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LEGAL ENVIRONMENT

The Government of India has been deeply concerned with the problem of child labour. Official recognition of child labour in modern times is evident in legislation dating back to the 19th century, which fixed the minimum age for employment in factories as seven years in 1881 and nine years in 1891.¹

The Constitution of India, which came into being in 1950, included strictures against the economic exploitation of children. For instance, Article 24 of the directive principles of state policy provides that “no child below the age of 14 shall be employed to work in any factory or mine or engaged in any hazardous employment”. Article 39(e) states that the tender age of children should not be abused, and should not be forced by economic necessity to enter into avocations unsuited to their age or strength, that children should be given opportunities and facilities to develop in a healthy manner, in conditions of freedom and dignity, and that childhood and youth should be protected against exploitation as well as moral and material abandonment.

Article 45 of the constitution directs the state to endeavor to “provide free and compulsory education for all children until they complete the age of 14 years”.

There are many Acts in the country for the benefit of children and adolescents engaged in certain specific occupations and industries, they are:

¹ Giri, V.V., “Labour Problems in India”, p.360.
a) The Children (Pledging of Labour) Act, 1933
b) The Employment of Children Act, 1938
c) The Factories Act, 1948
d) Minimum Wages Act, 1948
e) Dock Worker's Regulation and Employment Act, 1948
f) The Plantation Labour Act, 1951
g) The Mines Act, 1952
h) The Merchant Shipping Act, 1958
i) The Motor Transport Workers Act, 1961
j) The Apprentices Act, 1961
k) Radiation Protection Rules 1971 under the Atomic Energy Act, 1962
l) Bidi and Cigar Workers (Conditions of Employment) Act, 1966
m) The Child Labour (Prohibition and Regulation) Act, 1986

3.1 The Child Labour (Prohibition and Regulation) Act 1986

The Child Labour (P and R) Act 1986, which sought to prohibit the employment of children in certain occupations and processes and to regulate conditions of work in those occupations and processes. On 23rd December 1986, the Act was passed by the Parliament and the Employment of Children Act of 1938 was replaced.

3.1.1 Salient Features of the Act²

1. The Act aims to prohibit children's employment in certain occupations and processes and regulate the working conditions in other occupations.

2. It extends to whole of India.

3. Provisions of this Act are to come into force with immediate effect.

4. ‘Child’ means a person who has not completed his fourteenth year of age.

5. Central Government constituted a Child Labour Technical Advisory Committee to advise to implement this Act.

3.1.2 Prohibited Occupations and Processes

Occupations: Any occupation connected with

1. Transport of passengers or goods railway.

2. Cinder picking, clearing of an ash pile or building operation in the railway premises.

3. Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train.

4. Work relating to the construction of a railway station or with any other work where such work is done in close approximation to or between the railway lines.

5. A port authority within the limits of any port.

6. Work relates to selling of crackers and fireworks in shops with temporary licenses.

7. Abettors / Slaughter houses.

3.1.3 Processes

(a) Beedi-making

(b) Carpet-weaving

(c) Cement manufacture, including bagging of cement

(d) Cloth printing, dyeing and weaving


Manufacture of matches, explosives and fire works

(e) Mica cutting and splitting

(f) Shellac manufacture

(g) Soap manufacture

(h) Tanning

(i) Wool cleaning

(j) Building and Construction Industry

(k) Manufacture of slates and pencils (including packing)

(l) Manufacture of products from agate

(m) Manufacturing processes using toxic metals and substances such as lead mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos

(n) Cashew and Cashew nut descaling and processing

(o) Soldering processes in electronic industries

3.1.4 Regulation of Conditions of Work of Children

The provision of this part shall apply to an establishment or a class of establishment in which none of the occupations or process referred to section 3 is carried on.

3.1.5 Hours and Period of Work

(a) No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishment.

(b) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.
(c) The period of work of a child shall be so arranged that inclusive of his interval of rest which shall not spread over more than six hours, including the time spent in waiting for work on any day.

(d) No child shall be permitted or required to work between 7 pm and 8 am.

(e) No child shall be required or permitted to work overtime.

(f) No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

3.1.6 Weekly Holidays

Every child employed in any establishment shall be allowed in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

3.1.7 Maintenance of Register

There shall be maintained by every occupier in respect of children employed or permitted to work in any establishment a register to be available for inspection by an inspector at all times during working hours or when work is being carried on in any such establishment, showing

(a) The name and date of birth of every child so employed or permitted to work.

(b) Hours and periods of work of any such child and the intervals of rest to which he is entitled.

(c) The nature of work of any such child, and

(d) Such other particulars as may be prescribed.
3.1.8 Health and Safety

The appropriate Government may, by notification in the official gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.

Without prejudice to the generality of the foregoing provisions, the said rules may provide for all or any of the following matter, namely

(a) Cleanliness in the place of work and its freedom from nuisance
(b) Disposal of wastes and effluents
(c) Ventilation and temperature
(d) Dust and fume – Proof Environment
(e) Artificial humidification
(f) Lighting
(g) Drinking water
(h) Latrine and urinals
(i) Spittoons
(j) Fencing of machinery
(k) Work at or near machinery in motion
(l) Employment of children on dangerous machines
(m) Instructions, training and supervision in relation to employment of children or dangerous machines
(n) Device for cutting of power
(o) Self-acting machines
(p) Easing of new machinery
(q) Floor, stairs and means of access
(r) Pits, sumps, opening in floors etc.
(s) Excessive weights
(t) Protection of eyes
(u) Explosive or inflammable dust, gas etc.
(v) Precautions in case of fire
(w) Maintenance of building and machinery

Penalties:

(i) Whoever employs any child or permits any child to work in contravention of the provisions of Section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees, but which may extend to twenty thousand rupees or with both.

(ii) Whoever, having been convicted of an offence under Section 3, commits like a offence afterwards, it shall not be less than six months but which may extend to two years.

(iii) Whoever

(a) Fails to give notice as required by section 9 or

(b) Fails to maintain a register as required by section 11 or makes any false entry in any such register or,

(c) Fails to display a notice containing an abstract of section 3 and this section as required by section 12 or

(d) Fails to comply with or contravenes any other provisions of this Act or the rules made there under, shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

5. Ibid, Section 14, p.15.
3.2 National Policy on Child Labour

The Constitution of India, both in the directive principles of state policy and as a part of the fundamental rights has laid down that State shall direct its policy towards securing the health and strength of workers, men and women and the tender age of children are not abused that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength and that children, particularly one given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity. Childhood and youth are to be protected against exploitation and no child below the age of 14 years shall be employed to work in any factory and mine or engaged in any other hazardous employment.

The national policy for child resolution, adopted in August 1974, further developed the above ideas and setout a policy frame work and measures aimed at providing adequate services for children. These were to form a prominent part of the Nations plan for development of human resources. Free and compulsory education for children up to the age of 14, provision of health and nutritional programmes and services, providing alternative form of education for children unable to take full advantage of formal school education for whatever reasons and measures for protecting children against neglect, cruelty and exploitation form part of the national policy for children.

The policy also provides as one of its objectives, that no children under the age of 14 years shall be engaged in hazardous occupations or be made to undertake heavy work.

Government has given consideration to these aspects of the problems of child labour namely:

(a) The need to protect the child labour from exploitation or from being subjected to work in hazardous conditions, which endanger such children's physical and mental development.

(b) The need to ensure safety and health at their working places, that they should be protected from expressively long working hours and from right work;

(c) That these should be regulated work even in non-hazardous occupation; and

(d) That all child labour have to have sufficient weekly rest periods and holidays in their employment.

The Child Labour (Prohibition and Regulation) Act, 1986 was the culmination of the process of consideration that Government has been giving to this pervasive problem figuring in the economic and social landscape in the country. Both in enacting this legislation and those after in laying down the policy and outline of the programme of action, the Government has kept in mind the economic and social aspect of child labour in the country.

This national policy also includes alternative forms of education for children unable to take full advantage of formal school education for whatever reasons, health and nutritional programmer and services for all children; and measures for protecting children against neglect, cruelty and exploitation. The national anti-poverty policies, the national education policy and the national policy an health for all and on nutrition are expected to help in realizing the objectives of all national policy on child labour 1987.
The future action programme of this policy has been discussed under following three headings:

(a) The legislative action plan;

(b) The focusing of general development programs for benefiting child labour whenever possible; and

(c) Project based plan of action in areas of high concentration child labour engaged in wage and quasi wage employment.

(a) Legislative Action Plan

A Child Labour Technical Advisory Committee has been setup to advise the Central Government on addition of occupation and processes to the schedule contained in Child Labour (Prohibition and Regulation) Act, 1986, and the Central Advisory Board on Child Labour, Ministry of Labour has setup a task force to recommend measure institutions and mechanics necessary for implementing this Act and a legal action plan. It has made provisions of immediate enforcement of the Factories Act, 1948 and the Mines Act, 1952 particularly to ensure that children are not employed in hazards occupations and to regulate where they are employed in non-hazardous occupations. The State and Central Government department and undertakings are required to review the situation so as to ensure that child labour is not employed in prohibitive occupations and if employed in non-hazardous occupations, the provisions set out for their health and safety, for the maintenance or registers and for regulating and hours of work, overtime, weekly holidays and days of rest are enforced in all establishments.

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The Government will also bring about changes in the Minimum Wages Act 1948 to ensure equal wages to children and adults. This, it is expected will remove economic incentive to employ child labour at lower wages and also to remove other kinds of discrimination against child labour. For enforcing other protective legislation like the Payment of Wages Act, the Payment of Gratuity Act, the Equal Remuneration Act, the Payment of Bonus Act, etc. It will ensure that child labour is not discriminated against as compared to adult labour.

(b) Focusing on General Development Programmes for Benefiting Child Labour

National Development Programmes exist with a very wide coverage in areas of education. Health, Nutrition and Anti-Poverty Group of Programmes. Poverty alleviation programmes would be formulated and implemented in a decentralized manner with the participation of people at the gross root level through Village Panchayats, Zilla Partishaths etc.

The programmes would be aimed at identifying the poorest among poor, for this purpose detailed household survey will be carried out and provide assistance to the beneficiaries through various schemes. The following are the different schemes under which the Government provides benefits to poorest people. They are IRDP, through land based activities like minor irrigation, diary farming, horticulture, supply of working capital, equipment for household enterprises, importing skill through TRYSEM etc.
(c) Project Based Plan of Action

Under the Project Based Plan of Action specific section of employment where the incidence of child labour is high have been identified, these are:

1. The Match Industry in Sivakasi (Tamilnadu)
2. The diamond polishing industry in Surat (Gujarat)
3. The precious stone polishing industry in Jaipur (Rajastan)
4. The glass industry in Ferozabad (UP)
5. The brassware industry in Moradabad (UP)
6. The hand made carpet industry in Mirzapur Bhadoi (UP)
7. The lock making industry in Aligarh (UP)
8. The hand made carpet industry in Jammu and Kashmir
9. The slate industry in Mandsaur in (MP)
10. The slate industry in Markapur (AP)

In the above listed ten ‘project areas’ strategy was to evolve a package comprising of the following elements.\(^8\)

1. Stepping up the enforcement of the Child Labour (P&R) Act, the Factories Act and the Mines Act, even special enforcement staff are created for this purpose.

2. Coverage of families of child labour under the income / employment generating programmes under the overall eagis of anti-poverty programmes.

3. Where there is a concentration of SC/ST families with child labour, a concentration of special component and tribal sub-plans by the State Governments in each project area.

\(^8\) Mahaveer Jain, ‘Child Labour in India,’ National Labour Institute, Noida, 1994, p.219.
4. Formal / Non-Formal education of child labour engaged in hazardous employment and of as many labour as possible as may be in non-hazardous employments. Also, stepped up programme of adult education of the parents of the children.

5. Co-ordinating the activities of different departments Ministers of Central Government of India and State Government to benefit child labour.

6. Setting up of special school for child workers together with provision of vocational education training in such special schools, supplementing nutrition, a stipend to the children taken out from prohibited employments and health care for all children attending at such special schools.

3.3 Current Action Plan in Karnataka State

The Government of Karnataka is openly seized of the urgent need to improve the situation of children in the state. A state programme of action for the child formulated in 1994, aims to integrate several existing governmental programmes in the areas of nutrition, health and education for the benefit of children. The programme of action, which incorporates a holistic understanding of the multiple co-ordinate inputs required to improve the condition of the child, as well as a participatory approach to implementation, has the potential to effect positive changes in the health, nutritional and educational status of children. Such an outcome could greatly reduce the probability of children entering the labour force in the state.

However, more specific action to combat the menace of child labour is clearly necessary, in view of the fact that Karnataka ranks high among the 31 states and union
territories of India in the number of child labourers, it harbours fifth according to the campaign against child labour; fourth as per 1995 UNICEF document.

According to the centre for public policy studies, Hyderabad, Karnataka occupies third position (after Andhra Pradesh and Meghalaya) in the percentage of child workers to the total population (2.60%) as well as to the child population (6.58%), both well above the national average 1.68% and 4.26% respectively. UNICEF report puts the number of children working in hazardous occupations in the State at 1,169,000. It is clear that by any reckoning the child labour situation is grim and demands urgent attention and determined action.

CALL-K (Campaign Against Child Labour, Karnataka) launched a public awareness campaign on child labour in November 1994 by getting several eminent citizens to endorse a document entitled “Karnataka’s Commitment Towards Building a State Free of Child Labour” during the year 1994\(^7\).

In 1995 a draft approach paper was prepared after taking into consideration the opinion / suggestions of Government of India officials as well as academicians, researchers, social activists, legal experts, trade unionists etc and a task force was constituted to take the process forward. The approach paper which was further refined by a large group of social activists representing NGOs from different parts has been presented to the Government.

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In an effort to contribute to the formulation of effective strategies to eliminate child labour in Karnataka, the State Government’s Department of Women and Child Development (DWCP) and Labour Commissionarate, with the support and collaboration of UNICEF, Hyderabad. The Government of Karnataka has taken up a new concrete scheme to eradicate child labour and get them into the mainstream of education. The following is the summary of the proposed scheme.

The Government of Karnataka has recognized all the previous schemes of street children (child labour) into one scheme intending to prevent child labour in its order shown in the reference. In this new scheme, preference is given to the prevention of child labour and importance is being given to the prevention of girl child labour. The order of the Government is enclosed.

The implementation of the scheme and its expenditure has been discussed in detail in the meeting of the Assistant Directors on 17-9-97.

Assistant Directors are advised to meet the District Collectors immediately to implement the scheme. They should formulate a committee under the Chairmanship of District Collector to implement and supervise the above said scheme.

To implement the said scheme, the following guide lines should be followed.

1. Assistant Directors should recognize good, efficient non-governmental organizations to work for the sake of child labour and to start special schools and courses for them. The role of NGOs in implementation of scheme is very important that’s Why the Assistant Directors should carefully note the efficiency, self-sufficiency, economic feasibility, buildings, staff (trained and
un-trained) and other facilities. He should take special care to check their previous two years experience in this field and also get audit reports of the previous two years.

2. If certain NGOs failed to fulfill objectives and goals of previous schemes, it should be seriously taken note of and they should not be allowed to be selected for this scheme.

3. Clear cut memorandum or agreement of understanding should be prepared with the selected NGOs regarding implementation of the scheme and use of allotted funds in proper manner.

4. If no NGO has been selected in the district for this purpose, the Government should implement the scheme, and the Assistant Director should take complete responsibility in proper implementation of the scheme.

II Selection of Beneficiaries

1. Child labour who are working in agriculture, shops, garages, construction and domestic labour, hotels, bus / railway stations, industrial areas; can be considered as beneficiaries.

2. At the time of selection of beneficiaries, both NGOs and Assistant Directors should be present. It should be noted, Assistant Director’s physical presence is necessary in the process of selection of child labour to be benefited under this scheme. Preference should be given to girl child labourer, children belonging to scheduled castes and scheduled tribes. There should be special consideration for the children of Devadasis where ever this system exists.

3. The aim of the scheme is to make the beneficiaries join into the mainstream of education system, so beneficent child should be within the age limit of eight to twelve years.
III Building Arrangements

1. As the scheme itself is residential one suitable building should be selected for the beneficiaries to stay and also to have non-formal education and other activities. It should be near to Assistant Director's office, so that he could visit it as many times as possible.

2. Preference should be given to NGOs, which open schools for child labour at the district head quarters. If any good NGO is working at Taluk level and if it has a strength of 100 students, then it can be selected at Taluk level.

3. If girl children are there in the group they should be provided accommodation in a separate building.

IV Special Educational Camps

1. On the basis of age and previous education, separate groups should be divided.

2. Non-formal education syllabus should be used to conduct classes. Anyhow the syllabus and the curriculum will be sent by directorate, women and child welfare.

3. This scheme is wholly residential, Boys and Girls should stay in the course and there would not be any kind of leaves for them.

4. After six months of non-formal education, the children should be returned to schools for main stream of formal education in June. To facilitate them to join in schools their birth certificates should be gathered by NGOs.

5. It is the joint responsibility of Assistant Director and the NGO to join all the children into schools according to their age and ability. The report in this regard should be submitted to the directorate.
V Purchase of Various Equipments

1. The necessary equipment for beneficiaries like blankets, utensils should be bought with in the limits of the sanctioned money for the scheme and also according to the strength of the beneficiaries.

2. Only blankets are provided but not clothes for the beneficiaries which they should get from their houses.

3. Indoor and outdoor games equipment should be purchased.

4. Essential general medicines should be bought with due consultation with District Medical Officer.

5. The equipment bought under this scheme belongs to the Government so the NGOs should maintain store records for the above said equipment. This should be supervised by the Assistant Director, Women and Child Welfare.

VI Staff

1. The staff should be recruited by a district level committee. The recruitment of attenders, supervisors, teachers and cooks should be purely on temporary basis for the period of six months only. At any cost, they should not be considered as government service and it should be made clear to them.

2. Supervisors should stay with in the premises of the school and look after the children.

3. Staff and teachers and also staff of NGOs should be properly trained by the district committee using local talent and experience.

VII Publicity

To create awareness in the public regarding evils of child labour, its eradication and also regarding the implementation of scheme, publicity programmes should be taken up by the committee.
VIII Funds

1. Amounts regarding expenditure towards this scheme by NGOs should be submitted to district level committee and when it is accepted by the committee it should be sent to the Directorate, Women and Child Welfare, after the approval of the Directorate District Collector will release the funds.

2. In the beginning grants will be released for the scheme, as first installment in November in this non-recurring expenditure, staff training, publicity expenditure and fifty percent of recurring expenditure will be included. After getting full report about the scheme from assistant director in February, the remaining amount will be released in the month of March by the District Collector.

3. District Collector should release the grants according to the number of beneficiary children. 10% of the grants should be kept until all the children are joined in schools in June by NGOs and then the report is submitted to him, then the remaining 10% should be released.

   The special schools, camps should be run from December to May for a period of six months, the report regarding this should be sent in the proforma to the Directorate, Women and Children Welfare, Bangalore.