CHAPTER 3

The Constitutional Frame work

(Legal Aspects)
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The Constitution of India is an elaborate document with 395 Articles which are divided into 22 parts and having 12 schedules. It is one of the most comprehensive Constitutions in the world. The basic document of the Country makes special provisions for certain selected classes of the people like backward classes, women, children, etc.

Legislative history with respect to child labour traversed a long path since 1881 by progressively extending protection to the working children. Over its long period, the statutory provisions on child labour have concentrated mainly on a few aspects like reducing the working hours, raising the minimum age of children for working, and on different activities which a child can undertake. The Employment of Children Act 1938 was the first comprehensive Act in this regard, and this Act latter on became Child Labour (Prohibition and Regulation) Act in 1986.

An attempt is made to trace the revolution of the present law through the years under different enactment. Legislative response in this regard like labour laws is being criticized in many cases as ad-hoc and very often half-hearted. Industrialization brought with it several woes for the working especially long hours of work. The fate of the children was also not different where they used to accompany the parents to the work.
place. The Child Labour (Prohibition and Regulation) Act 1986 was the culmination point of the following legislative landmark.

1881: The Factories Act:

i. factories employing 100 or more persons were covered by Act.

ii. minimum age of a child for employment was fixed as seven years

iii. successive employment for the same employee, i.e. employment in two factories on the same day was prohibited

iv. working hours was not to exceed nine hours a day and at least four holidays to be given in a month

1881: The Factories Act (Revised):

The Act revised with respect to the following matters:

i. the minimum age increased to nine years

ii. hours of work was limited to maximum seven hours per day with prohibition of work at night between 8.00 p.m. to 5.00 a.m.

1901: The Mines Act:

The Act prohibited the employment of children under 12 years of age.

1911: The Factories Act:

The Act prohibited work of children between 7.00 p.m. and 5.30 a.m. It also provided for

i. Prohibition of working in certain dangerous processed occupation.

ii. Requirement of certificate of age and fitness.
1922: The Factories (Amendment Act):

To implement the ILO Convention (No. 5), 1919; the Factories Act was amended in 1922 which provided for the following changes.

i. minimum age limit increased to 15 years

ii. reduced the working hours to a maximum of 6 hours, and also an interval of half an hour was prohibited for children who are employed for more than 5.5 hours.

iii. scope of Act was limited to establishment employing 20 or more persons with mechanical process, with power given to the local government to exclude the provisions to premises employing 10 or more persons.

iv. prohibition of employment of children below 18 years and women in certain process.

v. provision for medical certificate plus certificate of re-examination for continuing work.

1923: The India Mines Act:

The Act prescribed a higher minimum age for employment in mines, i.e. from 12 to 13 years.

1926: The Factories (Amendment Act):

This amendment imposed certain penalties on the parents and guardians for allowing their children to work in two separate factories on the same day.
1931: The Indian Port (Amendment) Act:

This Act laid down 12 years as the minimum age that could be prescribed for holding goods in ports. The Report of the Royal Commission on Labour (1931) has an impact on legislation pertaining to Child Labour during the period between 1931 and 1949.

1932: The Tea District’s Emigrant Labour Act:

This Act was passed to check migration of labourers to district like Assam. It also provided that no child should be employed or allowed to migrate unless the child is accompanied by his parents or an adult on whom the child is developed.

1933: The Children (Pledging of Labour) Act:

This act prohibited pledging of children i.e. taking address by parents and guardians in return for bonds, pledging the labour of their children – a system accounting to that of the present day bonded labour system. This practice of pledging of labour of children was found to be prevalent in areas such as Amritsar, Ahmedabad, Madras etc. in carpet and bidi industries. The children in these situations were found to be working under extremely unsatisfactory working conditions.

1934: The Factories (Amendment) Act:

This amendment Act had elaborate provisions for regulating the employment of children of various age groups with regard to factories such as:
i. children under 12 and 15 years – employment generally prohibited.

ii. children between 12 and 15 years – employment restricted to 5 hours a day

iii. children between 15 and 17 years – certain restriction on employment were imposed

1935: The Mines (Amendment) Act:
This amendment introduced division of children according to age groups and the following restrictions were introduced.

i. employment of children under 15 years in mines was prohibited

ii. underground employment of persons between 15 and 17 years was permitted only on production of certificate of physical fitness granted by qualified medical practitioner.

iii. working time restricted to maximum 10 hours a day and 54 hours a week above the ground and 9 hours a day for work underground.

1938: The Employment of Children Act:
The Act was passed to implement the convention adopted by 23rd session of ILO (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, or in the holding of goods at docks, quays of wharves, but excluding transport by land. Children under the age of 15 years shall not be employed or
work in occupations to which this Article applies which are scheduled as dangerous or unhealthy by the competent authority."

Hence it:

i. Prohibited the employment of children under 15 years in occupation connected with transport of goods, passengers, mail on railways.

ii. Raised the minimum age for holding goods on docks from 12 to 14 years.

iii. Provided for the requirement of a certificate age

1948: The Factories Act:

This Act repealed all the previous enactments on factories and raised minimum age for employment in factories to 14 years.

1949: Employment of Children (Amendment) Act:

This amendment raised the minimum age to 14 years for employment in establishments governed by that Act.

1950: The Constitution of India:

In its chapter on Fundamental Rights and Directive Principles of state policy, it included provisions relating to employment and welfare of children such as:
1951: Employment of Children (Amendment) Act:

The amendment was required as a result of the ILO convention relating to night work of young persons. This amendment prohibited the employment of children between 15 and 17 years at night in railways and ports and also provided for requirement or register for children less than 27 years.

1951: The Plantations Act:

This Act prohibited the employment of children under 12 years in plantation.

1952: The Mines Act:

This Act prohibited the employment of children under 15 years in mines. This Act stipulated two conditions for underground work –

i. requirement to have completed 16 years of age and

ii) requirement of obtaining a certificate of physical fitness from a surgeon

1954: The Factories (Amendment) Act:

This amendment included a prohibition of employment of persons under 17 years at night. ‘Night’ was defined as a period of 12 consecutive hours and which included hours between 10 p.m. and 7 a.m.
1958 Merchant Shipping Act:
This Act prohibited children under 15 years to be engaged to work in any capacity in any ship, except certain specified cases.

1961 The Motor Transport Workers Act:
This enactment prohibits the employment of children under 15 years in any motor transport undertaking.

1961 The Apprentices Act:
This Act prohibits the apprenticeship / training of a person under 14 years.

1966 The Bidi and Cigar Workers (Condition of Employment):
This Act prohibits:

i. the employment of children under 14 years in any industrial premises manufacturing bidis and cigars.

ii. person between 14 years and 18 years to work at night between 7.00 p.m. and 6.00 a.m.

1978 Employment of Children (Amendment) Act:
It prohibits employment of a child below 15 years in occupations in railways premises such as cinder-picking or clearing of ash pit or building operation, in catering establishment and in any other work which is carried out in close proximity to or between the railway lines.
1986 Child Labour (Prohibition and Regulation) Act:

This Act prohibits the employment in six occupations and fourteen process which have been listed out in Part A & B of the schedule of the Act, of any person who has not completed his fourteen years of age.

This Act –

i. bans the employment of children, i.e., those who have not completed their fourteen years, in specified occupations and process.

ii. lays down procedure to decide modification to the schedule of banned occupations and process.

iii. regulates the conditions of work of children in employment where they are not prohibited from working.

iv. lays down enhanced penalties for employment of children in violation of the provisions of this Act, and other Acts which forbid the employment of children.

v. it also intends to obtain uniformity in the definition of ‘Child’ in the related laws.

1986 National Child Labour Policy:

The Child Labour (Prohibition and Regulation) Act, 1986, and its Implementation:

The Child Labour (Prohibition and Regulation) Act, 1986, repeated the Employment of Children Act, 1938, but reproduces its schedule A & B. This Act consists of four parts. Part – I contains definitions. Part – II deals with the prohibitions and process. Part – III
regulates child labour in those establishments where children under 14 years may be permitted to work. Part – IV lists the penalties for violations of the Act.

Though the previous Acts prohibit the employment of children below 14 years in certain specified employments, there was no procedure laid down in any law for deciding in which employment, occupations or process the employment of children should be banned. There was also no law to regulate the working conditions of children in most of the places where they are not prohibited from working and were working under exploitative conditions.

No fundamental changes have been incorporated in the 1986 Act and in most essential matters it is a replica of the old Employment of Children Act, 1938.

National Policy on Child Labour – 1987

In the Constitution of India, both Directive Principle of state policy and Fundamental rights, have laid down that the state shall direct its policy towards securing the health and strength of workers, men and women, and the tender age of children. Childhood and youth are to be protected against exploitation, and no child below age of 14 years shall be employed to work in any factory or workshop.

Government has given much more importance to these aspects of the problem of child labour i.e. to protect child labour from exploitative work.
So, from our foregoing analysis we find that lots of legislation has been formed to prevent, prohibit and safeguard the incidence and interests of child labour. Similar such Acts were the children (Pledging of Labour) Act 1933, and subsequently in the year 1938. Another legislation known as Employment of Children Act was introduced in 1938. These Acts determine the age of child labour and also restrict the work of children in certain occupations that are hazardous in nature. Another enactment came into force in 1986 called “Child Labour (Prohibition and Regulation) Act, that has made provisions for regulating working hours for child labour, restrict the employment of children at night, prohibition of employment in certain occupations and besides provided strong punishment for violation of the provisions of the Act.

The Government prohibits the employment of child labour through legislation and provided free primary education to all children of the society irrespective of the caste, color and creed. Besides legislative actions, the Government has also taken various executive steps to wipe out the evils of child labour. But unfortunately the Indian economic and social scenario does not have the intrinsic conditions which facilitate prohibitions of such evils. The social and economic conditions of the people cannot be improved all of a sudden. Employment, which is one of the major issues of concern, cannot be provided to all eligible persons. Until the major problems like poverty, unemployment, illiteracy, etc. are wiped out of our country completely; the elimination of child labour is virtually impossible.