CHAPTER II

CHILD LABOUR LEGISLATION AND NATIONAL POLICIES
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NEED FOR LEGISLATION

Child labour was an accepted part of economic and cultural behaviour in much of the developed world till 19th century. Children worked along with their parents, doing both domestic and non-domestic work, in the agrarian as well as in the Cottage industry sectors. After the Industrial Resolution these children were made to work in various industries and factories where they were exposed to much more hazards and were not only exploited but also abused. They become victims of personal aggrandizement, greed and even lust. Injuries that child labour inflicts upon the children are atrocious but at the same time child labour injures the society as well. In fact child labour often retards any form of technological advancement, that would otherwise be possible. Manufacturers, by employing children are often able to retain perpetuate methods of manufacture which are unnecessary and antiquated. The typically indigenous industries like beedi, match production and textile manufacture for instance, are made possible through the cheap availability of child labour. Greed for profits alone make it necessary for the exploitation of tender fingers to curl tobacco leaves, to paste stickers on match boxes and to spin cotton in a textile mill. The same tasks
can be carried out by mechanical means, instead ingenuity and innovative skills are allowed to lie dormant because the labour of children is cheap and plentiful.

The concept of social welfare state enunciates that every citizen must get security and protection from the state so that he may lead an honourable and dignified life. The principle is more relevant to children who have to develop as the potential citizens of the society. Children for this purpose must be socialized adequately so that they may develop their potentialities properly. The bitter reality is that instead of going to schools and training centres, the innocent boys go to industrial units and factories, spend considerable time and manage to feed themselves and other members of the family at the cost and risk of their own life. The problems such as the special vulnerability of children, the prevalence of discriminatory practices, the lack of protection, damage to education, health and development, and perhaps worst of all, the involvement of children in illegal and dangerous work, have given rise to legislation and policy. These concerns have gained importance in the recent years as a result of a great awareness of the need to recognise the rights of children, including working children, the realization that they are engaged outside the household economy in perhaps larger numbers than ever before.
...and the recognition that they are increasingly exposed to forms of employment and social settings which can be dangerous both to their physical and moral development. Due to widespread poverty and less job opportunities for adults, the children which were supposed to be in schools and playgrounds, are being sent to work places for meagre income to earn the livelihood.

The essence of any legislation is to protect and safeguard the interests of the people from the onslaught of exploitation of any form or nature. Infact laws are the expression of collective conscience of a society. These are enacted to regulate the affairs in a satisfactory manner. Starting from the premise that the children are the most valuable asset of any nation, that child labour is injurious to physical, mental, moral and social development of children, and that some special measures are urgently required to protect them from various kinds of adverse effects of the work undertaken by them, various provisions are made at the national and international levels.


It is also becoming accepted that because of the widespread poverty and a formidable array of institutional constraints facing governments, the immediate abolition of child labour will not be possible. These obstacles have led to reassessment of the traditional approach to child labour and brought about a striking evolution in public policy, which goes beyond exclusive reliance on legislation and enforcement and encompasses short- and long-term measures in such areas as the provision of service, protection and advocacy. This shift in attitude and approach is not confined to government. Indeed, another crucial development is the increasingly important role played by non-governmental organisations in the campaign against child labour and in the protection of working children.

CONSTITUTIONAL PROVISIONS AND LEGISLATIVE ENACTMENTS

Child labour is not a new phenomenon to our age. It has existed in some form or the other from the very earliest times. It was not before the industrial revolution that the evil effects of child labour became acute and were brought into prominence. In India factories were started about the middle of 19th century and children were employed in industries where they worked for long hours under appalling

conditions. The first legislative measure for the protection of child labour in India was adopted way back in 1881, but the scope was limited to factories employing 100 or more persons. According to this act, children below 7 years of age were not allowed to work. Between 7 and 12 years of age, they could work for 9 hours a day. In 1891 another Act was passed which applied to units employing 50 or more workers. The minimum age was fixed at 9 and hours of work were 7 for children between 9 and 14 years of age. However, the smaller units where the worst abuses existed were not covered by the Act. Since then time and again a series of legislations were enacted to get rid of the evil of child labour. Besides the legislative enactments, the constitution of India also provides protection to children from adverse effects of their employment on their physical and mental development. The constitution recognises the need for granting special protection to children. The constitutional safeguards are two fold:

1. Fundamental Rights
2. Directive Principles

The constitution carries important expression of the

government policies against the abuse of child labour. As regards the fundamental rights, specific provisions regarding children have been made in Part III of the constitution.

Article 15(3) of the constitution enables the state to make special provisions for children. This article saves the validity of laws making special provisions for women and children. Article 23 lays down:

i) Traffic in human beings and bear and other similar forms of forced labour are prohibited and any contravention of the provisions shall be an offence punishable in accordance with law;

ii) Nothing in the article shall prevent the state from imposing compulsory service for public purpose, and in imposing such services the state shall not make any discrimination on grounds of religion, race, caste or class or any of them.

Article 24 provides that "no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment".

As regards the Directive Principles of the state policy, The Chapter IV of the Constitution contains specific directions in relation to the welfare of children. Article
39(e) and (F) proclaim that the state shall in particular direct its policy towards securing the health and strength and that the tender aged children are not forced by economic necessity to enter avocations unsuited to their age or strength. It further enjoins that the childhood and youth are to be protected against exploitation. It states that "Children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against the moral and material abandonment". Apart from this the constitution also endeavours to provide free and compulsory education for all children until they complete the age of 14 years.

In addition to above mentioned provisions there are also certain other provisions contained in the constitution, which although do not lay emphasis directly on the child welfare, yet the children are bound to be beneficiaries if these provisions are implemented properly.

Article 38(1) provides that state shall strive to promote the welfare of the people by securing and protecting

6. Article, 39 (e) Constitution of India.

7. Article, 39 (F), by Virtue of Constitution 42nd Amendment Act, 1976 (S-7).

8. Article, 45 Constitution of India.
as effectively as it may secure a social order in which justice—social, economic and political shall inform all institutions of national life. Naturally an effective implementation of this principle will promote proportionately the child welfare.

Similarly Article 41, states that it is required that the state shall within the limits of its economic capacity and development make effective provisions for securing, inter-alia the right of education and to public assistance in cases of unemployment and other cases of undeserved want. Implementation of such provisions will also promote the welfare of children.

According to the provisions of Article 42 of the constitution, the state is required to secure just and humane conditions of work besides some maternity benefits. This provision envisages a healthy psychological environment to the child particularly during the significant period when the child requires a normal bringing up.

Article 43 of the constitution emphasises that the state shall endeavour to serve, by suitable legislation, to all workers, agricultural, industrial or otherwise, not only work but also living wage with specified conditions of work ensuring a decent standard of life and full enjoyment of
leisure and social and cultural opportunities. This provision also includes child labourers in its wider interpretations.

Article 46 similarly lays down that the state shall provide with special care the educational and economic interests of the Scheduled Castes and Tribes and other Weaker sections of the society. The children belonging to such category are the worst affected and need to be constitutionally protected.

Article 47 of the constitution also states that it shall be the primary duty of the state to raise the standard of its people which includes children as well.

However despite of these constitutional provisions, the assessment of progress made against child labour exploitation or the welfare measures provided to them appear to be disappointing. The International Labour organization after its establishment in 1919, also stressed on the elimination of child labour and has adopted time and again a series of conventions and recommendations. On the basis of these conventions, recommendations and declaration of the Rights of the child by the General Assembly of the United Nations more than 250 central and state laws were enacted pertaining to children. These laws were passed with an objective of improving working conditions of children and protecting them
against the abuse, exploitation and health hazards. The concentration of various legislative enactments is mainly on four basic issues as:

i) Minimum age for employment of children,

ii) a maximum period of work per day and forbidding work during night,

iii) Prohibition of certain types of work for children, and

iv) Medical examination of all children.

At present there are eleven major legislations providing legal protection to children in various occupations. The details of these Acts are as follows.

1. THE CHILDREN (Pledging of Labour) Act, 1933

The recommendations of the Royal Commission on labour forced the Government to introduce in the Legislative Assembly in 1932 a bill called the children (Pledging of labour) Bill, which a year later was converted into an Act. According to this Act, the pledging of children for the purpose of getting some work done is prohibited. Child, under the Act, is defined as person who is under 15 years of age. Any agreement pledging the labour of a child is void and any person found violating the Act shall be subjected to penalty which would be Rs.200/- on employer and Rs.50/- on guardians.
2. EMPLOYMENT OF CHILDREN ACT, 1938

The basis of this Act are the recommendations of a convention adopted by the 23rd session of the International Labour Organisation 1937 Which inserted a special article for India that "Children under the age of 13 years shall not be employed or work in the transport of passengers, or goods or mails, by rail or in the handling of goods in the docks etc. Children under the age of 15 years shall not be employed or work..... in occupation to which this article applies which are scheduled as dangerous or unhealthy by the competent authority". This Act:

i) Prohibits the employment of children under 15 years in occupations connected with transport of goods, passengers, mails or railways; ii) Minimum age for handling goods on docks is raised from 12 to 14 years;

iii) Certificate of age for child worker is required from a prescribed medical authority. All employers employing children must maintain register, showing the name and date of birth of every child worker under 17 years of age;

iv) Violation of this Act can mean an imprisonment from three months to one year and a fine of Rs 500 to 2000. For some one who has been convicted earlier, the period of imprisonment can go up from 6 months to 2 years.
The occupations declared hazardous are beedi making, Carpet weaving, Cement manufacture, Cloth printing, dyeing and weaving, match industries and fire works, mica cutting and splitting, shellac manufacture, soap manufacture, Canning etc. The state government may add any other manufacturing process to which this prohibition is to apply.

Provisions for verification of age in case of dispute were introduced in 1939 and in 1949 an amendment was made and the minimum age for employment was raised to 14 years.

3. THE FACTORIES ACT, 1948

This Act prohibits the employment of children below 14 years of age in a factory. Obviously the purpose is to safeguard the health of young persons of above 14 years of age and below 18 years as it prohibits their employment during night. Such persons according to the Act are required to obtain a certificate of fitness from a certifying surgeon and makes essential the periodical examination of these persons. It also enunciates that children between the age group of 14-15 years should not work more than 4 1/2 hours a day and work on dangerous machines is prohibited. Factory is supposed to maintain a register giving all details of child workers. The Factories Act does not apply to such factories where there are 10 workers with power and less than 20 workers without the aid of power. There is no statutory
protection to children employed in such factories. However the state government may extend all or any of the provisions of the act to other premises where manufacturing process is being carried on and where the number of workmen employed are less than those specified, except where the work is done solely with the help of the members of the family.

The Act also envisages that children should not clean, lubricate or adjust any part of the machinery while it is in motion. Rest shelters, canteens etc. are also to be provided to all workers including children.

4. THE PLANTATIONS LABOUR ACT, 1951

The Act prohibits employment of children below 12 years of age. It also regulates hours of work with no work at night. According to the Act, no child can be allowed to work for more than 40 hours a week. An adolescent between 15-18 years of age can not be employed unless he is certified fit for work by a surgeon. Such certificate is valid only for one year. Use of false certificates is punishable by imprisonment which may extend to one month or fine or both. The Act covers all tea, coffee, rubber, Cinchona and Cardamory plantations and using areas 10.117 hectares or more, in which 30 or more persons are employed. This Act prescribes a few welfare measures for the children as well as education facilities for children of plantation workers.
5. THE MINES ACT, 1952

This Act also defines the child as a person below 15 years of age. The Act not only prohibits the employment of children in mines, but also prohibits the presence of children in any part of the mine which is below ground or above ground where any mining operation is being carried on. Young persons between 16-18 years of age are allowed to work only after the production of physical fitness certificate. Even then such a person cannot work at night. Punishment for violation is imprisonment up to three months or a fine up to Rs.1,000 or both.

6. THE MERCHANT SHIPPING ACT, 1958

This Act restricts the employment of a person below 15 years of age in a ship except a training ship, home-trade ship, or a ship of less than two hundred ton gross, or a ship where other family members work. No person below 18 years of age can be a trimmer or stoker in a ship. All persons below 18 years of age must have a medical certificate which is valid up to one year. The Act imposes a modest penalty of a fine up to Rs.50/- for violation of any provision.

7. THE MOTOR TRANSPORT WORKERS ACT, 1961

The employment of persons below 15 years of age is prohibited under this Act. A person between the age group of 15-18 years can be employed only after producing a physical
fitness certificate and can work 6 hours a day with a half hour rest period and not between 10 p.m. and 6 a.m.

8. THE APPRENTICES ACT, 1961

The Act provides for regulating and controlling of trainees in trades and for matters connected herewith. The Act provides that no person shall be qualified for being engaged as an apprentice or to undergo apprenticeship training in any designated trade unless he is atleast 14 years of age and satisfies such standards of education and physical fitness as may be prescribed. The total number of hours for an apprentice shall be 42 hours to 48 hours per week, including the time spent on related instructions.

9. BIDI AND CIGAR WORKERS (Conditions of Employment) Act, 1966

Employment of children below 14 years of age is prohibited under this Act. It also restricts the work by persons between 14-18 years of age during night. But this Acts does not apply to house based work centres where a large percentage of Bidi and Cigar manufacture takes place. The administration of the Act lies with the state who appoint chief inspectors. The Act provides the penalties for breach which may be imprisonment upto three months or a fine of Rs. 500 or both.
10. SHOPS AND ESTABLISHMENT ACT

Shops and Establishment Acts have been passed by various state Governments which are applicable within their own states. The state Governments are empowered to extend the application of the Act to any area, category or establishment as may be considered necessary. The Act prohibits the employment of children below a certain age as different states have different age criteria for defining the child.

The Jammu and Kashmir Shops and Establishment Act, 1966 prohibits the employment of child in shops and establishments, and he can not be employed even as a member of the family of the employer. According to the Act, a child is a person who has not completed the age of 12 years. The working hours for child as per the Act are generally from 6 a.m. to 7 p.m., though in few may extend upto 7 or even 9 p.m. The daily working hours vary from 5 to 7 hours.

11. CHILD LABOUR (Prohibition And Regulation) Act, 1986

This Act was passed by both Houses of the Parliament on 23.12.1986. The aim of the Act is to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments. The bill which was introduced in the Parliament in its final form intended to: .
1. ban employment of children i.e., those who have not completed their fourteenth year, in specified occupations and processes;
2. Lay down a procedure to decide modifications to the schedule of banned occupations or processes;
3. Regulate the conditions of work of children in employment where they are not prohibited from working;
4. Lay down enhanced penalties for employment of children in violation of the provisions of this Act, and other Acts, which forbid the employment of children;
5. To obtain uniformity in the definition of 'child' in the related laws.

Salient features of the Act are given below. According to the Act, the Employment of Children Act, 1938 is repealed. All rules made in this Act will be in addition to the provisions of the Factories Act, 1948, the Plantations Labour Act 1951 and the Mines Act, 1952.

i. According to this Act "Child" means a person who has not completed his fourteenth year of age.

ii. The Act provides for the setting up of "Child Labour Technical Advisory Committee" for the purpose of addition of occupations and processes to the schedule. A notice of at least three months will be given by the
central government before adding any occupation or process to the schedule.

iii. The Act clearly lays down that no child will be allowed to work for more than six hours per day with a rest period of one hour after three hours of work. Once a week he will be given a holiday.

iv. No child will be allowed to work between 7 p.m. and 8 a.m. and no overtime will be permitted.

v. The Act clearly states that the Government can make rules for the health and safety of children who are permitted to work in any establishment. These rules can provide for matters such as cleanliness, ventilation, dust and fumes, lighting, drinking water and sanitary facilities etc. But there is no mention of nutrition or medical facilities.

vi) The penalties for violation of the Act will range from three months to one year of imprisonment with a fine of Rs. 10,000 to Rs. 20,000.

vii) If a person found guilty will be liable for punishment under the clauses given in section 14 (1 and 2) and not under any of the previous Acts. The penalties under this section are those mentioned above.

viii) Any person, police officer or an inspector can file a complaint of an offence under this Act in any court of competent jurisdiction.
ix) Part B of the schedule has been added one more process into the existing list and that is "Building and Construction industry". The total processes are now eleven as
1. Bidi making
2. Carpet weaving
3. Cement manufacture, including bagging of cement
4. Cloth printing, dyeing and weaving
5. Manufacture of matches, explosives and fire works
6. Mica-cutting and splitting
7. Shellac Manufacture
8. Soap Manufacture
9. Tanning
10. Wool cleaning
11. Building and construction Industry

These are the main provisions of the child labour (Prohibition and Regulation) Act, 1986. All other provisions are similar to the one's existing in the Employment of Children Act, 1938.

NATIONAL POLICIES

The Government of India has been deeply concerned about the problem of child labour. Since independence, besides the constitutional provisions, there have been several laws and
regulations prohibiting employment below a certain age and providing protection for working children. However in recent years a serious reassessment of the government policy on child labour has taken place, the aim being to identify the most effective way of dealing with the problem. The reassessment is based on number of considerations. Firstly, the conditions of work have been found to be more exploitative where children are engaged in wage labour than where they work with their family. Secondly it is practicable to prohibit the employment of children, efforts must be made to regulate the conditions of work so that they receive some protection and in particular are assured of a reasonable wage and less working hours. In addition efforts must be made to provide working children with service to ensure their proper physical and mental development. Thirdly it may prove necessary to rehabilitate those children removed from prohibited occupations, otherwise their families will face hardships due to a fall in income and the children may return to work. Finally efforts must be made to strengthen income-and-employment generating programmes and education, health nutrition and vocational training schemes in areas with high concentrations of child labour. These considerations have led to the formulation of National Policy on Child Labour.
National Policy on Child Labour has been framed in Conjunction with the legal measures to address the socio-economic issues having a bearing on child labour and to provide a frame work for a concrete programme of action. Main features of the Policy are as follows:

1. It will be ensured that the legal provisions pertaining to prohibition of child labour in hazardous occupations, regulation of their work conditions and provisions pertaining to health, safety, welfare amenities and other benefits are strictly implemented so that child labour does not live at the mercy of employers under highly exploitative and inhuman conditions.

2. Ten specific projects will be under taken in areas of high concentration of child labour. The objectives of these projects are:

i) Ensuring that all the poor families from which child workers come are covered by the income and employment generation programmes. This will enable them to cross the poverty line;

ii) The programmes pertaining to education, vocational training, health and nutrition will be strengthened in the project areas;
iii) Special schools will be opened to rehabilitate the children removed from the prohibited and hazardous employment and provide welfare inputs to the children working in the permitted employments. The schools for the rehabilitation of child labour will provide non-formal educational, supplementary nutrition and vocational training along with stipend so as to compensate the loss of income to their families.

The National Policy on Education 1986 puts a new trust on Universal enrollment and a substantial improvement in the quality of education. The quality envisages to launch a large and systematic programme of non-formal education for school dropouts, children from habitations without schools, working children and girls who can not attend whole day schools. The policy aimed at providing five years of schooling or its equivalent through non-formal system of education to all children who attain the age of 11 years by 1990. This had the target of having 4,90,000 non-formal educational centres to supplement the formal educational system. Schools and educational centres were to be opened both in rural and urban areas with the help of local

voluntary agencies and Panchayati Raj. Efforts were to be made to link the non-formal institutions with the formal educational system so as to enable to child workers who have completed non-formal and continue their schooling in the formal educational system.

3. The programmes of education, health, medical care, supplementary nutrition as well as of income and employment generation for the parents of child labourers are most relevant in the context of the problem of child labour.

Responsibilities for carrying out medical inspections of children lies with the state governments. In schools children receive regular health checkups. However working children unable to attend the school are not covered by such schemes. So it will be recommended to the state governments that intensive medical inspection of children should be taken up in areas where child labour is prevalent, and that the school health service should include working children. It should also be possible to arrange for health screening of working children at the non-formal education centres.

In addition to all this anti-poverty programmes have been developed by the government. These programmes include a number of income and employment generating schemes for poor
families. The most disadvantaged families will be given assistance to raise themselves above the poverty line and this in conjunction with the provisions of non formal education is expected to go a long way towards tackling a major underlying cause of child labour.

Project Based Plan of Action:

The policy anticipates and provides for specific pilot projects which could establish the basis for a more vigorous national programme of action. The plan of action is being implemented in the area where child labour concentration is much higher. Ten areas have been identified on the priority basis. These areas are:-

1. Match Industry, Sivakasi (Tamil Nadu)
2. Diamond Polishing Industry, Surat (Gujarat)
3. The Precious stone Polishing Industry, Jaipur (Rajasthan)
4. The Glass Industry, Firozabad (U.P.)
5. The Hand Made Carpet Industry, Mirzapur (U.P.)
6. The Brass Ware Industry, Muradabad (U.P.)
7. The Lock Industry, Aligarh (U.P.)
8. The Hand Made Carpet Industry, (Jammu and Kashmir)
9. Slate Industry, Makarpur (A.P.)
10. Slate Industry, Mandsaur (M.P.)
The plan is to mount pilot projects in each of these areas. The strategy will be to evolve a model comprising a number of key elements. These strategies are as:

1. Stepping up the enforcement of the Factories Act, 1948, The Mines Act, 1952, and the Child labour (Prohibition and Regulation) Act, 1986. If necessary special enforcement staff will be employed.

2. Coverage of families of Child Workers in income and employment generating schemes under the antipoverty programmes.

3. Formal and non-formal education for all child labour of these areas. Also adult education programmes, special schools for vocational education will be opened in these areas.

4. The policy also anticipates a stipend for children withdrawn from prohibited employment.

5. The final element involves the coordination of the activities of different departments and ministries of the Central and state governments to the benefit of child workers.

The child labour projects will be monitored by a Committee of the Central Government with representatives from the ministries and departments concerned and from the state governments in areas where child labour projects are being
implemented. Within the frame work of National Child Labour Policy the Central Government has launched two pilot projects in major concentration of child labour i.e., Match Industry of Sivakasi, Tamil Nadu and the Carpet Weaving Industry of Varanasi, U.P.