Chapter

IIIrd

Legislations on Child Labour - An Analysis.
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Before discussing existing legislations dealing with the problem of child labour, let us have a bird’s eye view of international concern regarding the abolition of child labour.

International Concern on Child Labour:

The child labour has long been an issue of significance to the international community. However, it was only in the 20th century the evil practice began to be seen as a matter of global concern for all nations and people of the world. At the forefront of emerging concern against child labour was the International Labour Organization (ILO). One of the principal ways by which ILO has expressed this concern has been through the adoption of International Conventions and Recommendations regulating the minimum age of admission of children into various kinds of employment. India became one of the founding members of ILO and was signatory to the first convention on prohibition on child labour in 1919. The first convention concerning a minimum age for admission to employment was adopted at the first International Labour Conference in 1919. Convention No. 5 (1919) prohibits the work of children under the age of 14 years in industrial establishments. Subsequent International Conferences have adopted other conventions and recommendations concerning the minimum age for admission to various other sectors of employment.

Two most important instruments specifically related to child labour were Convention No. 138 Minimum Age (1973) and accompanying Recommendation No. 146. These instruments provide general as well as specific guidelines on when and under what conditions children may and may not work and the types of policies countries adopt in order to pursue the
objective of the effective elimination of child labour. Convention 138 lays down that the minimum age for admission to employment or work shall not be less than the age of completion of primary schooling and in no case; it shall be less than 15 years. It also requires that the ratifying States to fix a minimum age for work and it should be progressively raised to a level consistent with the fullest physical and mental development of children.

However, convention also provides for different age for admission to different types of work. Thus, "the minimum age for employment shall not be less than 18 years if the circumstance in which work is carried out is likely to jeopardize the health, safety and morals of young persons. This may be lowered to 16 years if the health, safety and morals of young persons concerned are fully protected and that they have received adequate training. On the other hand, national laws or regulations may permit the employment of persons 13 to 15 years of age on light work which is not likely to be harmful to their health or development, and which will not prejudice their attendance at school or vocational training programmes".\(^1\) Moreover, the convention has created broad exceptions which seems to dilute its intended aim. It thus allows a country whose economy and educational facilities are insufficiently developed may initially (a) specify a minimum age of 14 years, (b) limit the sectoral scope of application, and (c) reduce to 12 years the minimum age of entry in to employment of light work.\(^2\) Thus, the convention is a comprehensive instrument and provides a flexible standard to be followed by the countries at their different stages of socio-economic development.

The major drawback of the Convention 138 is that it allows exemption for particular industries or enterprises and does not apply to family firms, domestic service, and home duties. These exemptions are justified on the grounds of practicality but in case of developing countries they constitute a glaring omission because 80 percent of child labour falls under these

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\(^1\) Bequele. A (1988) "Responding to Child Labour: An Overview", Conditions of Work Digest, vol.7 Number 1, p-7

\(^2\) Ibid.
categories. However as broad as these exemptions are, they failed to garner enough ratification. Only 55 nations had ratified by October 1997, but this increased to 116 in April 2002. Many countries, including India where child labour is prevalent in large numbers have not ratified this convention yet.

Another significant international development on child labour is the unanimous adoption of the United Nations Convention on the Right of Child (CRC) by the General Assembly in November, 1989. The CRC seeks to protect a wide range of children's rights including right to protection from economic exploitation and from performing any work that is likely to be hazardous or to interfere with their education or harmful to their physical, mental, spiritual, moral and social development. The States require to take legislative, administrative, social and educational measures to ensure the implementation of the convention. It is made mandatory for the States to make provisions regarding (i) minimum age for admission to employment, (ii) regulation of working hours and conditions of employment, and (iii) make provision for appropriate penalties or sanctions to ensure effective enforcement of its provisions. The important provisions contained by CRC have direct bearing on extreme forms of child labour such as sexual exploitation, the abduction and sale of and trafficking in children for any purpose or in any form. This convention is found such an unprecedented response from international community that is has been ratified by 189 countries of the world.

Within the ILO, the most important development has been the establishment of the International Programme on the Elimination of Child Labour (IPEC). IPEC is a global initiative of the ILO launched in 1992 to support participating member countries in their national efforts to combat and eliminate child labour progressively, which simultaneously creating worldwide movement against it. This has recognized the importance of having a

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process to eradicate child labour, not just as standard. This programme is funded initially by the German government, recognizes that legislation is only one component of a successful strategy to reduce and eventually eliminate child labour. ILO through the IPEC provided education in part or full time non-formal education centers with the goal of mainstreaming children into the formal school system in its first phase. These programmes have also assisted in training of labour inspectors, teachers, and NGO's for institutional capacity building. During the second phase of IPEC, preventive strategies such as enrolling children into school before their entry into labour force, mainstreaming them into formal school and providing follow up assistance to check dropping out were included.⁵

Besides IPEC, the ILO launched another programme in India and that was Child Labour Action Support Project (CLASP). This programme has been started mainly for providing support to nine National Child Labour Projects. Its priorities were to enhance the Central government's policy, its planning and implementation capacity, and its ability to support ongoing and future projects by the state governments and NGO's.⁶

United Nation's International Emergency Fund (UNICEF) also acknowledges the need to advocate the implementation of the convention on the Rights of the Child. The objectives of UNICEF are:

- Provide compulsory primary education;
- Advocate revision and enforcement of legislation to prohibit child labour, particularly in hazardous industries;
- Strengthen alliance between NGO's media, industry and legal set-up for social mobilization in support of elimination of child labour;
- Assist Central and State governments in the action plan for the withdrawal and rehabilitation of child labour; and

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⁶ Ibid.
• Setting up non-formal education center's for working children and teaching low-level vocational skills along with the basic curriculum.  

Thus the work of IPEC and UNICEF has emphasized that child labour is multi-faceted problem which requires not only prevention through legislation but enforcement, rehabilitation, education, social mobilization and development of alternative source of income if it is to be eliminated. Since the resources are limited and this has led to the strategy to target high priority areas as the best way to reduce the use of child labour.

Another most recent ILO convention on child labour is the "Worst Forms of Child Labour Convention, 1999," followed by "Worst Forms of Child Labour Recommendation, 1999". The new developments with respect to creating a category of 'worst forms of child labour' have evoked mixed response. The tone of the Preamble to the convention shows the paradigm shift in the ILO's approach to child labour, which no longer is limited only to elimination of child labour, but also emphasizes the importance of free basic education and the need to remove children from all such work. It concedes that problems like child labour are to a great extent caused by poverty and hence calls for multi-dimensional solutions which involve sustained economic growth, social progress, poverty alleviation and universal education. It also attempts to address the broader problems related to child labour and call for the rehabilitation and social integration of such children and seek to resolve the needs of their families also.

ILO's Convention No. 182 (C-182) concerning the Prohibition and immediate Action for the Elimination of Worst form of Child labour (1999) is meant to supplement the ILO Convention No. 138 (C-138) concerning the Minimum Age for Admission to Employment (1973) which remains the fundamental instrument on child labour. The new convention seeks to 'take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.'  

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term 'worst forms of child labour' as: "all forms of slavery or practices similar
to slavery such as the sale and trafficking of children, debt bondage (bonded
labour), serfdom and forced or compulsory labour; forced or compulsory
recruitment for use in armed conflict; child prostitution and pornography, use
of children for illicit activities such as trafficking of drugs, and any work which
is likely to harm the health, safety or morals of children".  

The accompanying recommendation defines hazardous work as work
that exposes children to physical, psychological, or sexual abuse; work carried
out underground, underwater, at dangerous heights or in confined spaces; work
with dangerous machines or equipment, work involving heavy loads, work in
unhealthy environment such as those with hazardous substances and extreme
temperatures or noise levels; work for long hours or during the night, work
involving unreasonable confinement at the employer's place. This broad
category overlaps significantly with the ILO Convention No. 138. Convention
No. 182 also requires the state parties to (a) ensure that children do not fall prey
to worst forms of child labour; (b) provide direct assistance to rescue children
from these worst forms and to integrate them back into social fabric;
(c) provide education to children remove from the worst forms;
(d) identify and reach out to children at special risk; and (e) take cognizance of
the special situation of girls. Concurrently, two optional protocols to the CRC
on the involvement of children in armed conflict and on the sale of children,
child prostitution and child pornography were also adopted by the United
Nations General Assembly in the year 2000. There is a conspicuous overlap
between the two sets of international treaties and India has not ratified them as
yet.  

The issue that needs to be considered here is, if India is keen on
pursuing goals of CRC, why has it been slow in ratifying the new international
treaties since the ratification of CRC? Although, the inter-ministerial meeting

9 Article:2
10 Mahandale, A(2004)"Realities of Child Labour and Contextualizing the Legal Strategy :
A Case study of India", in Lieten, G.K., Ravi Srivastava and Sukhdeo Thorat (ed) "Small Hands in
South Asia", Manager Publishers & Distributers, New Delhi.
held in July 2001, recommended that C-182 be ratified, the matter is still pending. In contrast, other developing countries such as Pakistan, Bangladesh, Nepal and Srilanka have already ratified Convention 182 with the later two countries having ratified even the earlier Convention 138. Both conventions have not ratified by India yet.

Relevant Provisions under Constitution of India:

The Constitution of India is a supreme law of the land. All laws in India derive its authority from it. One of the unique features of Indian constitution is that while it recognizes the principle of equality before the law and equal protection of the laws under Article 14. At the same time it provides for protective discrimination under Article 15 (3) of the constitution, which provides: "Nothing in this Article shall prevent the state from making any special provision for woman and children". Similarly, clause 4 of Article 15 allows the state to make provisions for advancement of any socially and educationally backward classes of citizens or for the Schedule Caste and Schedule Tribes.11

The framers of Indian constitution were fully aware of the problem of child labour. They incorporated some special provisions for the protection and welfare of children in general and child labour in particular in Part III and IV of the constitution dealing with Fundamental Rights and Directive Principles of States Policy. Accepting the fact of prevalent of child labour in India, Article 24 of the constitution relating to the fundamental right against exploitation states that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. This mandate is strengthened, fortified and supplemented specially by Articles 39 and 45 of the Directive Principles. Article 39 (e) directs the State to see that the tender age of children is not abused and that citizens are not compelled by economic circumstances to enter avocations unsuited to their age or strength.

Further clause (f) of Article 39 emphasizes the need to see that childhood and youth are protected against exploitation and against moral and material abandonment. It also provides that children are given opportunities and facilities to develop in a healthy manner and in conditions of dignity and freedom. Article 45 directs that State shall endeavor to provide, within a period of ten years from the commencement of the constitution, free and compulsory education for all children until they complete the age of fourteen years.

The Constitution (86th Amendment) Act, 2001 introduced Article 21A in Part III of the constitution dealing with the Fundamental Rights, which ensures a justifiable right to free and compulsory education to all children six to fourteen years of age.\(^\text{12}\) It can be pointed out that the free education does not cover the total cost of schooling and opportunity costs like wages if parent send their children to work instead of school. The phrase, as the State may by law determine' in Article 21A implies that the law will determine the nature and manner of the provision of free and compulsory education. Thus there is discretion of the state to implement education policy, and escape from liability and accountability in cases of providing low quality education to the children of deprived section of society. Further, the inclusion of the Article 51A (k) in Part IVA as fundamental duty of the parents\(^\text{13}\) has created an ambiguity on whom the compulsion lies. However, the state is under compulsion to provide quality education to all children.\(^\text{14}\)

Analysis of the these provisions clearly shows that the state is concerned with working children only when the child's work is recognized as being hazardous or unsuited to its age. What constitute hazardous is not defined and

\(^{12}\) See [Article 21A Right to Education "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine] inserted by the Constitution (Ninety-third Amendment) Bill, 2001 which is called as the constitution (86th Amendment) Act, 2001; in Saharay, H.K. (2002) "Constitution of India – An Analytical Approach." 3rd Edition Eastern Law House, New Delhi, p.267.

\(^{13}\) See Article 51A (k) says, "who is a parent or guardian to provide opportunities for Education to his child or, as the case may be, ward between the age Of six and fourteen years"; inserted by the Constitution (86th Amendment) Act, 2001.

open to interpretations. Therefore, it can be pointed out that Article 24 partially prohibits child labour. However, there is an inherent contradiction among these provisions, indicating a complete lack of understanding on child labour. By prohibiting employment of children in hazardous industries only, the constitution has actually allowed the employment of children in other sectors such as agriculture where 80 percent children are employed. Nevertheless, it also provides for free and compulsory education for all children up to the age of fourteen years. How are the children expected to work and compulsorily attend school at the same time? The working hours in agriculture and allied activities are increasing everyday and therefore, this contradiction seems to be more illogical.

**Child Labour Legislations in India:**

The legislative history in India reveals that the statutory provisions on child labour have mainly concentrated on raising minimum ages in defining a child, reducing the working hours and different activities which a child can undertake. The origin of statutory protection of the child workers in our country can be traced back to the Indian Factories Act, 1881. The Act imposed a restriction on the employment of children by prescribing an age of seven years. Between 7 to 12 years of age they could work for nine hours a day with an interval of one hour for rest, and a weekly holiday was given to all children. The Act however, applied only to units having 100 or more workers and using mechanized power. In order to remove its inherent weaknesses and to keep pace with the changing needs of the working class, the Act has been amended several times. Since then, the legislative history has traversed a long path till the coming in to effect of the Child Labour (Prohibition and Regulation) Act, 1986.

Apart from constitutional mandate, there have been several legislations relating to prohibition and regulation of child labour in India. The important provisions under different labour laws and enactment protecting the interest of working children are discussed below:
(i) The Children (Pledging of Labour) Act, 1933:

The Act defines, "child" as a person under the age of fifteen years. The Act prohibits the making of an agreement to pledge the labour of children, and the employment of children whose labour has been pledged. It declares that an agreement to pledge the labour of a child shall be void, and penalties up to Rs.50 shall be imposed on the parent or guardian who makes such an agreement to pledge the labour of child. If an employer knowingly or has reason to believe such an agreement, employ such a child shall be subject to fine up to Rs.200. This enactment was made to check the evil practice of mortgaging the child or to put the child on bondage. It made any such agreement null and void. However, there is an exception under Section 2 that any such agreement is allowed if an agreement was made without detriment to a child and not made in consideration of any benefit other than reasonable wages to be paid for child's service and could be terminable on not more than one week's notice.

(ii) The Employment of Children Act, 1938:

The main object of the Act is to prevent the exploitation of child working in hazardous employment and certain category of unhealthy occupations. The Act prohibits the employment of children below 15 years of age in any occupation relating to transport of passengers, goods or mail by railway or a port authority within the limits of a port.

With the exception of children employed as apprentices or trainees, no child between the ages of 15 to 17 years can be employed or permitted to work in any occupations referred to in sub-section (1) of Section 3, unless he is allowed a rest interval of at least 12 consecutive hours in a day. The period of rest is to include at least seven such consecutive hours between 10 p.m. to 7 a.m. as may be prescribed by the appropriate government. Section 3 (3) of the Act prohibits the employment of children below the age of 14 years in workshops connected with bidi making; carpet weaving; cement manufacture, including bagging of cement; cloth printing, dyeing and weaving; manufacture of matches, explosives and fire works; mica cutting and splitting; shellac
manufacture; soap manufacture; tanning and wool cleaning. However, these provisions will not apply to any workshops where the work is done by the occupier with the aid of his family only or to any school established, aided or recognized by the state government. The State Governments are empowered to extend the scope of application of this Act to any other employment also. In exercise of this power, the Government of Uttar Pradesh has extended the provisions of this Act to brassware and glass bangle industries.

Any violation of this Act means imprisonment from three months to one year and/or a fine from Rs. 500 to Rs. 2000 or both and on subsequent offence punishment shall not be less than six months but it may extend to two years. The Act also requires the railway and port authorities to maintain registers showing names, date of birth, rest intervals etc. of the children under 7 years of age. However, it is imperative to mention here that this Act has been repealed to the extent it is inconsistent with the Child Labour (Prohibition and Regulation) Act, 1986.

(iii) The Factories Act, 1948

The main purpose of the Act was to ameliorate working conditions in factories and to take proper steps for the safety, health and welfare of the workers. In addition, the Act envisages regulating working hours, rest intervals, holidays and overtimes etc. It also contains certain restrictions regarding the employment of young persons. The Act has been drastically amended to ensure safety and security of the workers against the use and handling of hazardous substances and also lays down procedure for setting up hazardous industries.

The Act prohibits the employment of children below the age of 14 years in factory. It also requires a child between the age of 14 years or an adolescent to obtain a certificate of fitness from certifying surgeon before employment and periodical examination. Such certificate shall be valid for one year and it required to be kept in the custody of manager and child concerned shall carry with him a token giving reference of such certificate. The Act prohibit

15 Chapter vii, from Section 67 to 76 are exclusively applicable to child labour.
employing children between 14 and 17 years at night (between 10p.m. to 6 a.m.), between 14 and 15 years for not more than four and half in any day, and in one shift and in one factory. The prohibition is also imposed on employing children in certain processes within the factories. They shall not be allowed to work on or near machinery in motion or on dangerous machines without proper training. Further, children shall not be employed to clean, lubricate or adjust any part of prime mover or of any transmission machinery while it is in motion or if they stand the risk of injury. Act also prohibits employment of children for pressing cotton in which cotton opener is at work. It empowers the State government to make rules prescribing the maximum weights which may be lifted, carried or moved by children employed in factories. The Act requires that every factory is supposed to maintain register giving all details of child workers.

The State Government is under statutory duty to ensure the enforcement of Act, and in order to ensure enforcement, penal provisions have been incorporated. For violation of the Act by occupier or manager, is punishable with imprisonment for a term which may extend to two years or fine up to Rupees one lakh or with both; and for continuance of violation a further fine of Rs. 1000 for each day may be imposed. The Act applies to establishments employing ten or more workers with power, or twenty or more workers without power. Some State Governments have taken important initiatives with an aim to contain and eradicate the problem of child labour. The Government of Uttar Pradesh has vide its notification dated May 4, 1993 made the relevant provisions of the Factories Act, 1948 (Act No. LXIII of 1948) to any place in U.P. where any manufacturing process of carpet making or any work incidental there to or connected therewith is carried on notwithstanding that (i) the number of persons employed therein is less than five if working with the aid of power and less than ten if working without the aid of power; (ii) the persons working therein are not employed by the owner thereof, but are working with the permission of or under agreement with such owner; provided that the
manufacturing process is not being carried on by the owner with the aid of his family.\textsuperscript{16}

(iv) The Minimum Wages Act, 1948:

The object of the Act is to prevent exploitation of the workers by fixing minimum wages which the employer must pay. Section 2 (bb) defines a child as a person who has not completed his fourteenth year of age. It provides that minimum rates of wages may be fixed for adults, adolescents, children and apprentices. It also has provisions regarding hours of work i.e. four and half an hours in case of a child, and certificate of physical fitness.

(v) The Plantation of Labour Act, 1951:

As per Section 4 (a), the Act applies to any land used or to be used for growing tea, coffee, rubber, cinchona or cardamom which admeasures five hectares or more wherein fifteen or more persons are employed. But the State Government has been empowered to apply this Act to any land, which admeasures less than five hectares and where in less than fifteen persons are employed. Section 2 (e) defines a "child" to mean a person who has not completed his fourteenth year of his age. Whereas, a person who has completed his fourteen year but has not completed his eighteenth year is adolescent within the meaning of the Act.

The Act provides that no child or no adolescent shall be required or allowed to work in any plantation unless, a certificate of fitness has been granted by the certifying surgeon. Such certificate will be in the custody of manager and such workers are required to carry a token giving reference to such certificate. This certificate remains valid for 12 months and it may be renewed. Except with the permission of the State Government, no child workers shall be employed between 7 p.m. to 6 a.m. The maximum working hours for such child are 47 hours a week. It also makes provision that where fifty or more women workers are employed or where the number of children of women workers is twenty or more, the Crèches are required to be provided for

education of children of workers. Sections 13 & 14 of the Act also make provisions for education of children of workers employed in Plantation between the age group of six to twelve, exceeds 25 in number, then the State governments may make rules requiring employers to provide recreational and educational facilities in such manner and of such standard as may be prescribed. The Act also contains penal provisions. It provides for inspecting staff on lines of The Factories Act to ensure effective implementation of the provisions of the Act.

(vi) The Mines Act, 1952:

The Mines Act, 1952 like The Factories Act, also regulated the employment of children in mines. The provisions contained in Mines Act are stricter than the Factories Act. The Act not only prohibits the employment of children below eighteen years of age in mines but also prohibits the presence of children in any part of mines which is below ground or above ground where any mining operation is being carried on. However, apprentices or trainees, not below the age of sixteen years may be allowed to work in any part below ground if he has obtained a certificate of fitness from a certifying surgeon. Such person may be allowed to work under proper supervision in a mine or part thereof by the manager, and after obtaining approval of the Chief Inspector. There are penal provisions also in order to ensure the observance of the Act. It lay down that if a person is employed in a mine in contravention of Section 40, the owner, agent or manager of such mines shall be liable to be punished with fine which may extend to five hundred rupees. The penal provisions are inadequate, in effective prohibition and regulation of child labour.

(vii) The Merchant Shipping Act, 1958:

The Act is a piece of legislation relating to shipping industry. It applies to sea going ships. It contains provisions prohibiting and regulating child employment. The Act bars the employment of children below fourteen years of age in any capacity except as provided: in a school ship or training ship in accordance with the prescribed conditions; in a ship in which all persons employed are members of one family; in a home trade ship of less than 200
tons gross; or where such person is to be employed on nominal wages and will be incharge of his father or other adult near male relative. Further, the Act provides that a person below 18 years of age can not be employed as a trimmer or stoker in a ship, and no person below 18 years of age can be employed unless he has been granted a certificate of fitness by prescribed authority. The Act also imposes a modest penalty of a fine up to Rs. 50 for violation of the provisions.

(viii) The Apprentices Act, 1961:

The main objective of the Act is to regulate and control the training of apprentices and supplement the availability of trained technical personnel for the industrial concerns. It provides for practical training to the graduate and diploma engineers. A person who is not less than 15 years of age and satisfied the prescribed standard of education and physical fitness can undergo apprenticeship training in the designated trades under an employer. Such persons include graduate engineers and diploma holders. The Act defines graduate or technician apprentice, technical vocational apprentice, and trade apprentice. The Act applies only to designated trades notified by the Central Government after consultation with the Central Apprentice Council.¹⁷

Further, the Act deals with the matters such as qualifications for being engaged as an apprentice, contract of apprenticeship, period of apprenticeship, termination of apprenticeship contract, number of apprentices for a designated trade, practical and basic training, payment of apprentices, health, safety and welfare of apprentices, hours of work, overtime, leave and holidays, conduct and discipline, obligation of employer and apprentices, offer and acceptance of employment etc. There are various authorities created under the Act. These authorities are consulted on matters within the purview of this Act.¹⁸

¹⁸ Ibid.
Section 4 is relevant with contract of apprenticeship. It provides that if person concerned is a minor, then his guardian is required to enter in to a contract of apprenticeship with the employer and it shall be registered with the Apprenticeship Advisor. The Act also provides that the total number of hours for an apprenticeship shall be 42 hours to 48 hours per week, including the time spent on related instruction. No apprentice other than short term apprentice shall be engaged in such training between 10 p.m. to 6 a.m.

(ix) The Motors Transport Workers Act, 1961:

The Act is applicable to every transport undertaking employing five or more transport workers. The state Governments have been authorized to apply all or any of the provisions of this Act to any transport undertaking employing less than five workers. Act defines a "child" means a person who has not completed his fourteenth years of age.

The Act prohibits the employment of a child who has not attained the age of fourteen years. But for adolescents who have completed fourteen years of age but has not completed eighteen year, the Act provides that such persons shall be allowed to work as a motor transport worker after obtaining a certificate of fitness, which shall be kept in custody of employer. The worker concerned required carrying with them a token giving a reference to much certificate. Such a certificate shall be valid for one year and can be renewed. Further, it is provided that an adolescent can work only 6 hours a day including half an hour rest interval and not between 10 p.m. to 6 a.m. For proper observance of the provisions of the Act, it contains penal provisions also.

(x) The Atomic Energy Act, 1961:

Atomic Energy Act, 1961 has the minimum age as 18 years.

(xi) The Bidi and Cigar (Conditions of Employment Act, 1966:

This is a special enactment to regulate the conditions of work of bidi and cigar workers. This is an area where a large number of children work and are being easily employed. No doubt, Factories Act is applicable to these workers but employers easily evade from its applicability by splitting concern in to small units. Also because of the home-based nature of work, the evasion of the
Factories Act becomes easier. However, after this special Act evasion becomes a distant possibility.

Section 24 of the Act prohibits the employment of children below 14 years of age. No young person between 14 and 18 years shall be required or allowed to work except between 6 am. and 7 pm. The Act also provides crèches for the use of children of females employees below the age of 6 years, wherein more than thirty\textsuperscript{19} women workers are employed. But the Act does not apply to private dwelling houses where a large percentage of bidi and cigar manufacture takes place on a sub-contracting system. The Act also provides penalties for the breach which may be imprisonment up to three months or a fine up to Rs. 500 or both.

(xii) Shops and Establishment Act, 1969:

Different states are governed by their own Acts. These Acts apply to shops, establishments, restaurant and hotels and places of amusement in notified urban areas to which Factories Act does not apply. The age of employment in shops and commercial establishments varies from 12 to 15 years in different States. The working hour for children is generally from 6 am. to 7 pm. The State of Uttar Pradesh has codified \textit{U.P. Dookan Aur Vanijya Adhishthan Adhiniam, 1962} to regulate the conditions of work in shops and commercial establishment subject to the provision of the Act. The U.P. Act prohibits the employment of children below the age of 14 years, and also they are not permitted to work during night.

(xiii) The Bonded Labour System (Abolition) Act, 1976:

The Act prohibits bonded labour system. It provides that if there is any agreement or instrument or custom which requires such bonded labour, it shall stand inoperative after the commencement of the Act. Any liability to repay bonded debt shall stand extinguished. The property of bonded labour shall stand freed and discharged from mortgage, charge, lien or encumbrances and shall be restored to the possession of bonded labourers. The State Government

is authorized to confer such powers and impose such duties on a District
Magistrate as it deems fit for the purpose of the compliance of the provisions of
the Act. The Act makes provision for the constitution of the Vigilance
Committees in each district and each sub-division. The Committee is vested
with wide powers.\(^{20}\)

The Bonded Labour System (Abolition) Act, 1976 which prohibits all
forms of bonded labour for people of any age, and prohibits the creation of
bonded labour agreements and criminalizes attempts to compel a person to
engage in bonded labour. The Act frees all bonded labourers, cancels any
outstanding debt against them, prohibits the creation of any new bondage
agreements, and orders the State to economically rehabilitate free bonded
labours. A free bonded labourer is provided with a rehabilitation grant, from
Central and State Governments. It does not deal with rehabilitation of children
in bondage. Act is a social welfare legislation to provide socio-economic
justice to the weaker sections of the society.

(xiv) The Child Labour (Prohibition and Regulation) Act, 1986 : An
Analysis:

The Act came in to force when it was realized that the aforesaid
legislations were inadequate to combat the magnitude of child labour in India.
This Act repealed the Employment of Children Act, 1938 but it reproduces it in
Schedule A and B. Although there are number of Acts which prohibited the
employment of children below 14 and 15 years in certain specifies
employments. However, there is no procedure laid down in any law for
deciding in which employment or processes the employment of children should
be banned. There is also no law to regulate the working conditions in the
employment where they were not prohibited to work consequently; they are
working under exploitative conditions.

The preamble of the Child Labour (Prohibition and Regulation) Act, 1986
hereinafter referred Act, 1986, indicates that it has twine objectives, first,

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Allahabad, p-1027.
to prohibit the engagement of children in certain employments; and second, to
regulate the conditions of work in certain other employments where children
are allowed to work. The main aims of the Act are:

(a) To ban the employment of children, i.e. those who have not
completed their 14th year, in specified occupations and
processes;
(b) To bring uniformity in the definition of child in the related laws;
(c) To lay down the procedure to decide notifications to the Schedule
of banned occupations or processes;
(d) To regulate the conditions of work of children when they are not
prohibited from working;
(e) To lay deterrent punishment for violators of any provision of
this Act.

The Act, 1986 is divided into four parts. Part I contains definitions. Part
II deals with prohibition of employment of children in certain occupations and
processes. Part III regulates the working conditions of child labour in those
establishments where children under the age of 14 may be permitted to work.
Part IV of the Act, contains penalties for the violation of the provisions of the
Act. Section 2 (ii) of the Act defines, 'child' to mean a person who has not
completed his fourteenth year of age. Thus, it replaces definition of child in
various legislations. By lowering the age for the definition of a child from 15
to 14 year, the Parliament and the Government has used the constitution to take
away the protection of children between 14 and 15 years of age.

The act, 1986 does not prohibit child labour per se. Also does not set a
minimum age for employment of children. It prohibits the employment of
children in 13 occupations and 57 processes. It regulates the hours and
conditions of work in all other areas of employment. The regulation of work
rests on the implicit acceptance of the theory of harsh reality about the

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21 Amended, the Minimum Wages Act, 1948; Merchand Shipping Act, 1958; Plantation of
Labour Act, 1951; and Motor Transport Act, 1961, by substituting the word "fourteen" in place of
the word 'fifteen' in the case of age of the child.
existence of child labour. The most important occupations in which child labour is prohibited are handloom and power loom industry, transport passengers, goods or mail by railway; ports, mines, abattoirs/slaughter houses, automobile workshop and garages; selling of crackers and fire works, and plastic unit etc.\textsuperscript{22} Among the most important processes in which children are prohibited to work are bidi-making; carpet weaving; cloth printing, dyeing including processes incidental thereto; manufacture of matches, explosives and fire works, construction industry, aggarbatti manufacturing; zari-making (all processes); wool cleaning; and electroplating etc.\textsuperscript{23} However, recently the Central Government on the recommendations of the Child Labour Technical Advisory Committee vide its notification dated October 10, 2006 under Child Labour (Prohibition and Regulation) Act, 1986, extend the ban on employing children below 14 years to enterprises such as dhabas (road side coterries), restaurants, hotels, motels, tea-shops, resorts, spas or other recreational centers and domestic workers or servants.\textsuperscript{24}

Section 5 of the Act provides for the constitution of the "Child Labour Technical Advisory Committee" to advise the Central government for the purpose of addition of occupations or processes to the Schedule. The Committee has the power to regulate its own procedure and it may also constitute sub-committee. The committees can meet as and when considered necessary. Act clearly lays down that no child shall be allowed to work more than six hours per day inclusive of period of one hour rest after three hours of work. Every child shall be given one day's rest in a week. He shall not be allowed to work between 7 p.m. and 8 a.m. And no over time will be permitted. Section 13 of the Act, clearly states that the appropriate Government is empowered to make rules in such matters as cleanliness, ventilation lighting

\textsuperscript{22} See the Act, 1986 Part A of the Schedule for full list of occupations where children are prohibited to work in kumar (2005) ... p-670.

\textsuperscript{23} Ibid. see Part B of the Schedule for full list of the processes wherein children are prohibited to work.

\textsuperscript{24} Lucknow Law Times (2006) vol. XLVII, Issue 11, p-424 vide notification No. S.O. 1742 (E), dated October 10, 2006 published in the Gazette of India Extra; Part II, Section 3 (i), page-2 No.1211 by which the Central government has added two more occupations in the Schedule to the Act. 1986 in Part A:” (14) Employment of child as domestic workers or sevice: (15) Employment of children in dhabas, restaurants, hotels, motels, tea-shops, resorts, spas or other recreational centres."
drinking water, protection of eyes, excessive weight, latrine and urinals etc. for the health and safety of children working in the establishment. Act also includes penal provision for its violation. It says that whoever, employs any child or permits to work in contravention of Section 3, shall be awarded a minimum of three months imprisonment but it may extend to one year or with fine ranging from Rs. 10,000 to 20,000 or both. The penalty increases with the second offence and the imprisonment becomes mandatory ranging from six months to two years. For the purpose of securing compliance with the provisions of the Act, the appropriate government has been empowered to appoint inspector. Further, in the absence of a certificate, the dispute between inspector and occupier relating to the age of any child, the question shall be referred by the inspector to the prescribed medical authority for decision.

There is an exception to Section 3, whereby any work, occupation or process carried on by the occupier with the aid of his family, kept out of the purview of the Act. Thus it gives a tacit approval of the government to use child labour in household manufacture sector. This includes the use of child labour in hazardous occupations or industries. Not only this, the Act is also inapplicable to government sponsored programmes. The best examples of this exception are the approximately two hundred government-run weaving training centers. The carpet weaving is hazardous and therefore, prohibited under the Act. However, thousands of children are enrolled in Government-run training school in this industry with government's approval and encouragement. It means that work and conditions generally considered harmful to children became safe when it is carried on in household unit or under auspices of government programmes. This defies logic and justification. Moreover, these exceptions are clear violation of Article 24 of the constitution, which outlaws child labour in all hazardous occupations and processes. In fact Part III of the Act regulates the working conditions of children engaged in


26 Ibid.
work not mentioned in the Schedule to the Act, is nothing but legalizing the employment of children even without fixing minimum age of entry in the employment.

However, recent notification banning child labour in domestic and hospitality sector is a step in right direction. But unless the government addresses the issue of employment of children in agriculture, any ban will be meaningless. For eighty percent of child labourers work in agriculture and ban does not cover them. It does not cover household manufacturing industries also. Thus notification is limited in its scope and therefore, it is a huge lacuna.

The Act, 1986 also authorizes the appropriate government to appoint inspectors for the purpose of securing compliance with the Act. But most of the States have added responsibility for the enforcement of the Act on already existing labour inspectors. In practice some of labour inspectors enforce the Factories Act while others enforce the Act, 1986, thus there is no efficient division of labour. Further, and many inspectors were unclear about the import of laws. Besides, the labour inspectors in India are notoriously corrupt and susceptible to bribery. Another major loophole in the Act is relating to the proof of age of child workers. Instead of putting onus of proof on employer, it provides that in the event of dispute, it shall be referred to prescribed authority for decision. It means that on occasions of inspector's visit of premises they must accompany a doctor to evaluate the age of child.

The distinct improvement The Act, 1986 makes over the existing law is to enhance the penalties and to make provision for appointment of inspectors. If the conditions of labour can be improved by sanction, these provisions should be more than adequate. But considering that the employment of child labour is more of a socio-economic problem than a legal problem, and considering also that much of the child labour is out of the reach of the law, in

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28 Ibid.
29 Ibid.
the rural and the informal or unorganized sector, one can not be hopeful that these provisions will be much effective in regulating child labour.

Thus, the legislation to control and regulate child labour in India has existed since long. But in spite of the constitutional mandate and all these laws, child labour continues unabated even in industries or employment which are prohibited and there are very little regulation and control in non-prohibited industries and employments. This evil practice can not be eliminated or well regulated only with the introduction of few laws. After all, child labour is deep rooted in the socio-economic conditions of the people and therefore, can not totally disappear unless there is a substantial change in socio-economic conditions, attitude of the people and society at large.

**Definition of Child:**

There is no uniform definition of child. It is generally felt that the definition of the child is a complicated issue about which a uniform position neither exist in India nor is followed in social practice. Age limit is a formal reflection of society’s judgement about the development of children’s capacities and responsibilities. The activities of children such as to attend and leave school, to marry, to vote, to be treated as adult by criminal justice system, to be considered for employment and work are determined by age criterion. This criteria differ from country to country and from activity to activity.

According to Article 1 of United Nations Convention on Rights of the Child 1989, a ‘child’ means every human being below the age of 18 years unless, under the law applicable to the child majority is attained earlier. Thus this Article gives discretion to individual country to determine by law at what age the child attains majority.

The legal concept of a child varies depending upon the purpose: whether it is for imposing legal disabilities, for spelling out duties and obligations, for affording protections or for establishing to eligibility to receive benefits or special services. Underlying these alternative specifications are

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very different concepts about the child. These include viewing children as a burden which invoke rights to maintenance and support; regarding children as undergoing temporary disabilities making for rights to special treatment and special discrimination; treating children as specially vulnerable for ensuring rights of protection; and recognizing children as resources for the country’s development giving rise to rights of nurturing and advancement. The child has also been regarded as a commodity, as an insurance as a source of labour, and as a social burden in different countries depending upon social and economic development.

In India too, the definition of a child varies with purpose. The census of India defines person below the age of 14 years as children. While making use of standard demographic data, social scientists include females in the age of group of 15 to 19 years under the category of the girl child. According to Article 23 of the constitution, 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. The legal definition of a child depends very much upon specific legislation. In India the age on which a person cases to be a child varies in different laws. Some of the provisions relating to age under different legislations are summarized below:

<table>
<thead>
<tr>
<th>The Act</th>
<th>Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family Law</td>
<td>“Child” means a person who, if a male, has not completed 21 years of age, and if a female, has not completed 18 years of age.</td>
</tr>
<tr>
<td>Indian Contract Act, 1870</td>
<td>A person below the age of 18 years has no capacity to contract</td>
</tr>
<tr>
<td>Indian Penal Code, 1860</td>
<td>Nothing is an offence which is done by a child under seven years of age (Section 82) Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature</td>
</tr>
</tbody>
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31 Ibid.
32 Ibid.
and consequences of his conduct on that occasion (Section 83).

<table>
<thead>
<tr>
<th>Act</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Juvenile Justice Act, 2000</td>
<td>‘Juvenile’ or child means a person who has not completed 18 years of age [Section 2(k)]</td>
</tr>
<tr>
<td>The suppression of Immoral Traffic in Women &amp; Girls Act, 1956</td>
<td>“Girl” means a person who has not completed the age of 21 years.</td>
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Labour Laws:

<table>
<thead>
<tr>
<th>Act</th>
<th>Definition</th>
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<tbody>
<tr>
<td>The Plantation of Labour Act, 1951</td>
<td>“Child” means a person who has not completed his fifteenth year.</td>
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<tr>
<td>The Apprentices Act, 1961</td>
<td>A person shall not be qualified to be engaged as an apprentice unless he is not less than fourteen years of age.</td>
</tr>
<tr>
<td>The Factories Act, 1948</td>
<td>No child who has not completed his fourteenth year shall be required or allowed to work in any factory.</td>
</tr>
<tr>
<td>Minimum Wages Act, 1948</td>
<td>Child means a person who has not completed his fifteenth year of age [Section 2(bb)].</td>
</tr>
<tr>
<td>The Mines (Amendment) Act, 1983</td>
<td>No person below eighteen years of age shall be allowed to work in any mine or any part thereof.</td>
</tr>
<tr>
<td>The Motors Transport Workers Act, 1961</td>
<td>Prohibitions of employment of children under fifteen years in any motor transport undertaking.</td>
</tr>
<tr>
<td>The Shops and Establishment Act, 1961</td>
<td>Different age is specified by different states which ranges between twelve to fifteen years.</td>
</tr>
<tr>
<td>The Child Labour (Prohibition and Regulation) Act, 1986</td>
<td>Child means a person who has not completed fourteenth year of age [Sec. 2(ii)]</td>
</tr>
<tr>
<td>Constitutions of India (86th Amendment) Act, 2001</td>
<td>Article 21-A of the constitution states that the state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine. Article 45 of the constitution states that the state shall endeavor to provide early childhood care and educations for all children until they complete the age of six years. Article 51-A(K) lays down a duty of parents or guardians should provide opportunities for education to his child or ward between the age of six to fourteen years.</td>
</tr>
</tbody>
</table>

Source: Compiled from different legislations.
As it is observed from the above table that the expression ‘child’ has been defined variously under various Acts. Hence the term ‘child labour’ embraces a complex reality. It is conventional to apply the criterion of age to distinguish between child and adult workers. The constitution of India as well as various labour legislations mentioned the age of 14 years as the demarcating point. Therefore, a girl falling in the age group of 5-14 years engaged in silk industry is treated as child labourer for the purpose of this study.

The Problems of Enforcement of Laws relating to child Labour:

Law is an instrument of social change. So the law can be used to bring any change – social, economic and political, by restricting and regulating the behaviour of society. But the law is like a railway engine sleeping in the locomotive yard which begins to heave when fuelled and fired. Therefore, the law will not work until invoked and provoked. At least this is true in case of children for whom all laws are dormant and inoperative against their exploitation. It is in this background let us have a look on the problems of enforcement of legislation relating to child labour.

There is hardly any product in India, which has no child labour behind it. It is quite amazing to note that Indian legislature has passed more than 300 Central and State legislations to protect and safeguard the interest of child labour. But, truth remains that these laws remained dormant and under utilized. In chapter third, we have examined constitutional provisions and at least thirteen major legislations that provide protection to children in various occupations. The Constitution of India outlawed the employment of children below the age of fourteen years in factories, mines and hazardous industries. Besides, there are other enactments dealing employment in factories, mines and plantation etc. which have clauses prohibiting and regulating the employment of children. The government of India in its latest Act of 1986 has recognized child labour as a necessary evil. As it prohibits employment of children in hazardous jobs and regulates the condition of work for children in other jobs of non-hazardous nature. However, in spite of all these laws children continue to
work in prohibited occupations. There is no or very little regulation of child labour in non-prohibited areas of employment.

It is difficult to enforce child labour legislation in unorganized household industries because the units are running without registration, large in number and scattered over huge areas. The number of labour inspectors is also extremely low. There are other practical problems as well, when the inspector visit an area where there is a concentration of units employing child labour, he may find children present and at work only in first or two units visited. In all other units, child workers would disappear on learning of inspector’s visit. Where the inspector does manage to find children employed in particular establishment in violation of the law and takes up prosecution, he then faces many legal hurdles. When unit is small, the claim is often made in the court is that the child workers are the children of the family and are therefore, covered by the exemption under the Child Labour Act. In the larger units, it is often claimed by the employers that the children are present only for the purpose of meeting their parents or bringing their lunch etc. Since the Court normally attaches more importance to documentary evidence and there is no such evidence that child is working in the unit, therefore, prosecution become very difficult.

Another aspect crucial to the prosecution is the age of the child. Since the birth certificates are not common in the rural areas or among the rural poor people. There is no reliable evidence to prove the age of the child in the absence of a birth certificate. The inspector has to get the child medically examined at the employer’s cost. All this requires time and money. Neither the parents nor the child are prepared to make statements against their employer. In addition, the judiciary does not deal with the problem for evolving an effective and viable solution. The court takes a long time to impose any penalty on defaulters. Even the employers are let off by the court after paying meager fines.

Another significant reason responsible for lack of enforcement of child labour legislation is the prevailing attitudes and perceptions of the parents, children, employers, law makers and law enforcers and society at large. It is
widely believed that there is nothing wrong in employing children. It is in fact, helps to alleviate poverty of child’s family and helps impart skills to children for their future lives. The studies on child labour reveal that the problems of enforcement of laws relating to child labour fall in to following categories.33

(i) **Enforcement of Social Legislations:**
Social legislations are difficult to enforce. In case of child labour laws also, the situation is similar because the law enforcers do not understand the spirit of the law. Neither the employers nor the parents nor the law enforcers perceive child labour as undesirable thing or evil.

(ii) **Informalization of Child Labour:**
Due to “informalization of child labour” viz there has been a shift of work out of factories and large establishments in to small cottage and home based units, from out of the organized sector to the unorganized sector. Therefore, it has become difficult to enforce the laws concerning child labour. This requires a large increase in the labour enforcement machinery. Other laws are applicable only to the organized sector. Apart from this, the employers do not maintain record of the child workers.

(iii) **No Successful Conviction:**
When an inspector manages to find children working in an establishment in violation of the law, the prosecution does not lead to successful conviction.

Moreover, the studies indicate that most of the inspections conducted do not result in prosecution because of the carelessness of enforcement officers. So the number of prosecution which resulted in convictions again makes a dismal picture. Some of the most common reasons for acquittal in some cases studied are:34 (i) delay in filing cases; (ii) the inspector failed to obtain a

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deposition from any of the workers of the factory while noticing the contravention; (iii) the inspector who prosecuted the case was not a notified inspector under section 17 of the Child Labour Act 1986; (iv) the section 92 of the Factories Act 1948, was not amended to accommodate the prosecutions for contravention of section 67, under section 14 (1) of the Child Labour Act, 1986; (v) the Medical Officer was a notified authority to certify the age of the children only under the Factories Act, 1948 and not under the Child Labour Act, 1986; (vi) the certificate of age was not issued in the prescribed form; (vii) the prosecution failed to produce the children before the court; (viii) the register of child labour was not seized and produced before the court; (ix) the rules were not framed by the state government under section 18 of the Child Labour Act, 1986, and under such circumstances the legality of attracting section 14 (1) of the Act for the award of punishment would not be a valid contention; and (x) the certification of age of the child could not be considered as complete and final.

Therefore, it is clear from the above discussion that why the child labour legislations could not make significant impact in combating the problem of child labour.

To conclude, the international agencies like ILO, UNICEF and UN are making every effort to eradicate the problem of child labour. In this context, the ILO has adopted 18 Conventions and 16 Recommendations to deal with this social evil. Child labour has been one of the key areas concern for the ILO since its inception, and has always been an area of special concern. The organization provides a world forum for the discussion of social and labour problems of concerns to governments, employers and workers in all member countries. The Conventions and Recommendations adopted by the international conference is a legal instrument regulating the labour administration, social welfare and human rights. It creates obligation of a binding nature on the countries who have ratified it. ILO has been playing an important role in the process of gradual elimination of child labour and to protect the child from industrial exploitation. The main focus has been: (a) prohibition of child labour
at work; (b) protecting child labour at work; (c) attacking the basic causes of child labour; (d) helping children to adapt to future work; and (e) protecting the children of working parents. Barring few, India has ratified almost all the conventions on child labour but sincere and sustainable efforts are still required to be adopted to curb this social evil.

The Constitution of India has embodied certain provisions for the welfare of children. Articles 15, 23, 24, 39, 43 and 45 are related to the children’s rights. Further Article 21-A inserted by the Constitution (86th Amendment) Act 2001 declares right to free and compulsory primary education as a fundamental right; whereas Article 51-A (k) inserted by the same amendment imposes an obligation on parent or guardian to provide education to their child or ward as the case may be.

To combat the problem of child labour in our country several legislations were enacted such as Child Labour Act 1933; Child Act 1938; Factories Act 1948; Mines Act 1952; Plantation Labour Act 1951; The Merchant Shipping Act 1958; Motors Transport Workers Act 1951; Bidi and Cigar Workers Act 1966; and Child Labour Act 1986. In fact except Act 1986, various other laws mentioned above were not laws on child labour. They either related to employment in general or were confined to certain specific employments. These laws were not passed with a focus on child labour in general but with reference to regulate employment in a particular industry as and when the need arose. In addition to these Central Acts, the states passed various shops and commercial establishment acts for their respective states. But due to loop-holes in the Acts these could not yet be proved effective in eradicating the child labour problem. Beside, inadequate, corrupt and weak government machinery is also responsible for the poor enforcement of these Acts. As a result the problem of child labour went on increasing in our country.

Therefore, in order to eliminate the evil practice of child labour, the ethos of society needs to be changed. It needs a social revolution to change the attitude of employers, parents, children, government officials and society at large. But there is no such revolution in our country. Various statutory
provisions and constitutional mandate would be futile without social acceptance, awakening and social revolution or sensitivity regarding this evil. Force of law depends on social acceptance and force. To achieve the constitutional goal, it is necessary that proper implementation of laws should be ensured. The Hon'ble Supreme Court observed that “various enactments made by the Parliament and State legislature are only teasing illusions and promise of unreality, unless they are effectively implemented and make the right to life to the child driven to labour a reality, meaningful and happy”. It is possible through combined effort of governments, employers, trade unions, social activists, social reformers and committed non-government organization.

35 Bandhua Mukti Morcha v. Union of India; AIR 1997 SC 2218.