate government.

The addition of occupation and processes to the schedule is done on the advice of the child labour technical advisory committee.

12. The ‘Board’ may suggest suitable additions to the list of occupations & processes mentioned in the schedule to the act. [section 8(2)]

The corresponding section 17 empowers appropriate government to appoint inspectors.

13. Part-IV

Section 13 empowers appropriate governments to appoint sufficient number of child labour inspectors with in twelve weeks of enactment. In addition to above , the following shall be deemed to be child labour inspectors:

- Inspectors appointed under other labour laws.
- Police Inspectors.
- Sarpanch of a village.
- Development Officers.

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<td>14.</td>
<td>It empowers appropriate governments to authorize persons as compliance officers only for the purpose of filing complaints regarding non-compliance with the provision of the act. These persons include nominated teachers of government schools, nominated doctors and nominated panchayat members. [section 13(4)]</td>
<td>Under CL (P&amp;R) Act, 1986, any person, police officer, or inspector may file a complaint of the commission of an offence under the act in any court of competent jurisdiction. [section 16]</td>
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<td>15.</td>
<td>Section 14 specifies that duties of the inspectors &amp; reporting to the advisory board of the initiative taken and status of compliance.</td>
<td>No such specific provision exists in the CL (P &amp; R) Act, 1986.</td>
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<td>16.</td>
<td>Section 16 of the intended legislation prescribes duties of the state advisory board on receipt of the notice or complaints.</td>
<td>No such specific provision exists in the CL (P &amp; R) Act, 1986.</td>
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<td>17.</td>
<td>Notice of accident which results in death or body injury to child labour to be given to concerned inspector. Inspector to inquire into the matter. [section 21]</td>
<td>No such specific provision exists in the CL (P &amp; R) Act, 1986.</td>
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<td>18.</td>
<td><strong>Part-V</strong> Establishment of child labour courts for hearing offences under the act. [section 22]</td>
<td>No such specific provision exists in the CL(P&amp;R) Act, 1986</td>
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<td>19.</td>
<td>Right of trade unions, panchayats and registered voluntary agencies to bring action against employer [section 29]</td>
<td>No such specific provision exists in the CL(P&amp;R) Act, 1986</td>
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<td>20.</td>
<td>Affected employer may move to court for legal action against other employers engaging child labours. [section 31]</td>
<td>No such specific provision exists in the CL(P&amp;R) Act, 1986</td>
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<td>21.</td>
<td><strong>Part-VII</strong> Establishment of child labour advisory board at central and state level, their constitution, appointment of officers, conduct of business and their duties. [section 32,33,34,35,36 and 37]</td>
<td>No such specific provision exists in the CL(P&amp;R) Act, 1986</td>
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<td>22.</td>
<td>The function of the child labour advisory board shall be to promote the aims and objectives of this act and further protect the rights of the working children [section 38]</td>
<td>No such specific provision exists in the CL(P&amp;R) Act, 1986</td>
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<td>24.</td>
<td>District Commissioner to be the Chairman of the District Child Labour Rehabilitation, Welfare &amp; Development Fund.</td>
<td>No such specific provision exists in the CL(P&amp;R) Act, 1986</td>
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<td>25.</td>
<td>The fund shall be utilized by the District Child Labour Rehabilitation &amp; Welfare Committee for activities necessary or expedient to promote the welfare, educational &amp; vocational training of children withdrawn from occupations and processes listed in the schedule to the act [section 45,46 and 47]</td>
<td>No such specific provision exists in the CL(P&amp;R) Act, 1986</td>
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(*) Employment: - "The occupation for which you are paid" (www.ardictionary.com, www.mnemonicdictionary.com) (#) Work: - "Work has been defined in the Census 2001 as 'participation in any economically productive activity with or without compensation, wages or profit. (@) Released Children may be of any categories as per schedule of occupations & processes under the Child Labour (Prohibition and Regulation) Act. 1986. (www.censusindia.gov.in)

To examine the draft legislation prepared by V.V. Giri National Labour Institute a committee under the chairmanship of Sri. S.K. Srivastava, Former Joint Secretary in Ministry of Labour and Employment was constituted on 08/03/2010. The committee recommended:-

1. The existing definition of child as a person who has not completed 14 years of age may continue.
2. Setting up of special courts to trial child labour cases.
3. To include education of child labour in addition to health and safety already provided under the act.
4. Specific provisions for offence of trafficking of children for labour.
5. Compounding of offences and enhancement of penalties.
6. Provision of power to search and seizer under the act.
7. Retention of provision to section 3 of the act allowing children to work under the parental care. (*PIB, 08/03/2010*)

3.9. Second National Labour Commission on Child Labour Act: -
A ten member commission set up on 15/10/1999, under the chairmanship of former Union Labour Minister Dr. Ravindra Verma. Its term of reference is to suggest rationalization of the existing labour laws in the organized sector and umbrella legislation for ensuring minimum level of protection to workers in the unorganized sector. On 29/06/2002 the report was submitted to the Prime Minister and placed before the cabinet on 18/07/2002. The commission examined the Child Labour (Prohibition and Regulation) Act, 1986 and observed that 'the act does not cover all occupations and processes where children are working. It covers only some hazardous occupations and processes. It excludes children working in family based enterprises. Whether the child is employed in enterprise and industry, outside the home, or at home, for wages or to help in domestic chores or family occupations, it results in the forfeiture of opportunities for education. The law does not say what should happen to the child labour once the employer is prosecuted. The implementation of the act depends entirely on the state’s bureaucratic machinery, which is poorly staffed and ill equipped, will not be able to ensure that children do not engage in hazardous works. Conditions of work in non—hazardous settings also need to be upgraded. Education is referred to in three different types of laws. Instead of enabling and empowering parents to send children to school, the law empowers the state to take punitive action against parents who do not send their children to school. The modified version of National Policy on Education-1986(modified in 1992) talks of Universal Elementary Education (UEE), but education up to 14 years of age has become compulsory from 01/04/2010 with the enactment of Right to Education Act, 2009. Preprimary education is not legislated upon. Non-formal education, rehabilitation and general development programmes are talked about in the National Policy on Child Labour (NPCL) but are not made a part of law'.

The commission feels that the close links between education and the prevalence of child labour demand a convergence of laws on education and child labour and recommends that the government should incorporate the suggestions contained in various judicial pronouncements in relevant laws or guidelines. So far, our policies have approached the situation of the child in a fragmented way. We have tried to deal with the problem of universalizing education on the one hand and approaching child labour as hazardous on
the other. This fragmentation of approach has been matched by a lack of convergence of
effort as reflected in our programmes/schemes of the various departments. The number of
ministries and departments (both states and centre) who handle schemes and budgets that
deal with children are numerous. What is evident is that, a very large number of
government agencies are currently offering welfare and other services which are meant to
reach children. Unless we achieve convergence in operational terms, laws and schemes
related to child labour and child development may prove ineffective and inadequate. We
are proposing an indicative law on child labour which would replace the existing Child
Labour (Regulation and Prohibition) Act 1986. Historically, wherever child labour has
been abolished in the world, it is through compulsory primary education for all children.
At the same time, a set of complementary measures needs to be put into place. Public
action must be mobilized along all fronts to change attitudes towards child labour and to
build public pressure against hiring children.